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البند ٣ من جدول الأعمال

تعزيز وحماية جميع حقوق الإنسان، المدنية والسياسية والاقتصادية والاجتماعية والثقافية، بما في ذلك الحق في التنمية

تقرير الفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي

إضافة

البعثة إلى المكسيك*

موجز

بدعوة من حكومة المكسيك، زار الفريق العامل المعني بحالات الاختفاء القسري أو غير الطوعي البلد في الفترة من ١٨ إلى ٣١ آذار/ مارس ٢٠١١. وكان الهدف من الزيارة هو التعرف على ما تبذله المكسيك من جهود لمعالجة حالات الاختفاء القسري، والوقوف على حالة التحقيقات المضطرب بها والتدابير المتخذة لمنع تلك الحالات والقضاء عليها ومكافحة إفلات مرتكبيها من العقاب، وكذا المسائل المتعلقة بالحقيقة والعدالة وجبر الضرر. ويرحب الفريق العامل بمختلف الجهود التي بذلتها المكسيك في مجال حقوق الإنسان، بما في ذلك مكافحة الاختفاء القسري، فضلاً عن التحديات التي تملّيها الحالة الراهنة المعقدة من حيث السلامة العامة في إطار مكافحة الجريمة المنظمة. ومع ذلك، فمن اللازم أن تستمر المكسيك في العمل من أجل إعمال حقوق جميع ضحايا الاختفاء القسري في معرفة الحقيقة واللجوء إلى القضاء والحصول على جبر للضرر.

* يُعمم موجز هذا التقرير بجميع اللغات الرسمية. أما التقرير نفسه الوارد في مرفق الموجز فلا يُعمم إلا باللغة التي قدم به وبالإنكليزية فقط.

وقدم الفريق العامل جملة من التوصيات شملت منع الاختفاء القسري والتحقيق في حالاته والمعاقبة عليها وتعويض الضحايا وحماية المجموعات المستضعفة بوجه خاص. ومن بين تلك التوصيات: ضمان إدراج جريمة الاختفاء القسري في القوانين الجنائية لجميع الكيانات الاتحادية ومواءمة تعريف الاختفاء القسري في التشريعات الجنائية مع أحكام الصكوك الدولية لحقوق الإنسان ذات الصلة؛ وضمان التنسيق فيما بين السلطات المسؤولة عن الأمن العام بهدف منع الاختفاء القسري للأشخاص وإجراء التحقيقات الكافية في حالات الاختفاء القسري؛ وتأكيد اختصاص المحاكم المدنية في جميع المسائل المتعلقة بالاختفاء القسري؛ واستحداث برنامج وطني للبحث عن الأشخاص يقوم على خطة للتدابير الفورية؛ وكفالة حق ضحايا الاختفاء القسري في الجبر الكامل للأضرار.

Annex

Report of the Working Group on Enforced or Involuntary Disappearances on the mission to Mexico (18 to 31 March 2011)

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I. Introduction

1. At the invitation of the Government of Mexico, the Working Group on Enforced or Involuntary Disappearances visited the country from 18 to 31 March 2011. The Working Group would like to thank the Government for its invitation, positive cooperation before and during the mission and its openness to dialogue. In addition, the Working Group wishes to thank civil society organizations, associations of relatives of the victims of enforced disappearance and, in particular, the relatives who provided information and testimony. Lastly, the Working Group would like to thank the Office of the United Nations High Commissioner for Human Rights (OHCHR) for its invaluable support.

2. The Working Group congratulates the Government for having ratified all core United Nations human rights treaties, including the International Convention for the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. The Government of Mexico has extended a standing invitation to all United Nations special procedures.

3. The Working Group was represented by Ms. Jasminka Dzumhur (Bosnia and Herzegovina), Mr. Ariel Dulitzky (Argentina) and Mr. Osman El Hajjé (Lebanon). The purpose of the visit was to learn about the efforts made by Mexico to deal with enforced disappearances, to assess the progress of investigations and the measures adopted to prevent and eradicate these disappearances and to combat their impunity, and to consider matters relating to the truth, justice and reparation.

4. The Working Group visited Mexico City (Federal District), Chihuahua and Ciudad Juárez (Chihuahua), Acapulco, Atoyac de Álvarez and Chilpancingo (Guerrero) and Saltillo (Coahuila). It held a series of meetings with high-level officials, including the Minister of the Interior and the Minister of Public Security, as well as with officials from the Ministry of Foreign Affairs, Ministry of the Interior, Ministry of Defence, Ministry of Public Security, National Public Security System and the Technical Secretariat of the Coordinating Council for the Implementation of the Criminal Justice System. The Working Group also met legislators from the Chambers of Deputies and Senators of the Congress of the Union; judges from the Supreme Court; members of the Attorney-General's Office (in Mexico City and the states of Chihuahua and Guerrero) and Government authorities from Chihuahua, Guerrero, and Coahuila. The Working Group also visited the military zone in Saltillo. All of these meetings helped the Working Group to understand the policies that the Mexican Government is implementing and substantiated this report.

5. The Working Group met with the National Human Rights Commission (NHRC) and the human rights commissions of Chihuahua, Guerrero, Coahuila and the Federal District. It also met with several national and international NGOs, relatives of victims of enforced disappearance, victims of enforced disappearance and other stakeholders.

6. Since its establishment until the adoption of its 2010 annual report, the Working Group has transmitted 412 cases to the Government of Mexico. Of these, 24 cases have been clarified on the basis of information provided by sources, 134 have been clarified on the basis of information provided by the Government, 16 have been discontinued and 238 remain outstanding.

7. As in other countries, this data is not representative of the scale of enforced disappearances. The increase in the number of new cases submitted to the Working Group in 2010, the large number of new allegations received during the visit and the discovery of several mass graves in recent months may indicate that enforced disappearances in Mexico are becoming worse.

8. The Working Group's mandate relates to enforced disappearance as defined in the Declaration on the Protection of All Persons from Enforced Disappearance (hereinafter referred to as the Declaration). However, the Working Group condemns all acts of disappearance regardless of the perpetrator of the offence.

9. The mission to Mexico and this report focus mainly on two different periods during which a great number of enforced disappearances took place. However, the majority of the recommendations apply to any enforced disappearance case, regardless of when it occurred. During the period known as the "Dirty War", from the end of the 1960s until the beginning of the 1980s, the security forces carried out a policy of systematic prosecution against students, indigenous peoples, peasants, social activists and anyone suspected of being part of an opposition movement. The serious abuses committed included student massacres in 1968 and 1971 and the torture, execution and enforced disappearance of hundreds of dissidents and suspected sympathizers. Until a few years ago, Mexico refused to recognize that abuses had been committed by the security forces. It has since changed course and adopted some measures relating to the crimes committed during the "Dirty War". An official report has claimed that the administrations of three presidents were responsible for the crimes, thus rejecting the theory that the atrocities were committed by the police or certain military units on their own initiative. The second period in question is the current security situation in which multiple cases of enforced disappearance have been and continue to be reported. The Working Group is aware of the different contexts in which these two patterns of enforced disappearances have developed and are still developing in Mexico, and these have been duly taken into account. However, it notes with great concern that, in spite of these differences, the periods share some patterns, such as widespread impunity, withholding of the whole truth and lack of reparation for the victims.

II. Legal and institutional framework

10. Mexico is a federal State, with power divided between the Federation and 32 federal entities, including the Federal District. There are also over 2,400 municipalities which have certain responsibilities for security matters.

11. The federal structure creates opportunities for experimenting and developing different levels of protection. For example, in 2005, Guerrero adopted comprehensive and detailed legislation on enforced disappearances. Guerrero, Jalisco and Puebla have granted state human rights institutions the authority to deal with such matters.

12. However, the federal structure creates problems for the effective implementation of the Declaration throughout the country as a whole. The division of power, absence of a general law regulating all aspects of enforced disappearance, existence of security forces at the federal, state and municipal levels and the possibility for offences to be investigated at either the federal or state level depending on the identity of the alleged perpetrator dilute the responsibility of the federal and local authorities. The majority of Government officials, NGOs and victims of enforced disappearance highlighted the problem of the lack of vertical and horizontal coordination among Government authorities in the prevention and investigation of enforced disappearances and the search for disappeared persons. In the Working Group's meetings with the federal authorities, it was explained that some of the tasks related to enforced disappearances fall within the competence of the states. Yet, the state authorities asserted that the Federal Government has responsibility for central issues such as the fight against organized crime, abductions and guaranteeing security through the presence of the Federal Police, the army and the navy.

13. The states and the federation both have the power to adopt laws, although there are some offences which come exclusively under the jurisdiction of the Federation. Enforced

disappearance has been an autonomous offence in the Federal Criminal Code since 2001 and in the criminal legislation of the following eight states: Aguascalientes, Chiapas, Chihuahua, Durango, Federal District, Guerrero, Nayarit and Oaxaca. The Federal Criminal Code and the legislation of the states which have classified enforced disappearance as an offence do not use the same definition, or the definition set out in the Declaration. The majority refer merely to acts committed by public officials and exclude the possibility that enforced disappearances may be perpetrated by organized groups or individuals acting on behalf of the Government or with its direct or indirect support, authorization or acquiescence. Penalties vary according to the jurisdiction, and are not necessarily proportionate to the seriousness of the offence when compared with that of other offences such as abduction. The legislation of the majority of states (Federal District, Chiapas, Durango and Chihuahua) does not include a statute of limitations. In 2004, the Supreme Court decreed that the statute of limitations in an enforced disappearance case would begin to run from when the victim appeared, alive or dead, or when his or her fate was determined.

14. The inconsistencies between the definition of the offence of enforced disappearance used in the Declaration and that of other international instruments, as well as the fact that the majority of the states have not classified it as an autonomous offence, contribute to impunity. The fact that 24 states have not criminalized the offence is worrying. In these states, enforced disappearances are treated like abuse of authority, unlawful aggravated deprivation of liberty, abuse of public authority, offence against justice, unlawful detention, abduction or a combination of these offences. However, either such offences do not have the necessary scope to encompass enforced disappearances or the severity of the penalty is inappropriate. The Executive's proposal in 2010 to amend the offence of enforced disappearance on a federal level in order to bring it into line with international standards is awaiting approval in the Congress of the Union.

15. Important constitutional human rights reforms entered into force in June 2011, which basically provide that the human rights enshrined in international treaties have constitutional rank. The amendments stipulate all of the authorities' obligations regarding human rights and give greater legal force to the recommendations of public human rights bodies. Another constitutional reform recognizes that the violations of internationally recognized human rights may be subject to *amparo* proceedings. The Congress of the Union and local legislatures must reconcile federal and state legislation with these constitutional changes, just as the judicial authorities must adapt their jurisprudence to the new constitutional framework.

III. Enforced disappearances in the current security context

16. Mexico is faced with a complicated public security situation due to the rise in violence, which stems mainly from organized crime. The violence is continuing in spite of the arrest or murder of allegedly key members of criminal groups, as well as the confiscation of significant quantities of drugs and arms. Organized criminal groups have broadened the scope of their unlawful activities to include trafficking in persons, kidnapping and extortion. The Working Group acknowledges the Government's efforts to deal with this complicated situation.

17. Many cases of abduction and offences similar to enforced disappearances are committed by organized criminal groups. However, apparently, not all disappeared persons were abducted by independent organized criminal groups; the State is also involved in enforced disappearances in Mexico. The Working Group received specific, detailed and

reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials.

18. Due to the prevailing impunity, many cases which could come under the scope of the offence of enforced disappearance are reported and investigated as different offences, or are not even considered to be offences. Cases of enforced disappearance are often euphemistically and popularly called *levantones*. The Working Group received many reports of cases in which unlawful or arbitrary deprivation of liberty was classified as a different offence, such as abduction or abuse of authority, or persons were simply considered “missing” or “lost” (particularly groups such as women, children and migrants); proper investigations are not being conducted to rule out the possibility that such persons might be victims of enforced disappearance.

19. The Working Group received a variety of information regarding the number of enforced disappearances. NHRC has recorded a steady increase in the number of complaints of enforced disappearances received, from 4 complaints in 2006 to 77 in 2010. The NHRC programme for disappeared persons recorded the alleged disappearance of 346 persons in 2010. The Attorney-General’s Office has initiated 63 preliminary inquiries for the offence of enforced disappearance (49 in connection with the “Dirty War”).

20. Civil organizations reported that, according to their estimations, over 3,000 people have been victims of enforced disappearance in Mexico since 2006. According to information received by the Working Group, some of these cases could be described as enforced disappearances due to the direct or indirect involvement of public officials.

21. A potential enforced disappearance may only be ruled out after a complete, independent and impartial investigation. Therefore, the number of cases of enforced disappearance cannot be fully established without proper investigation.

22. Federal authorities maintained that 92 per cent of offences committed in Mexico come under local and not federal jurisdiction. Many federal authorities claim that federal institutions tend to be well equipped and have trained professional staff, while local institutions tend to be weak, have fewer professional development opportunities and scant human and financial resources.

23. In December 2006, the Federal Government decided to deploy the Armed Forces to perform public security operations. According to the information received, the Armed Forces do not simply act in support of civil authorities and accept orders from them, as established in the Constitution and by criteria of the Supreme Court, but also perform tasks that are the exclusive responsibility of the civil authorities. These operations consist in the deployment of thousands of soldiers in urban areas or at strategic points such as roads and checkpoints, and include the searching of houses, individuals and automobiles, often without a warrant issued by a competent civil authority. The Government has reported that the deployment of the Armed Forces is temporary and limited to certain parts of the country, but has not announced a plan to remove the troops. During its meetings with the delegations of the Attorney-General’s Office in Chihuahua and Chilpancingo, as well as with the authorities from the military base in Saltillo, the Working Group did not receive clear and specific information regarding the level of supervision that the civil authorities have when the military authorities detain civilians.

24. Many military personnel are chiefs of state police (in 6 federal entities) or heads of the state ministries of public security (in 14 states). In addition, a significant number of municipal police forces are run by military officials. The Ministry of Defence informed the Working Group that such military personnel, in most cases retirees, were not under its supervision.

25. The logic and training of the army are different from that of the police and therefore military operations conducted in the context of public security should be strictly limited and properly supervised by civil authorities. It is not surprising that the number of complaints concerning the Ministry of Defence received by the National Human Rights Commission increased by 182 in 2006 to 1,230 in 2008, 1,791 in 2009 and 1,415 in 2010. From 2006 to 2010, the Commission issued over 60 recommendations - 22 in 2010 alone - which confirm human rights violations committed by the army. The Commission's recommendations are often the only public record of investigations into abuses committed by soldiers and, as such, constitute a fundamental tool in highlighting the patterns of human rights violations. The Working Group was informed that the discrepancy between the number of recommendations issued and the number of complaints received was due to the fact that the majority of complaints had been resolved or channelled without the Commission having conducted an investigation and determined that there was no violation; this only occurs when an agreement of non-responsibility is issued.

26. The Working Group received credible information regarding civilians who were reportedly detained by military personnel and brought to military facilities. In many cases, the military personnel and other security forces which had made the arrests allegedly used the excessively broad concepts of quasi-flagrante delicto and equipollent flagrancy, which allow any person to arrest another several hours or even days after the commission of an offence. The elimination of the concept of equipollent flagrancy from the Constitution in 2008 will come into force at the very latest in 2016. The Working Group also received detailed documentation on various cases of enforced disappearance that were said to have been perpetrated by military personnel in many states such as Coahuila, Guerrero, Chihuahua, Nuevo León and Tamaulipas. In short, the military forces have stayed far beyond the duration of the security operations. The Working Group received allegations regarding cases in which military personnel reportedly questioned detainees and in which they allegedly used torture and other cruel, inhuman or degrading treatment. The Working Group also received information regarding members of the army and other security forces who were purportedly involved in enforced disappearances for short periods of time. Allegedly, the detention was not acknowledged and the detainee was not brought before the civil authorities for several days.

27. Mexico has also implemented a thorough reform to strengthen security policies and harmonize and integrate the federal, local, and municipal police forces into the security system. The Working Group understands the challenge of using a system that requires coordination, harmony and complementarity between the Federal Police, the police of the 32 federal entities and the more than 2,400 municipal police forces which have enormously different training, teams and accountability mechanisms.

28. The federal forces were restructured in 2009 in order to provide the Federal Police with new and greater investigative powers, integrating the Federal Preventive Police and the Federal Investigation Agency into a single body with around 30,000 members. In addition, the Government is implementing measures to raise professional standards to train and modernize the police forces at the three Government levels. An integral communication platform was also created called "Platform Mexico". It compiles and analyses information and links all of the police forces around the country to a centralized database and intelligence system.

29. The Working Group did not receive any information about the existence and implementation of mechanisms monitoring the use of force by police and military personnel. The Ministry of Public Security has a cooperation agreement with the International Committee of the Red Cross (ICRC) to promote and incorporate rules on the use of force by the police. However, only the Federal District police force has legislation and regulations governing the use of force. The Ministry of the Navy has a guideline on the

matter. The other local and federal security forces have no specific rules on the use of force. The Government reported that the Ministry of Defence has guidelines on the use of force in line with the principles of legality, necessity, proportionality and rationality. The Working Group did not receive a copy of these guidelines or specific information on their content when the authorities at the Saltillo military base were asked to provide them. In 2009, the Chamber of Deputies adopted the Act on the Use of Force by Members of the Public Security Forces which is currently pending approval in the Senate. The Working Group's experience shows that such legislation is essential for limiting the use of excessive force and preventing enforced disappearances.

30. Certain sections of the 2008 constitutional reform which was aimed, inter alia, at fighting organized crime, have undermined protection against enforced disappearances. The reform provided for the application of preventive custody (*arraigo*) when individuals are under investigation for serious offences or organized crime. Individuals may be detained in preventive custody "safe houses" for 40 days - a period which may be extended to a maximum of 80 days - without charge and with limited contact with lawyers and relatives. The whereabouts of the detainees are often unknown. The Working Group received information on cases in which individuals disappeared temporarily before they appeared before the local or federal authorities and were placed in preventive custody.

31. Under the 2008 constitutional reform and also the General Act on the National Public Security System, all detentions must be registered. The General Act, which is pending full implementation, provides that the police and the prosecution services must provide information on the detention of an individual to all persons who so request it. The detention register is one of the most rudimentary databases of the National Public Security System. This is due to the fact that the different police forces still do not have a unified detention procedure or a centralized database. The draft federal code of criminal procedure also regulates in detail the obligation of the authorities to keep a detention register.

IV. The right to justice

32. Impunity for crime in general and for enforced disappearances in particular remains a major challenge in Mexico at the federal and local levels. Less than 25 per cent of offences are reported and only 2 per cent result in conviction. The Working Group was only informed of two convictions currently under appeal for the offence of enforced disappearance, despite the high number of offences reported. The Supreme Court stated that, of the 64,000 cases it had heard since 1995, only one concerned the offence of enforced disappearance. The case did not address the criminal liability of the defendants or the rights of the victims, but involved a constitutional challenge over the application of an international treaty.

33. The Working Group received extensive and consistent information indicating that fear discouraged victims from filing complaints about or pressing for investigations into enforced disappearances. According to several sources, the authorities - particularly the prosecution services - try to discredit disappeared persons by claiming that they have been involved with criminal groups, without providing any evidence or conducting any investigation to prove otherwise. In several cases, the relatives of the victims of enforced disappearance have been subject to intimidation, threats and reprisals because they insisted that a proper investigation be carried out.

34. The Working Group observed severe problems relating to investigations into enforced disappearances, including omissions, delays and lack of due diligence. Many prosecution services refuse to handle complaints of enforced disappearances, agreeing only to draw up a detailed report of events without launching a proper investigation. Many

reports on enforced disappearances have been declared “confidential”. In most investigations, the only evidence is that provided by the relatives of the victims. Many authorities, both civil and military, refuse to work with the investigating authorities. Often, the prosecution services submit cases as minor offences instead of the offence of enforced disappearance (in those federal entities where the act has been classified as an offence) and judges do not use their powers to reclassify the offences.

35. In 2008, an important constitutional reform changed the criminal system from a mixed model to an adversarial system. Although several states have taken action on the matter, only eight have brought their criminal procedures into line with the constitutional changes. The other states have until 2016 to do so. Despite the efforts made mainly by the Coordinating Council for the Implementation of the Criminal Justice System, the new system has yet to be implemented at the federal level. A new legal culture is needed to ensure that the adversarial system is successful. Unless the police and prosecution services receive proper training and supervision, the new system will make little impact on the pattern of impunity.

36. The relatives of the victims of enforced disappearances have also resorted to the remedy of *amparo* which has proved inadequate, due to the interpretation of articles 17 and 117 of the Amparo Act. Many *amparo* courts request that the complainants should identify the authority responsible for the violation of the victim’s constitutional rights, although in enforced disappearance cases, the identity of the perpetrator is often unknown. Furthermore, many courts require the relatives to identify where the detainee is being held and the direct victim confirm the application for *amparo*. Such requirements are impossible to fulfil in the case of enforced disappearances. The Working Group understands that the recent constitutional reforms will render the concept of *amparo* more effective in cases of enforced disappearances.

37. Article 13 of the Constitution expressly forbids military courts from trying cases involving civilians, therefore, military jurisdiction may not be exercised over persons not belonging to the army. However, article 57 of the Code of Military Justice defines offences against military discipline as ordinary offences and thus subject to military jurisdiction when committed by military personnel “on active service or in connection with active service”. The Code has been used to ensure that allegations of human rights violations, including enforced disappearances, committed by military personnel are almost always dealt with by the military courts.

38. While the military justice system lacks the necessary independence and impartiality to address human rights violations, victims and their relatives are being denied the right of access to justice. This makes it extremely difficult to end impunity for human rights violations, including enforced disappearances. To date the remedy of *amparo* has been ineffective in challenging the jurisdiction of the military courts. In 2009, the Supreme Court ruled that the relatives of a victim of an extrajudicial execution by the military did not have the constitutional right to challenge the military courts by means of *amparo*. These obstacles should have been eliminated following the recent constitutional reforms regarding human rights and *amparo* and the Supreme Court’s ruling on the implementation of the judgement handed down by the Inter-American Court of Human Rights in the case of *Radilla-Pacheco v. Mexico*, which was welcomed by the Working Group.

39. The Ministry of Defence has accepted all the recommendations issued by NHRC concerning abuses committed by military authorities. However, investigations into these abuses are still under way in the military courts and, in the case of enforced disappearances, have gone unpunished.

40. In 2010, the President tabled a proposal to reform the Code of Military Justice which would exclude from military jurisdiction the offences of enforced disappearance, rape and

torture. The proposal, which is currently pending approval in the Senate, would limit the scope of military jurisdiction. However, it should also establish that investigations into cases of enforced disappearances committed by military personnel must be carried out by civil authorities. Furthermore, any legislative reform which excludes only the offence of enforced disappearance from military jurisdiction could encourage military prosecutors to investigate and submit cases as different offences in order to maintain military jurisdiction.

The right to justice in cases of enforced disappearance that occurred in the context of the “Dirty War”

41. All cases of enforced disappearance are affected by impunity. Reportedly only 2.5 per cent of the cases of enforced disappearance carried out during the “Dirty War” that were investigated resulted in a preliminary inquiry and of these cases, only 20 were brought to court. In less than half of the cases an arrest warrant was allegedly obtained, although it was not actually for the offence of enforced disappearance, but for unlawful deprivation of liberty. The Attorney-General’s Office reported that although 49 preliminary inquiries were under way, no authority had been sentenced, arrested, or was awaiting trial for enforced disappearance. In a meeting with the Working Group, the representatives of the Attorney-General’s Office did not provide any information on lines of inquiry, significant progress in the investigations, the possibility of new accusations or the communication channels with the relatives of the victims of enforced disappearances. It merely reported that 149 preliminary inquiries had been closed. Of these, 69 had been closed with the decision not to initiate criminal proceedings, 29 on the grounds of lack of jurisdiction, 27 had been subsumed into other criminal proceedings and 1 was on hold pending new evidence.

42. Some investigations have been transferred from the Attorney-General’s Office to the military courts despite the fact that article 16 of the Declaration on the Protection of all Persons from Enforced Disappearance prohibits the use of military force to investigate and punish offences of enforced disappearance. The Military Attorney-General did not provide the Working Group with information on any cases of enforced disappearance carried out during the “Dirty War” resulting in the conviction of a member of the military.

43. The Working Group welcomes the decision handed down in 2011 by the Supreme Court in the case of *Radilla-Pacheco v. Mexico* relating to an enforced disappearance during the “Dirty War”; the decision facilitates the full enforcement of the judgements of the Inter-American Court of Human Rights, many of which are with the recommendations of the Working Group.

V. The right to the truth

44. The Working Group notes that many of the families of disappeared persons and many other sectors of Mexican society are demanding to know the truth about the fate and the whereabouts of their loved ones.

A. The right to the truth in general

45. Mexico does not have a comprehensive policy to address the issue of enforced disappearances, which includes searching for the victims, identifying remains and exhuming bodies. Furthermore, it lacks a centralized database on disappeared persons and access to information on cases of enforced disappearance. There is no requirement to issue

a comprehensive information sheet with the physical description needed to search for, locate and identify the disappeared person. When an information sheet on a disappeared person is available, it is not usually distributed in hospitals, detention centres or highways or to the authorities responsible for locating missing persons in other federal entities.

46. “Platform Mexico” has not been used to prevent enforced disappearances or determine the fate or whereabouts of the victims of enforced disappearances, to locate potential unmarked graves or to fully and properly identify the bodies found in them.

47. Many authorities refuse to register disappearances within the first 72 hours after the event. This period of time is essential for obtaining information on the fate and whereabouts of victims of enforced disappearances and preventing them from being murdered.

48. The so-called Alba Protocol was implemented in the municipality of Ciudad Juárez (Chihuahua) to help the municipal, state and federal authorities coordinate, handle and respond to cases of disappeared women and girls. The Protocol establishes a mechanism for helping the authorities at the three levels of Government to coordinate, handle and respond to cases of missing women and girls in Ciudad Juárez. Although the Protocol is a positive step, it is geographically limited in scope, is only used in high-risk cases of disappearances of women and girls and has rarely been invoked.

49. There are no clear rules governing the exhumation, identification and storage of human remains. This is an important factor for protecting the genetic information of disappeared persons and their relatives, especially in the case of the “Dirty War”, as some of the victims’ relatives have now died of old age. Only the state of Chihuahua has regulations establishing a genetic information database. These regulations have been in place since 2009. ICRC is working with the Mexican authorities to establish new procedures for identifying remains in accordance with international protocols.

50. In recent months, many unmarked graves have been found. These discoveries were allegedly not a result of the Government’s concerted effort to search for disappeared persons. The procedures used to identify the remains from the graves reveal various shortcomings, such as the shortage of professional forensic teams to identify bodies properly, problems with notifying relatives, and exchanging information with other databases, and poorly kept burial records in municipal cemeteries.

51. NHRC has registered 8,989 unidentified bodies (though not all belong to victims of enforced disappearances) and has implemented a programme relating to persons who have allegedly disappeared, which is a national database on missing, disappeared or absent persons and unidentified deceased persons. It has also established a national information system on missing and unidentified deceased persons, which registered 5,397 people between 2006 and April 2011.

52. Information on cases of enforced disappearance is collected from different state institutions in an unsystematic and often inconsistent manner. The fact that this information is not centralized makes it difficult to grasp the real dimensions of the problem, particularly in terms of the number of cases registered, investigated and prosecuted, the number of exhumed and identified corpses, the institutions in charge, and the number of applications for reparation. The Federal Government recently established a national register of disappeared persons which is not specifically focused on enforced disappearances. In April 2011, the Senate adopted a bill for the establishment of a national register of information on missing children, adolescents and adults, which is currently pending approval in the Chamber of Deputies. The register will be managed by the Executive Secretary of the National Public Security System and will collect information from all sources.

53. Article 6 of the Constitution, which guarantees freedom of access to information, is restricted by some secondary laws, especially in respect of information on the status of

investigations conducted by the prosecution services. An amendment to the Federal Code of Criminal Procedure (article 16 of which is currently being challenged on the grounds that it is unconstitutional) restricts the right of access to information regarding preliminary inquiries by establishing that only decisions to dismiss proceedings should be published, provided that a period of time has elapsed equivalent to the statute of limitations for the offences in question, and which must be between 3 and 12 years.

B. The right to the truth in the context of the “Dirty War”

54. NHRC and the Office of the Special Prosecutor for Past Social and Political Movements (FEMOSPP) have handled issues regarding the truth about enforced disappearances that occurred during the “Dirty War”. In its Recommendation 26/2001, NHRC documented 532 cases of alleged enforced disappearances dating from the “Dirty War” and attributed responsibility to the State. NHRC concluded that in 275 of the cases, the persons concerned had been victims of detention, interrogation and possibly enforced disappearance by public authorities from various state bodies. In the remaining cases there was not enough evidence to confirm the occurrence of enforced disappearances, although it could not be ruled out as an investigative hypothesis. FEMOSPP investigated a total of 797 cases of enforced disappearance. Civil society organizations reported an estimated 1,350 enforced disappearances, including 650 in the state of Guerrero, 450 of which had occurred in the municipality of Atoyac de Álvarez. Of the persons who disappeared during the “Dirty War”, only two have apparently been located.

55. During the investigations that led to Recommendation 26/2001, NHRC compiled a list of names of persons allegedly involved in enforced disappearances, but the list has not been published.

56. Recommendation 26/2001 proposed the creation of a special prosecutor’s office, which resulted in the establishment of FEMOSPP. In 2006, the Attorney-General ordered that FEMOSPP should be closed down after almost five years in operation.

57. FEMOSPP was the only channel opened by the State to address the demand for the truth and justice. For this reason, a number of victims, relatives and organizations supported its work and provided it with information. FEMOSPP faced many challenges but, despite some positive developments in its work, failed to guarantee the right to the truth and justice.

58. FEMOSPP drafted a report entitled “Let it never happen again!”. In February 2006, a first draft was published by various national and international media, which established State responsibility for serious human rights violations committed during the “Dirty War”. In November 2006, FEMOSPP published its final report which modified some of the first draft’s conclusions. The final version was never approved by the Attorney-General’s Office, and is not currently available on any official website. The Attorney-General’s Office indicated that the report could be obtained through a request for access to public information.

59. Information collected by the FEMOSPP Office of Investigations and Documentary Analysis will not be made available, even though the agreement on the closure of FEMOSPP in November 2006 ordered that the documents should be kept in the National Institute of Criminal Sciences. According to various sources, the Institute does not acknowledge having these files in its possession. The Attorney-General’s Office stated that it had a copy of all the documents and that the originals had been returned to the National Archives, where they are available to the public. Meanwhile, civil society organizations

stated that they did not have access to the documents, as they did not know where such files were being kept.

VI. The right to reparation

60. All victims of enforced disappearances and their relatives have the right to full reparation, which includes compensation, satisfaction, restitution, rehabilitation and guarantees of non-repetition, as provided for in article 19 of the Declaration.

61. In 2001, an interdisciplinary committee for the reparation of damages to victims or aggrieved parties for human rights violations in connection with social and political movements of the 1960s, 1970s and 1980s was established. The Working Group welcomes the decision of the Chamber of Deputies of the Congress to include in the 2011 budget, for the first time, an allocation to provide redress for the victims of the “Dirty War” and to comply with decisions of the Inter-American Court of Human Rights.

62. The interdisciplinary committee has met only six times and has not established guidelines to guarantee reparation, or provided reparation to any victims. Only the victims of the 275 cases confirmed by NHRC in its Recommendation 26/2001 will receive reparation. There are no plans to extend reparation to other victims of the “Dirty War”, or to include the victims of enforced disappearances outside the context of the “Dirty War”.

63. Civil or administrative reparation for cases of enforced disappearance is extremely rare or does not exist. The State’s duty to provide reparation and the right to compensation are included in article 113 of the Constitution and its secondary law. There are also state laws governing the responsibility of public officials. However, the Working Group did not find any examples of civil or administrative rulings guaranteeing reparation for relatives.

64. In criminal cases, it is possible to receive compensation in addition to the sentence handed down, although this rarely happens. If the victim requests reparation for damages, the quantum of proof is raised to criminal standards. Even if reparation is ordered, the family does not usually receive it, as there are no parameters to determine the amount involved and, in the majority of cases, the convicted public official does not have the means to pay compensation. Article 32 of the Federal Criminal Code establishes the subsidiary responsibility of the State to provide reparation for offences committed by public officials.

65. The constitutional amendment on matters relating to human rights includes the right to reparation for the victims of human rights violations and requires the adoption of a secondary law. The Working Group stresses the importance of adopting and implementing the legislation in order to ensure adequate and full reparation.

VII. Particularly vulnerable groups

66. Recent cases of enforced disappearance do not reveal any clear pattern in the profile of the victims. However, among the victims there are particularly vulnerable groups, including women, migrants, human rights defenders and journalists. The climate of impunity surrounding the assaults against these victims allows such behaviour to continue and hinders any proper investigation and punishment of these offences.

67. There is very little public information available on the enforced disappearance of women. Through the national system on missing and identified deceased persons, NHRC registered 5,397 persons reported as missing or absent between 2006 and 2011, 1,885 of whom are women. Although the Government has taken various steps to prevent, punish and eradicate violence against women, including in cases of enforced disappearance, the

Working Group is still concerned about the number of women who have been the victims of enforced disappearance. The response from the police and justice officials to gender-based violence, including enforced disappearances, is generally inadequate. The Working Group received information on the prejudices, discriminatory behaviour, indifference, negligence and even on the deliberate obstruction of many authorities when handling cases involving the disappearance of women, as well as in their treatment of the female relatives of victims of enforced disappearance.

68. Cases involving the disappearance of women are particularly significant in the state of Chihuahua. Yet while the ongoing problems in Ciudad Juárez are distinctive in terms of their visibility, they are not unique to that area, as cases of enforced disappearances involving women and discriminatory practices against female relatives occur in other regions too.

69. Migrants are particularly vulnerable to enforced disappearances due to their undocumented status and the lack of financial resources, effective laws, protection schemes, and judicial remedies available to them. Many of the 150,000 migrants that travel through Mexico every year to the northern border cross through areas where there is crime and they easily fall prey to abduction or extortion. In 2009, NHRC reported 9,578 cases of abduction of migrants over a period of six months, and at least 11,333 migrants were allegedly abducted between April and September 2010, primarily by criminal organizations. According to NHRC reports and other sources, public officials from different sectors, including the National Institute for Migration and the municipal, state and federal police forces, had in some cases collaborated with criminal organizations in the abduction of migrants, thereby committing the offence of enforced disappearance. NHRC reported that 8.9 per cent of the documented abductions that occurred over a period of six months in 2010 involved the participation of Government authorities. Until a proper and comprehensive investigation is conducted, it will not be possible to accept that all abductions of migrants are carried out exclusively by criminal organizations or to rule out the possibility of the direct or indirect involvement of public officials.

70. The Government has taken a number of steps to deal with the abduction of migrants. It is now possible to grant migrants who have survived abduction a humanitarian visa to allow them to remain in the country while the relevant criminal investigation is under way. Some states have also adopted certain measures to combat and investigate abductions of migrants. Lastly, the Federal Government has signed cooperation agreements with NHRC and various Central American countries to prevent and combat the abduction of migrants. Testimonies received indicate that these programmes have not yet yielded positive results.

71. The Working Group received general information about assaults against human rights defenders, and specifically about assaults against those working on matters relating to enforced disappearances. The Working Group is particularly concerned about the situation of human rights defenders whose current whereabouts are unknown. The Working Group was informed that the assaults against human rights defenders had created a climate of fear among their colleagues and had led to some members of civil organizations deciding to keep a lower profile, move to a different city or state, and refuse to take on certain cases. According to the report from the OHCHR Office in Mexico, 37 assaults against human rights defenders were committed between September 2009 and October 2010, but only three cases resulted in criminal charges. The report criticizes the absence of comprehensive Government policies to eliminate the risks faced by human rights defenders. According to NHRC, eight complaints about enforced disappearances of human rights defenders were filed between January 2005 and May 2011. In July 2011, President Felipe Calderón signed an agreement paving the way for the establishment of a national mechanism for the protection of human rights defenders.

72. Journalists represent another specific group which has been subject to many attacks, including disappearances. According to NHRC, 13 journalists have disappeared since 2000. NHRC registered four disappearances of journalists in 2010. According to information received, Mexico is the most dangerous country in the Americas in which to work as a journalist. In the majority of cases, the failure to conduct investigations makes it impossible to find the causes and perpetrators of such offences. According to information received by the Working Group, journalists covering local issues such as corruption within the Government, drug trafficking, organized crime, public security and other related problems are particularly at risk. In 2006, the Government established a special prosecutor's office to deal with offences against freedom of expression within the Attorney-General's Office, and, in 2010, an agreement was signed to protect journalists. Neither of these developments has yet to yield effective results.

VIII. Concluding observations

73. The Working Group welcomes the substantive information provided by various authorities, civil society organizations, relatives and victims with the aim of ensuring a better understanding of the phenomenon of enforced disappearances. Enforced disappearances occurred in the past and continue to occur. Moreover, disappearances that occurred in the past remain topical given the continuous nature of the offence.

74. There is no comprehensive public policy or legislation that deals with the different aspects of prevention, investigations, penalties and reparation for the victims of enforced disappearances. It would appear that there is no vertical or horizontal coordination between the federal, local and municipal authorities. Likewise there is no effective national system to search for the victims of enforced disappearance.

75. The public security concerns with regard to organized crime are real, and the Working Group recognizes that it is the right and duty of the State to take appropriate action. However, the situation cannot be tackled at the expense of the observance of human rights, or by permitting the practice of enforced disappearances. Such disappearances cannot be attributed exclusively to organized crime without a full and proper criminal investigation.

76. The victims of enforced disappearances have no faith in the justice system, prosecution services, the police or Armed Forces. The chronic pattern of impunity still exists in cases of enforced disappearance and sufficient efforts are not being made to determine the fate or whereabouts of persons who have disappeared, to punish those responsible and to guarantee the right to the truth and reparation. It would seem that Mexico is unwilling or unable to conduct effective investigations into cases of enforced disappearance.

77. The Working Group reiterates its willingness to continue the constructive dialogue with the Mexican authorities and offers its unreserved support for the full implementation of the Declaration.

78. The Working Group reaffirms its solidarity with the victims of enforced disappearance and their relatives. Their continued suffering is living proof that enforced disappearance is a continuous offence and a permanent violation of their human rights until the fate or whereabouts of the victim is clarified. The Working Group acknowledges the work done by many human rights defenders, NGOs, lawyers and all those who work indefatigably, including in adverse conditions, to eradicate this terrible practice.

IX. Recommendations

79. In view of the foregoing, the Working Group makes the following recommendations to the Mexican State.

A. General recommendations

80. The Working Group recommends that the scale of the problem of enforced disappearances should be recognized as the first step required to implement comprehensive and effective measures for its eradication.

81. The Working Group recommends that statistical data should be compiled, disaggregated by sex, age, location and the authorities allegedly involved, on enforced disappearances in order to implement policies relating to prevention, eradication, investigations, penalties and reparation. Information should be included, if available, on the date and place of exhumation as well as on the relatives of the victims.

82. The Working Group recommends that the State should accept the competence of the Committee on Enforced Disappearances in accordance with articles 31 and 32 of the International Convention for the Protection of All Persons from Enforced Disappearance concerning complaints from individuals and States.

83. The Working Group recommends that all the necessary steps should be taken to ensure that all relevant international instruments on enforced disappearance are complied with and applied effectively throughout the country, including the withdrawal of all reservations or interpretative declarations that might undermine their effectiveness.

84. The Working Group recommends that the full independence and autonomy of all human rights bodies should be guaranteed.

B. Legislative framework

85. The Working Group recommends that amendments should be made to federal and local legislation to ensure the effective implementation of the new constitutional framework on human rights, *amparo* and the criminal justice system.

86. The Working Group recommends that the offence of enforced disappearance should be included in the criminal codes of all states and that a comprehensive law on enforced or involuntary disappearances should be adopted without delay. Under this general law enforced disappearance should be defined as an autonomous offence; a specific procedure for finding the disappeared person with the assistance of the relatives of victims should be established; a national register of persons who have been the victims of enforced disappearance should be compiled, and relatives, lawyers, human rights defenders and any other person concerned should be guaranteed full access to the register; the declaration of absence following the enforced disappearance should be allowed; full protection and support should be provided to the relatives of disappeared persons and witnesses; the right to full compensation should be guaranteed.

87. The Working Group recommends that the definition of enforced disappearance in criminal law should be brought into line with that contained in the Declaration and other relevant international instruments.

88. The Working Group recommends that preventive custody (*arraigo*) should be eliminated from legislation and in practice, both at federal and state levels, so as to prevent cases of enforced disappearance.

89. The Working Group recommends that legislation relating to flagrancy should be amended to restrict its use to the actual time of the commission of an offence and that the concepts of quasi-flagrancy and equipollent flagrancy should be eliminated in order to prevent enforced disappearances.

C. Preventive and security measures

90. The Working Group recommends that consideration should be given, without delay, to the withdrawal of military forces from public safety operations and the application of criminal law, as a means of preventing enforced disappearances.

91. The Working Group recommends the adoption of legislation, standards and protocols to regulate the use of force by the army and all police forces as a preventive measure against enforced disappearances, in accordance with the principles of necessity, rationality, proportionality, legality and full observance of human rights.

92. The Working Group recommends that coordination among the authorities responsible for public safety should be ensured in order to prevent and investigate enforced disappearances.

93. The Working Group recommends that all the authorities competent to arrest individuals during operations conducted in conformity with the law should be properly identified.

94. The Working Group recommends that the detention register should be upgraded to ensure that it is regularly updated and harmonized with other databases in order to monitor the physical location of detainees, including through strict controls over the authorities responsible for registering detention and the imposition of appropriate penalties for those who fail to do so. The register must indicate the following: the grounds for detention; the detainee's exact time of arrival at the place of custody; the length of the deprivation of liberty; the identity of the authority that ordered the arrest of the person concerned and the officers responsible for carrying out the order; the chain of custody of detainees; precise information on the place of custody; when the detainee first appeared before a judicial or other competent authority.

D. The right to justice and judicial protection

95. The Working Group recommends the adoption of a new *Amparo* Act in accordance with the constitutional reform. The new legislation on *amparo* must deal appropriately with the particular characteristics of enforced disappearances, contain a broad definition of the victim, guarantee that the judge plays an active role, and must not impose unreasonable conditions concerning the circumstances of the case, such as identifying the place of detention, establishing the authority responsible and confirming the application for *amparo* by the direct victim.

96. The Working Group recommends that the right to justice and the fight against impunity should be guaranteed through judicial training and the enforcement of the law, the adoption of protocols for investigations and the protection of witnesses and relatives. All available means should be used to ensure that the investigations and

judicial proceedings are expeditious, in accordance with protocols and manuals that comply with the guidelines contained in international human rights instruments. The various bodies involved in the investigative and judicial procedures should have the necessary human and material resources to do their job properly, independently and impartially. Those involved in investigative work must have guarantees of protection. Investigations should follow specific lines of inquiry according to the area, time, period and/or authority concerned. The results of all investigations must be made public.

97. The Working Group recommends the early entry into force of the new criminal justice system in order to guarantee the rights of the victims of enforced disappearance. These constitutional reforms should be strengthened and fully implemented by allocating additional resources to ensure that officials are better prepared for the investigation and prosecution of offences, including cases of forced disappearance. This includes training and resources for the search for disappeared persons so that such cases are investigated using a systemic approach in order to understand the pattern of enforced disappearances, including the chain of command.

98. The Working Group recommends that the jurisdiction of civil courts should be guaranteed in all matters relating to enforced disappearances and violations of human rights in general, regardless of whether the perpetrator is a member of the military. Mexico must ensure that civil prosecution services conduct serious and prompt investigations into all complaints of human rights violations, including enforced disappearances by military personnel. It must legally prevent the military prosecution services from initiating or continuing investigations into human rights violations, including enforced disappearances.

99. The Working Group recommends the establishment of an effective mechanism for continuing investigations into enforced disappearances committed during the “Dirty War”.

100. The Working Group recommends strengthening the concept of delegated access (*coadyuvancia*) by ensuring full access to prosecution service inquiries for the relatives of victims and their representatives, regularly providing relatives with information on the progress of investigations and ensuring that it is not the obligation of victims and their relatives to obtain and provide evidence. Mexico should take the necessary steps to ensure that the civil and military authorities cooperate fully with civil prosecutors and courts in the criminal investigation and prosecution of enforced disappearances.

101. The Working Group recommends that support should be provided to relatives and their associations so that they can play their essential role in dealing with cases of enforced disappearance.

E. The right to the truth

102. The Working Group recommends that a national search programme for missing persons with an immediate action protocol should be established. The programme should be based on the following parameters:

- (a) Carrying out the search *ex officio* and without delay in cases of disappearances;
- (b) Coordinating the efforts of the various security agencies to locate the disappeared person;

- (c) Eliminating any legal or factual obstacles that limit the effectiveness of the search or prevent its launch;
- (d) Providing the necessary human, financial, logistical, scientific or other resources required so that the search is carried out successfully;
- (e) Having staffs that are highly skilled in the exhumation and identification of remains;
- (f) Entering the missing person's report into all existing relevant databases;
- (g) Focusing on the search area where it is reasonably most likely that the disappeared person will be found, without arbitrarily excluding other possibilities or areas;
- (h) Having access to and making full use of "Platform Mexico";
- (i) Ensuring that the programme is run with full budgetary and operational autonomy.

103. The Working Group recommends the establishment and regular maintenance of a database of personal information on victims of enforced disappearances nationwide (both for the federal and state courts), including genetic information, primarily DNA and tissue samples obtained from human remains and the relatives of victims, with their prior consent. Mexico must ensure the permanent protection of the personal information contained in the databases.

104. The Working Group recommends that an appropriate legislative framework should be established and that the provision of financial, human and technical equipment for forensic investigations should be guaranteed in cases of enforced disappearances.

105. The Working Group recommends that the report drafted by FEMOSPP should be disseminated and posted on the official website of the Attorney-General's Office, that clear information should be provided on the location of all documents received by FEMOSPP, and that full public access to them should be guaranteed.

106. The Working Group recommends that the military archives concerning the "Dirty War" stored in the Ministry of Defence should be transferred to the National Archives thereby guaranteeing free public access; it also recommends that there should be systematic access to all files of the defunct Federal Security Directorate and the special prosecutor's office so that they are also made available in the National Archives.

107. The Working Group recommends that the names of the persons involved in acts of enforced disappearance should be disclosed, in accordance with the information available to NHRC in connection with the preparation of the Recommendation 26/2001.

F. The right to reparation

108. The Working Group recommends that the right to full reparation for the victims of enforced disappearance should be guaranteed. Legislation must provide that reparation should be proportional to the gravity of the violation and suffering of the victim and his or her family. Provision should be made for restitution, as and when possible, as well as for medical and psychosocial care, satisfaction, compensation and guarantees of non-repetition.

109. The Working Group recommends that , for the purposes of reparation, a broad definition of the victim should be adopted that is not linked to the establishment of the criminal liability and conviction of the accused and is not limited to those cases of forced disappearance that have been corroborated by NHRC.

G. Particularly vulnerable groups

110. The Working Group recommends the swift implementation of all the recommendations contained in the NHRC reports on the abduction of migrants (some of which could be classified as enforced disappearances).

111. The Working Group recommends that the safety of human rights defenders should be guaranteed, including those who are fighting against enforced disappearances and defending the rights of victims. The national mechanism for the protection of human rights defenders should be guaranteed preventive, protective and investigative powers, federal jurisdiction, sufficient resources and autonomy. The full participation of human rights organizations in the creation, implementation and monitoring of the national mechanism should also be ensured.

112. The Working Group recommends that a national mechanism to protect journalists should be established and run by senior officials, and that an inter-agency committee led by a federal authority should be established which is able to coordinate with various authorities and Government agencies and has its own and sufficient resources; the participation of journalists and civil society should be ensured in the creation, activities and monitoring of the national mechanism.

113. The Working Group recommends that measures intended to eradicate violence against women, including enforced disappearances, should be fully implemented. The gender perspective should be taken into account in all research and policies to combat violence, given the unique characteristics of gender-based violence against women and the social responses required by the situation, with a view to eliminating the enforced disappearances of women.
