

Country Report  
**MEXICO**

**IACHR** Inter-American  
Commission on  
Human Rights

# Situation of Human Rights in Mexico



Organization of  
American States



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# The Human Rights Situation in Mexico

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Approved by the Inter-American Commission on Human Rights on December 31, 2015

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# EXECUTIVE SUMMARY



## EXECUTIVE SUMMARY

1. This report addresses the human rights situation in the United Mexican States (Mexico), with particular emphasis on forced disappearances, extrajudicial executions and torture, as well as citizen insecurity, access to justice and impunity, the situation of journalists, human rights defenders, and other groups especially affected by the context of violence in the country. The report also provides recommendations with the aim of assisting the Mexican State in strengthening its efforts to protect and guarantee human rights in the country.
2. Mexico has been undergoing a serious situation of violence and security for several years. During the administration of former President Felipe Calderón and the launch in 2006 of the so-called “war on drugs,” serious situations of violence increased until they reached alarming levels, including the subsequent loss of more than 100,000 human lives, thousands of disappearances, and a context that has caused the displacement of thousands of people in the country. As a response to the increase in violence, authorities have opted to increase the role of the Armed Forces in law enforcement duties, which include a policy of confronting organized crime and the deployment of joint operations between the armed forces and state and municipal security agencies. This situation has sparked yet greater violence, as well as gross violations of human rights in which there has been a notable lack of accountability by international standards.
3. The Inter-American Commission on Human Rights (IACHR or Commission) values the measures the State has taken to address the situation presented in this report. Specifically, it acknowledges the significant constitutional and legislative reforms introduced in Mexico in 2011, the constitutional reform and protocols recently approved to investigate cases of torture and forced disappearance, as well as other initiatives highlighted herein. Notwithstanding this progress, the implementation of the State’s response has run up against deficiencies, shortcomings and obstacles. The IACHR has confirmed a deep gulf between the legislative and judicial framework and the daily reality millions of people face in accessing justice, violence prevention, and other public initiatives. Time and again the IACHR heard from victims throughout the country that the administration of justice is a “simulation.”
4. Despite the change in administration in December 2012, in practice there have been no substantial changes with regard to security policies and the violence levels. In this context, of particular concern are the reports of disappearances, extrajudicial executions and torture, as well as the situation of insecurity for women, children, migrants, human rights defenders, and journalists, who are victims of murder, disappearance, kidnapping, torture, harassment, and threats.

Moreover, Mexico is considered one of the most dangerous countries in the world for journalists, excluding countries that are at war.

5. According to official statistics, from December 2006 to November 2012 102,696 homicides were committed in the country, and the UN High Commissioner has made reference to 151,233 homicides through August 2015. Although the annual numbers of these crimes have declined since 2013, the amount continues to be high. As of September 30, 2015, the Mexican State reported there were 26,798 “unlocatable” or disappeared persons nationwide,<sup>2</sup> and in some states there is an upward trend.
6. Forced disappearances of people have occurred in Mexico at different moments and with varying intensity, such as in the 1960s in the context of the so called “Dirty War” until the end of the 1980s, and currently have increased dramatically in the country. Especially grave is the widespread and consistent information the IACHR has received through its different mechanisms regarding the existence of a practice of forced disappearances at the hands of agents of the State, or with their participation, acquiescence, or tolerance. Figures provided by the State to international organizations show only six federal court convictions in Mexico for the crime of forced disappearance.
7. The deficiencies in the investigations of disappearances are many and serious. The current crisis of gross violations of human rights in Mexico is in part a consequence of the impunity that has persisted since the “Dirty War,” and has fostered their repetition heretofore. Many cases of disappearances are not reported due to family members’ distrust of the State’s capacity for response or their fear of reprisals. In those cases where a report is filed, the authorities’ response presents grave deficiencies. In this context, everywhere the IACHR went during its visit it met with victims, family members, and defenders, who described the barriers that they have run up against in their quest for justice, as well as their distrust of the authorities. This information is consistent with the IACHR’s research in the last several months in Mexico, as well as with various national and international sources. Family members’ discoveries of mass graves with dozens of bodies underscore that they are the ones who have undertaken the search for their loved ones given the State’s ineffectiveness. Meanwhile the authorities do not fulfill their duty to investigate, find, identify, and return the victims with the appropriate due diligence.
8. The forced disappearance of 43 young students from the rural teacher’s college “Raúl Isidro Burgos” in the State of Guerrero, on September 26 and 27, 2014—events in which other individuals were also wounded and murdered—constitutes a terrible tragedy in Mexico that was also a national and international wakeup call regarding disappearances in Mexico, and in particular in the State of Guerrero. Furthermore, it reflects the serious deficiencies in the investigations into these events and the structural and almost absolute impunity that permeate these

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<sup>2</sup> The registered statistics are mostly related to disappearances between 2007 and 2015. In addition, there are also statistics about disappearances before 2007 and others that do not have a specified date. As of September 30, there were 880 disappearances under federal jurisdiction, and 25,918 in local jurisdictions. See Executive Secretariat, available at: <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>

serious crimes. This case is also an emblematic example of the apparent collusion between agents of the State and members of organized crime.

9. As mentioned in other opportunities, the IACHR reiterates that it welcomes the Mexican State's openness to international scrutiny and the work of the Interdisciplinary Group of Independent Experts [Grupo *Interdisciplinario de Expertos Independientes*—GIEI] in particular. The GIEI has the following responsibilities: analysis of the plans to find the disappeared persons alive, and where appropriate, to recommend best practices for a more efficient investigation; a technical analysis of lines of inquiry to determine criminal responsibilities; a technical analysis of the Comprehensive Plan for Assisting Victims of the events of September 26 and 27. The Commission is convinced that such openness and the cooperation agreement such as the one that give rise to the GIEI's work, based on the requests of the State and the representatives of the families, are key to making headway in safeguarding human rights in Mexico and shedding light on the fate of the 43 students from Ayotzinapa. The IACHR hopes that during the GIEI's renewed mandate, the group can support advances in the investigation.
  
10. In this framework, there have been in recent years tragic incidents of violence with involvement of agents of the State, which have been widely reported in the media: the murder of 22 people in Tlatlaya, State of Mexico, some of whom were allegedly victims of extrajudicial executions by army soldiers; the death of civilians presumably at the hands of Federal Police in Apatzingán, Michoacán, in January 2015; the alleged confrontation at the border between Tanhuato and Ecuandureo, Michoacán in June 2015, in which 42 civilians and one Federal Police agent lost their lives, among others. In the three cases mentioned above, the first version provided by authorities—without any investigation having taken place—was that the deaths of civilians were the result of confrontations between public forces and civilians. With the passing of time and following investigation, testimonies and circumstantial evidence point to the alleged participation of federal authorities and members of the armed forces, manipulation of the crime scene in order to present the situation as if it had been a confrontation, as well as irregularities in the investigations. These situations call for a review of the use of force in Mexico in keeping with the principles of legality, absolute necessity, and proportionality. Furthermore, it demands the adoption and implementation of accountability measures by a body that is independent of all security forces in situations where there has been loss of life during public security operations or activities.
  
11. Furthermore, the practice of torture in Mexico is alarming. The Mexican State reported that as of April 2015, the Attorney General's Office (PGR) had 2,420 pending investigations for torture, and that there are only 15 federal convictions for this crime. The Commission agrees with other international organizations in highlighting that torture is generalized in Mexico and frequently occurs when someone is detained—usually arbitrarily—and prior to the detained individual being brought before a judge. The IACHR notes that even in the investigation of the events occurred in Iguala, one of the highest-profile matters in terms of human rights in the recent past, 77% of the persons who were being investigated showed bodily injuries, which is indicia, at least, of the existence of ill treatment and potential torture committed against them.

12. The Commission has confirmed on the ground the critically high levels of impunity and inadequate and insufficient attention to victims and their family members. The failure to provide access to justice has created a situation of structural impunity whose effect is to perpetuate, and in some cases foster, the repetition of gross human rights violations. The threats, harassment, murders, and disappearances of individuals who seek truth and justice has led to a cowering of Mexican society, which the IACHR noted in countless testimonies of people who have not reported these violations to the authorities for fear of reprisals, leading to a serious problem of underreporting in official figures. Barriers in the access to justice, and the ineffectiveness in many cases with a resulting impunity, have weakened the Rule of Law and constitute urgent challenges. In addition to its *in loco* visit in 2015, the Commission has monitored the human rights situation in Mexico, including the issues described in this Report, for many years through its various human rights monitoring mechanisms such as thematic and country hearings,, cases and petitions, precautionary measures, requests for information, visits by thematic Rapporteurs, among others.
  
13. Currently, the challenge for the Mexican State is to close the existing gap between its legal framework and unconditional support of human rights and the reality faced by a large number of citizens when they seek a prompt and effective justice. Thus, the Mexican State's real challenge is to break the cycle of prevailing impunity in order to achieve effective prevention, investigation, prosecution, and punishment of the perpetrators of human rights violations. In this regard, the IACHR makes a series of recommendations to the Mexican State.

CHAPTER 1  
INTRODUCTION





## INTRODUCTION

14. The IACHR has observed with concern that the human rights situation in Mexico in recent years has revealed more reports of disappearances and forced disappearances, extrajudicial executions, and torture, as well as a deterioration of citizen insecurity, the lack of access to justice, and impunity, with a particular impact on journalists, human rights defenders, and other groups especially affected by the context of violence in the country, such as persons living in poverty and/or in marginalized zones, migrants, asylum seekers, refugees and internally displaced persons, women, children and adolescents, indigenous peoples, among others.
15. Pursuant to note 0028, dated January 30, 2015, the Mexican State extended “an invitation to the IACHR to conduct an *in situ* visit to Mexico in 2015 in order to analyze the human rights situation in the country.” In note OEA-02073, dated June 23, 2015, the Mexican State proposed that the visit take place between September 28 and October 3, 2015. The Commission, in a press release dated July 28, 2015, confirmed its *in situ* visit to the country from September 28 to October 2, 2015.
16. The IACHR conducted its *in situ* visit from September 28 to October 2, 2015. The Commission observed on the ground the human rights situation in the country, with particular emphasis on forced disappearances, extrajudicial executions and torture, as well as the situation of citizen insecurity, barriers in the access to justice, impunity, and the situation of journalists, human rights defenders, and other groups especially affected by the violence in the country. After the invitation, and even before, through various visits by members of the Commission, the IACHR documented the situation in Mexico in the mentioned areas.
17. The delegation during the visit consisted of the President of the IACHR, Rose-Marie Belle Antoine; First Vice-President James Cavallaro; and Commissioners Felipe González, Tracy Robinson, and Rosa María Ortiz. Other members of the delegation included IACHR Executive Secretary Emilio Álvarez Icaza Longoria; Assistant Executive Secretary Elizabeth Abi-Mershed; the Special Rapporteur for Freedom of Expression, Edison Lanza; and other members of the IACHR Executive Secretariat.
18. The Inter-American Commission interviewed authorities from the three branches of government at different levels, and met with representatives of civil society, autonomous agencies, and international organizations, as well as academicians and journalists. It also heard testimony provided by victims of human rights violations and their family members. The delegation visited Mexico City, Coahuila, Guerrero, Nuevo León, Tabasco, and Veracruz.
19. The IACHR met with the Presiding Justice of the Supreme Court, Luis María Aguilar Morales, and Justices Alfredo Gutiérrez Ortiz Mena, Alberto Pérez Dayán, and Jorge

Mario Pardo Rebolledo; the Secretary of the Interior, Miguel Ángel Osorio Chong; the Secretary of Foreign Relations, Claudia Ruiz Massieu; the Undersecretary of Multilateral Affairs and Human Rights, Miguel Ruíz Cabañas; Representative of the Deputy Attorney General's Office for Human Rights, Crime Prevention, and Community Services (SDDHPDSC), Israel González Delgado; the President of the Senate, Roberto Gil Zuarth; Senators Luis Sánchez Jiménez, Alejandro de Jesús Encinas Rodríguez, Hilda Esthela Flores Escalera, Angélica de la Peña, Fernando Yunez Márquez, Gabriela Cuevas Barrón, Mariana Gómez del Campo Gurza, Layda Sansores San Román, Enrique Burgos García, Manuel Bartlett, Miguel Barrosa Huerta, Luis Humberto Fernández Fuentes, Alejandro de Jesús Encinas Rodríguez, and Adriana Dávila Fernández; the President of the Chamber of Deputies, Jesús Zambrano; the Chair of the Political Coordination Group of the Chamber of Deputies, César Camacho; the Attorney General, Arely Gómez González; the President of the National Human Rights Commission (CNDH), Raúl González Pérez; the Undersecretary of Human Rights of the Ministry of the Interior, Roberto Campa Cifrián; the Deputy Director General of the Human Rights Advocacy Unit of the Ministry of the Interior, Ricardo Sánchez Pérez del Pozo; the Head of Implementation of the Constitutional Reform at the Federal Council of the Judiciary, Juan José Olvera López; the Permanent Representative of Mexico to the OAS, Emilio Rabasa Gamboa; the Deputy Director General of the General Directorate for Human Rights and Democracy, Erasmo Lara Cabrera; the National Security Commissioner, Renato Sales Herrera; the Legal Adviser of the Secretariat of Foreign Relations, Alejandro Alday González; the National Commissioner to Prevent and Eradicate Violence against Women (CONAVIM), Alejandra Negrete; the President of the National Council of Governors (CONAGO), Governor Eruviel Ávila; the Coordinator of the CONAGO Human Rights Commission, Governor Rubén Moreira; the Undersecretary for Prevention and Citizen Participation, Arturo Escobar y Vega; and the Commissioner General of the Federal Police, Enrique Francisco García Ceballos. At the National Commission of High Courts of Mexico (CONATrib), the IACHR met with the Presiding Judge of the High Court of Justice and President of the Council of the Judiciary of the Federal District, Edgar Elías Azar, as well as with the Presiding Judges of the High Courts in the states of Aguascalientes, Juan Manuel Ponce Sánchez; of Durango, Apolonio Betancourt Ruíz; of Guerrero, Lambertina Galeana Marín; of Morelos, Nadia Luz María Lara Chávez; of Oaxaca, Alfredo Rodrigo Lagunas Rivera; of Puebla, Roberto Flores Toledano; of Sinaloa, José Antonio García Becerra; and of Tlaxcala, Elsa Cordero Martínez. It also met with Technical Secretary Alfredo Álvarez Cárdenas and with Criminal Court Judges: from the First Court, Eduardo Alfonso Guerrero Martínez; the Second Court, Manuel Horacio Cavazos López; the Third Court, Elsa del Carmen Arzola Muñoz; the Fourth Court, Enrique Sánchez Sandoval; the Fifth Court, Salvador Ávalos Sandoval; the Sixth Court, María de Jesús Medel Díaz; the Sixth Court, Ramón Alejandro Sentíes Carriles; the Seventh Court, Raúl Jaime Campos Rábago; the Eighth Court, José Guadalupe Carrera Domínguez; and the Ninth Court, Joel Blanno García. The IACHR also met with the Commissioner of the Administrative Agency for Prevention and Social Rehabilitation, Eduardo Guerrero; the General Coordinator of Federal Facilities, Emanuel Castillo Ruíz; the Head of the Unit for Legal Affairs and Human Rights of the Administrative Agency for Prevention and Social Rehabilitation, Raúl Salvador Ferráez Arreola; the President of the Executive Commission for Attention to Victims, Sergio Jaime Rochín del Rincón; the Head of the Human Rights Defense Unit of the Ministry of

the Interior, Sara Irene Herrerías Guerra; the Deputy Attorney General for Legal and International Affairs of the Attorney General's Office, José Alberto Rodríguez Calderón; and the Undersecretary for Population, Migration, and Religious Affairs, Humberto Roque Villanueva. In addition, the IACHR met with Brigadier General of Military Justice José Carlos Beltrán Benítez, Brigadier General of Military Justice Alejandro Ramos Flores, and other members of the National Defense Secretariat (SEDENA); Captain Fernando Ocampo and Admiral Alejandro M. Vázquez Hernández, and other members of the Navy Secretariat (SEMAR); the Deputy Attorney General for Human Rights, Crime Prevention, and Citizen Participation, Eber Omar Betanzo Torres, and other officials from the Attorney General's Office (PGR); the Mexican Commission for Refugee Assistance (COMAR); the Commissioner of the National Migration Institute (INM), Ardelio Vargas; the Coordination Council for the Implementation of the Criminal Justice System (SETEC) and its Head, María de los Ángeles Fromow Rangel; the Special Prosecutor for Crimes against Freedom of Expression (FEADLE), Ricardo Nájera Herrera; the Governing Board of the Protection Mechanism for Human Rights Defenders and Journalists; the National Institute of Women (INMUJERES); the National Commission to Prevent and Eradicate Violence against Women (CONAVIM); and the Executive Commission for Attention to Victims (CEAV).

20. In its visit to federal entities, the IACHR met with the following officials: the Head of Government of the Federal District (Mexico City), Miguel Ángel Mancera; the President of the Mexico City Human Rights Commission (CDHDF), Perla Gómez; and other CDHDF officials. In the state of Guerrero, it met with Governor Salvador Rogelio Ortega Martínez; Governor-Elect Héctor Astudillo Flores and his team; the Secretary of Public Security, Pedro Almazán Cervantes; the Guerrero Public Prosecutor, Miguel Ángel Godínez Muñoz; and the Deputy Director General of Institutional Liaison, Ricardo Sánchez. In the state of Tabasco, the IACHR met with Governor Arturo Núñez; the Secretary of the Interior, César Raúl Ojeda Zubieta; the President of the State Human Rights Commission, Jesús Manuel Argáez de los Santos; the Secretary of Public Security, General Sergio Ricardo Martínez Ruiz; the State Attorney General, Fernando Valenzuela Pernas; the General Coordinator of Legal Affairs, Juan José Peralta; the Federal Delegate of the National Migration Institute of Tabasco, Eduardo Hernández Dighero; the Deputy Attorney General for Human Rights and Comprehensive Victim Assistance of the State Attorney General's Office, Juan Sibaja Contreras; the Deputy Director of Assistance for Human Rights Defenders at the Human Rights Defense Unit, Mariana Franco González; and the Attorney for the Office of Cases at the Secretariat of Foreign Relations, Guillermo Díaz Ordaz Rigada. In the state of Veracruz, the IACHR met with the Governor of Veracruz, Javier Duarte Ochoa; the State Attorney General, Luis Ángel Bravo; the Secretary of Public Security, Arturo Bermúdez; the Director General of Integral Family Development (DIF), Astrid Elías Mansur; the Legal Director of the Veracruz DIF, Armando Ruiz Sánchez; the Executive Secretary of the State Commission to Assist and Protect Journalists, Namiko Matsumoto Benítez; the State Prosecutor for the Protection of Children and Adolescents, Adelina Trujillo Landa; the Adviser for Legal Affairs and Citizen Rights in the Governor's Office, José Ramón Cárdeno; and the State Director General for Sentencing Enforcement, Juan Carlos Espino. In the state of Nuevo León, the IACHR delegation met with the Governor, Rodrigo Medina de la Cruz; the Secretary General of Government, Felipe González Alanís; the Head of the Governor's

Executive Office, Jorge Domene; the Attorney General, Javier Enrique Flores; and the Secretary of Public Security, Alfredo Flores Gómez. In the state of Coahuila, the IACHR delegation met with the Governor, Rubén Moreira Valdez; the Secretary of Government, Víctor Manuel Zamora Rodríguez; the State Attorney General, Homero Ramos Gloria; the President of the State Victims Commission, Luis Efrén Ríos Vega; the Head of the Human Rights Unit of the Executive Branch, Federico Garza Blanco; the Deputy Prosecutor for Human Rights and Special Investigations of the State Attorney General's Office (PGJE), Liberto Hernández Ortiz; the Deputy Ministerial Prosecutor of the PGJE, Norberto Ontiveros Leza; the Prosecutor for Children and Families, Yezka García Ramírez; and the President of the Board of Directors of Congress, Human Rights Commission, and local Congressional Deputy, Georgina Cano Torralba.

21. It also met with the Deputy Representative of the UN Office of the High Commissioner for Human Rights in Mexico, Jesús Peña Palacios; the Human Rights Officer of the Office of the UN High Commissioner for Human Rights in Mexico, Alán García Campos; the Interdisciplinary Group of Independent Experts; and the Argentine Forensic Anthropology Team (EAAF).
22. In addition, the IACHR met with the following civil society organizations: Abogadas y Abogados para la Justicia y los Derechos Humanos, A. C., Acción con Pueblos Migrantes (VM-APM), Acción Urgente para Defensores de Derechos Humanos A.C (ACUDDEH), Agenda LGBT, A.C, Agrupación de Derechos Humanos Xochitpetl A.C., Albergue Casa del Caminante Static, Alconsumidor A.C, Alianza Sierra Madre A.C., Altépetl, Nahuas de la Montaña, A.C, Amnesty International, Archdiocese of Acapulco, Artículo 19 Oficina para México y Centroamérica, Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México, AFADEM-FEDEFAM, Asociación Jalisciense de Apoyo a Grupos Indígenas A.C (AJAGI), Asociación Mexicana de Abogados del Pueblo, Asylum Access México, AVANCE Por los Derechos de México, A.C., AVC Noticias, Buscando a nuestros Desaparecidos y Desaparecidas, Veracruz, Casa del Caminante JTatic Samuel Ruíz García; Casa del Migrante Casa Nicolás, Casa del Migrante de Saltillo, Centro de Apoyo al Trabajador, Centro de Colaboración Cívica, A.C., Centro de Derechos Humanos "Bartolome Carrasco Briseño", Centro de Derechos Humanos de la Montaña "Tlachinollan", Centro de derechos Humanos de las Mujeres (CEDEM), Centro de Derechos Humanos de los Pueblos del Sur Veracruz, "Bety Cariño", Centro de Derechos Humanos Fray Bartolomé de Las Casas, AC, Centro de Derechos Humanos Fray Francisco de Vitoria, OP, A.C; Centro de Derechos Humanos Fray Matías de Córdoba A.C.; Centro de Derechos Humanos Miguel Agustín Pro Juárez, Centro de Derechos Humanos Paso del Norte, Centro de Derechos Humanos Toaltepeyolo, Centro de Derechos Humanos y Alternativas Sociales Las Tepehuas, A.C, Centro de Derechos Humanos y Asesoría a Pueblos Indígenas A.C, Centro de Derechos Humanos Zeferino Ladrillero, Centro de Desarrollo y Atención Psicológica, A.C (CEDAPI), Centro de Estudios Sociales y Culturales Antonio de Montesinos, A. C, Centro de Investigación y Capacitación Propuesta Cívica A.C. (CIC-PC), Centro Fray Julián Garcés, Centro Mexicano de Derecho Ambiental A.C. (CEMDA), Centro Nacional de Comunicación Social, A.C (CENCOS), Centro para los Derechos Humanos Fray Juan de Larios, A.C, Centro Penitenciario Varonil Saltillo, Centro Regional de Defensa de Derechos Humanos José María Morelos y Pavón, Ciencia Forense Ciudadana, Ciudadanos en Apoyo a

los Derechos Humanos A.C. (CADHAC), International Human Rights Clinic of Seattle University School of Law, Closet Sor Juana, A.C, Colectivo Contra la Tortura e Impunidad, A.C. (CCTI), Colectivo Contra la Trata de Personas, Colectivo de Análisis de la Seguridad con Democracia A.C (CASEDE), Colectivo Defensa Verde Naturaleza para Siempre, Colectivo por la Paz Xalapa, Colectivo Red de Madres, Colectivo Sí a la Vida, Colectivo Ustedes, Somos Nosotros, Comisión Independiente de Derechos Humanos de Morelos, Comisión Mexicana de Defensa y Promoción de los Derechos (CMDPDH), Comité Cerezo México, Comité de Derechos Humanos de Colima No Gubernamental A.C., Comité de Derechos Humanos de Nuevo Laredo, Comité de Esclarecimiento de los Años, Comité de Familiares de Detenidos Desaparecidos Hasta Encontrarlos, Comité de familiares de Migrantes del Centro Honduras (COFAMICENH), Comité de Familiares de Migrantes Desaparecidos y fallecidos de El Salvador (COFAMIDE), Comité de Familiares Desaparecidos del Progreso Honduras (COFAMIPRO), Comité de Familias de Desaparecidos y Asesinados de Guerrero, Comité de viudas de la masacre del Charco, Comité Independiente de Solidaridad con los Caídos del 60, Comité para la Libertad Veracruz, Comunicación e Información de la Mujer A.C (CIMAC), Comunidad de Ostula, Comunidad Indígena de San Miguel Aquila, Consultoría Técnica Comunitaria A.C. (CONTEC), Contingente MX, Coordinación Jurídica Retoño, Coordinadora Estatal de Trabajadores de la Educación Guerrero (CETEG), Coordinadora Regional de Autoridades Comunitarias Policía Comunitaria (CRAC PC), Defensoría y estrategias integrales para los derechos humanos y territoriales, Desarrollo Autogestionario A.C, Desplazados de Copala, Deudos y defensores Dignidad de nuestros desaparecidos, Diario de Xalapa, Diocese of San Cristóbal de las Casas, Documenta, análisis y acción para la justicia social, AC, E-Consulta, El Barzón, El Solecito Veracruz, Elige Red de Jóvenes Por los Derechos Sexuales y Reproductivos A.C, Enlaces Nacionales, Equifonía Colectivo por la Ciudadanía, Autonomía y Libertad de las Mujeres, A.C, Equis Justicia para las Mujeres, Eslabones Morelos, School of Social and Political Sciences of the National Autonomous University of Mexico (UNAM), Monterrey School of Law (FLDM), Familiares de los 43 desaparecidos de Ayotzinapa, Familias Unidas por los Desaparecidos en Piedras Negras, Federación Mexicana Pro Derechos Humanos “POS ME AMPARO”A.C., Freedom House México, Fuerzas Unidas por Nuestros Desaparecidos en Coahuila, Fundación Arcoiris por el respeto a la diversidad sexual, A.C, Fundación para la Justicia y el Estado Democrático de Derecho A.C (FJEDD), Fundar, Centro de Análisis e Investigación, A.C, Grupo Imagen Multimedia, Cambio Digital, H.I.J.O.S. México, Idheas Litigio Estratégico en Derechos Humanos, A.C, Imagen del Golfo Colectivo, Incidencia política Advocacy, Indignación, Promoción y Defensa de los Derechos Humanos A.C., Instituto de Derechos Humanos Ignacio Ellacuría SJ, Instituto Mexicano de Derechos Humanos y Democracia A.C, Instituto Mexicano para el Desarrollo Comunitario (IMDEC, A.C), Instituto para la Seguridad y Democracia (INSYDE, A.C), Instituto para las Mujeres y la Migración (IMUMI), International Detention Coalition (IDC), Autonomous Technological Institute of Mexico (ITAM); Justicia, Derechos Humanos y Género, A.C., Kalli Luz Marina, A.C, Kinal Antzetik, Guerrero, A.C, La Asamblea Veracruzana de Iniciativas y Defensa Ambiental (LAVIDA), La 72 Hogar-Refugio para Personas Migrantes, La Jornada Veracruz, La Red por los Derechos Sexuales y Reproductivos en México (LEDESER), La Silla Rota, La Unión Medellín, Las Reinas Chulas Cabaret y Derechos Humanos A.C, Litiga, Organización de Litigio Estratégico de Derechos Humanos, A.C. (Litiga OLE), Litigio Estratégico sobre Derechos Sexuales y Reproductivos relacionados con la población LGBTI en México, Los Otros

Desaparecidos de Iguala, Movimiento Migrante Mesoamericano (MMM), Noticias de Veracruz, Latin American Observatory on Regulation, Media, and Convergence, MacArthur Foundation Office in Mexico, Organización de Campesinos Ecológicos de la Sierra de Petatlán, Organización Familia Pasta de Conchos (OFPC), Periodistas de a Pie, Plataforma de Vinculación con Periodistas, Proceso Semanario de Información y Análisis, Advocacy Programs of the Ibero-American University, Mexico City, Proyecto sobre Organización, Desarrollo, Educación e Investigación (PODER), Puebla Libre, Radio Huayacocotla, Red ciudadana de no violencia y dignidad humana, Red Cívica Ciudadana (RECIVE), Red de Radios Comunitarias de México, A.C./AMARC-México, Red Eslabones por los Derechos Humanos e integrantes del Movimiento por la Paz con Justicia y Dignidad, Red Nacional de Defensoras México, Red Nacional de Organismos Civiles de Derechos Humanos, Red Nacional de Organismos Civiles de Derechos Humanos Todos los Derechos para Todas y Todos, Red por los Derechos de la Infancia en México (REDIM), Red Solidaria Década contra la Impunidad, Red Unidos por los Derechos Humanos, SDP Noticias, Servicio Jesuita a Migrantes (SJM), Servicios y Asesoría para la Paz A.C (SERAPAZ), Siempre Vivos, A.C, Sin Fronteras I.A.P, Sindicato Minero, A.C, Taller de Desarrollo Comunitario, Guerrero (TADECO), Unión de barres y familiares de desaparecidos en Sinaloa, Unión Empresarial del Comercio y los Servicios (UCEZ), Unión Popular de Vendedores Ambulantes 28 de octubre (UPVA), Ibero-American University; University of Manchester, University of Veracruz, Voces Mexicanas, Voces Unidas por la Vida, y las de El Fuerte, Voz Alternativa, W Radio y Zacatecanos por la Paz. The IACHR also met with victims of human rights violations and their relatives, who provided testimony.

23. In order to prepare this report, IACHR has systematized and analyzed the information received on the human rights situation in Mexico in recent years. The IACHR has availed itself of the information received before, during, and after the *in loco* visit, including the visits of the Rapporteur for Persons Deprived of Liberty in September 2014 and September 2015, the investigations undertaken *ex officio*, the input from different mechanisms through which the Commission has monitored the situation in the country, such as public hearings, thematic visits, requests for information under Article 41 of the American Convention and precautionary measures; journalistic articles, decisions and recommendations from specialized international organizations, among others.<sup>3</sup>

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<sup>3</sup> Below are listed the hearings, press releases, precautionary measures granted between 2011 and 2015, requests for information and visits of the IACHR in relation to Mexico:

2011 - The following hearings on Mexico were held during the 141 Period of Sessions: "Constitutional Reforms on Human Rights in Mexico"; "Human Rights Situation of Persons in Preventive Detention in Mexico"; Citizen Security and Human Rights in Mexico"; and "Land Tenure and Human Rights of Indigenous Peoples in Mexico"; and "Human Rights Situation of Migrant Persons on the Southern Border of Mexico". The following hearings on Mexico were held during the 143 Period of Sessions: "Follow-Up to the Visit to Mexico by the Office of the Rapporteur on the Rights of Migrants"; Citizen Security and Human Rights in Mexico"; "Attacks on Journalists in Mexico"; and "Case 12.791 – Jesús Angel Gutiérrez Olvera, Mexico (Testimony)".

The following press releases on Mexico were issued in 2011: R 11/11 - Special Rapporteur Condemns Armed Attack on Media Outlets in Mexico. Washington, D.C., February 16, 2011; R 26/11 - Office of the Special Rapporteur Condemns Crimes Against Two Media Workers in Mexico. Washington, D.C., March 29, 2011; 34/11 - IACHR Condemns Murder of 145 People whose Bodies were Found in Clandestine Graves in Mexico.

Washington, D.C., April 18, 2011; 35/11 - IACHR Condemns Murder of Human Rights Defender in Mexico. Washington, D.C., April 25, 2011; 42/11 - IACHR Condemns Murder of LGBTI Rights Activist in Mexico. Washington, D.C., May 10, 2011; R54/11 - Office of the Special Rapporteur Condemns Murder of Journalist who Disappeared in Mexico in March. Washington, D.C., June 7, 2011; R58/11 - Office of the Special Rapporteur Expresses Concern regarding Disappearance of Journalist in Mexico. Washington, D.C., June 16, 2011; R61/11 - Office of the special Rapporteur Deplores Murders of Journalist and his Family in Mexico. Washington, D.C., June 23, 2011; 68/11 - IACHR Office of Rapporteur on Migrant Workers to Visit Mexico. Washington, D.C., July 13, 2011; 73/11 - Important Human Rights Progress in Mexico. Washington, D.C., July 22, 2010; 82/11 - The Rapporteurship on the Rights of Migrants of the IACHR Wraps Up its Visit to Mexico. Mexico City, Mexico, August 2, 2011; R95/11 - Office of the Special Rapporteur Condemns Murder of a Journalist in Sinaloa, Mexico. Washington, D.C., August 26, 2011; R97/11 - Office of the Special Rapporteur Condemns Murder of Two Women Journalists in Mexico City. Washington, D.C., September 7, 2011; R105/11 - Office of the Special Rapporteur Condemns Three Murders in Nuevo Laredo, Mexico. Washington, D.C., September 27, 2011; 105/11 - IACHR Wraps Up Visit to Mexico. Mexico City, September 30, 2011; 112/11 - IACHR and Supreme Court of Mexico Sign Cooperation Agreement. Washington, D.C., October 24, 2011; R113/11 - UN and IACHR Rapporteurs for Freedom of Expression Present Reports on Visit to Mexico. Washington, D.C., October 24, 2011; R122/11 - Office of the Special Rapporteur Expresses Deep Concern over Attacks Against Newspaper Workers in Mexico. Washington, D.C., November 18, 2011; and 127/11 - IACHR Condemns Attack Against Human Rights Defender in Mexico. Washington, D.C., December 9, 2011.

The following precautionary measures were awarded to beneficiaries in Mexico in 2011: PM 270/10 – Nazareth Migrant House and Human Rights Center, Nuevo Laredo, Mexico, May 16, 2011; PM 111/10 – Rosa Díaz Gómez and Other Members of the Jotolá Ejido, Mexico, May 19, 2011; PM 55/10 – Patricia Galarza Gándara and others, Mexico, May 19 2011; PM 448/10 – Víctor Ayala Tapia, Mexico, June 28, 2011; PM 344/08 – Family of Javier Torres Cruz, Mexico, July 19, 2011; and PM 262/11 – Ten Persons alleged to have been disappeared, Mexico, December 2, 2011.

The Rapporteurship on the Rights of Migrant Workers and their Families conducted a visit to Mexico from July 25 to August 2, 2011, with the purpose of observing the human rights situation of migrants in that country.

The Rapporteur for Mexico, Commissioner Escobar Gil, conducted a working visit from September 26 to 30, 2011. During the visit, the delegation held a series of meetings with senior State officials, including the President of the Republic, Felipe Calderón Hinojosa, and with civil society organizations. Various working meetings on cases and precautionary measures were held.

2012 - The following hearings on Mexico were held during the 144 Period of Sessions: “Complaints of Institutional Segregation and the Abuse of Children and Adults with Disabilities in Mexico”; “Situation of the Rights of Persons Deprived of Liberty in Mexico”; and “Situation of Missing Migrants and Unidentified Remains in Mexico”. The following hearings on Mexico were held during the 146 Period of Sessions: “Human Rights and Militarization in Mexico”; and “Situation of Street People in Mexico”.

The following press releases on Mexico were issued in 2012: 32/12 - IACHR Condemns Murder of Human Rights Defender in Mexico. Washington, D.C., March 20, 2012; R44/12 - Office of the Special Rapporteur Condemns Murders of Four Media Workers in Veracruz, Mexico. Washington, D.C., May 4, 2012; 47/12 - Mexico: International and Regional Experts Urge Swift Action to Protect Human Rights Defenders and Journalists. Geneva/Washington, D.C., May 14, 2012; R53/12 - Office of the Special Rapporteur Condemns Murder of Crime Reporter in Sonora, Mexico. Washington, D.C., May 21, 2012; 54/12 - IACHR Condemns Threats to Father Alejandro Solalinde in Mexico. Washington, D.C., May 22, 2012; 66/12 - IACHR Condemns Killing of Human Rights Defender in Mexico. Washington, D.C., June 14, 2012; 69/12 - IACHR Condemns LGBTI Murder in Mexico. Washington, D.C., June 18, 2012; 71/12 - IACHR Condemns Murder of LGBTI Youth in Mexico. Washington D.C. June 22, 2012; 73/12 - IACHR Condemns Murder of Trans Adolescent in Mexico. Washington, D.C., June 25, 2012; 78/12 - IACHR Condemns Murder of Trans Woman in Mexico. Washington, D.C., July 6, 2012; 98/12 - IACHR urges the State to guarantee conditions of security in shelter for migrants in Mexico. Washington, D.C., August 2, 2012; R101/12 - IACHR Office of the Special Rapporteur Expresses Concern over Attacks against El Norte Newspaper and Threats against Journalists in Mexico. Washington, D.C., August 3, 2012; 118/12 - Mexico City Forum on Strengthening of the Inter-American Human Rights System Began. Washington, D.C., September 13, 2012; and R136/12 - Office of the Special Rapporteur Condemns Murder of Journalist in Tehuacán, Mexico. Washington, D.C., November 20, 2012.

The following precautionary measures were awarded to beneficiaries in Mexico in 2012: PM 351/11 – Ananías Laparra Martínez, México, January 18, 2012; PM 208/10 – Estela Ángeles Mondragón, Mexico, March 1, 2012; PM 485/11 – X, Mexico, May 8, 2012; PM 77/12 – Alberto Patishtán Gómez, Mexico, May 24, 2012; PM 60/12 – Members of the Triqui Indigenous Community in the San Pedro River Valley, San Juan



Cópala, Putla de Guerrero, Oaxaca, Mexico, May 29, 2012; PM 21/11 – Blanca Velázquez Díaz et al., Mexico, May 29, 2012; and PM 388/12 – Edgar Ismael Solorio Solís et al., Mexico, November 6, 2012.

2013 - The following hearings on Mexico were held during the 147 Period of Sessions: “Case 12.229 - Digna Ochoa y otros, Mexico (Admissibility)”; “Case 12.846 - Mariana Selvas Gómez et al, Mexico (Merits - Testimony)”; “Exhibition in the media of victims of crime and of persons under the responsibility of the Public Ministry in Mexico”; “Human Rights Priorities and Legislative Harmonization in Mexico”; “General Human Rights Situation in Mexico”; and “Situation of Human Rights of the Rarámuri and Tepehuán Indigenous Peoples in the Sierra Tarahumara of Chihuahua, Mexico”. The following hearings on Mexico were held during the 149 Period of Sessions: “Reports of Human Trafficking in Mexico”; “Situation of Individuals Affected by Internal Displacement in Mexico”; “Situation of Individuals Deprived of Liberty at the Islas Marias Prison Complex in Mexico”; and “Situation of the Disappearance of Persons in Mexico”.

The following press releases on Mexico were issued in 2013: R15/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., March 6, 2013; 33/13 - IACHR Takes Case Involving Mexico to the Inter-American Court. Washington, D.C., May 9, 2013; R53/13 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., July 22, 2013; and 56/13 - IACHR Condemns Murder of Human Rights Defender in Mexico. Washington, D.C., August 1, 2013.

The following precautionary measures were awarded to beneficiaries in Mexico in 2013: PM 391/12 - Toribio Jaime Muñoz Gonzalez and others, Mexico, April 16, 2013; PM 273/11 - Fray Tomás González Castillo, Ruben Figueroa, staff Home- Shelter migrants 'La 72' and others, Mexico, April 19, 2013; and PM 338/13 – Lorenzo Santos Torres and Family, Mexico, November 8, 2013.

In exercising the powers granted to it under Article 41 of the American Convention on Human Rights and Article 18 of its Statute, in 2013 the IACHR requested information from the State of Mexico regarding the following specific issues: Situation of the Binnizá people and community, July; Aggression and arrests at social protests, October; and Request for up-to-date information about the progress made in implementing and operating the mechanism to protect defense attorneys and journalists, November.

2014 - The following hearings on Mexico were held during the 150 Period of Sessions: “Human Rights Public Policy and Good Practices in Mexico”; “Challenges to the Work of the Truth Commission of the State of Guerrero, Mexico”; “Maternal Health and Reports of Obstetric Violence in Mexico”; and “Challenges in the Implementation of the Criminal Justice System in Mexico”. The following hearings on Mexico were held during the 153 Period of Sessions: “National Human Rights Program In Mexico”; “Reports of Destruction of the Biocultural Heritage Due to the Construction of Mega Projects of Development in Mexico”; “Special Prosecutor for Social and Political Movements of the Past in Mexico”; “Reports of Impunity for Serious Violations of Human Rights in Mexico”; and “Human Rights and Social Protest in Mexico”.

The following press releases on Mexico were issued in 2014: R12/14 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., February 14, 2014; 40/14 - IACHR Expresses Deep Concern over Discoveries of 370 Child Migrants Abandoned by their Traffickers in Mexico. Washington, D.C., April 16, 2014; 53/14 - IACHR Welcomes Military Justice Reforms in Mexico. Washington, D.C., May 9, 2014; 54/14 - IACHR Expresses Concern over Attacks on Migrants and Human Rights Defenders by State Agents in Mexico. Washington, D.C., May 12, 2014; R64/14 - Office of the Special Rapporteur Condemns Murder of Journalist in Mexico. Washington, D.C., June 10, 2014; 73/14 - IACHR Holds Extraordinary Period of Sessions in Mexico. Washington, D.C., July 9, 2014; 76/14 - IACHR Welcomes Mexico's Withdrawal of Treaty Reservations. Washington, D.C., July 22, 2014; R83/14 - Office of the Special Rapporteur Condemns Attack to Journalist and Murder of his Son in Mexico. Washington, D.C., August 6, 2014; 86/14 - IACHR Wraps Up its 152nd Special Session. Mexico City, August 15, 2014; R87/14 - Office of the Special Rapporteur Condemns Murder Journalist in Mexico. Washington, D.C., August 16, 2014; 88/14 - IACHR Publishes Report: “Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico”. Mexico City, August 18, 2014; R96/14 - Office of the Special Rapporteur Condemns Attack to Journalist in Mexico. Washington, D.C., September 9, 2014; R124/14 - Office of the Special Rapporteur Condemns Murder of Radio Announcer and Expresses Concern over Disappearance of Journalist in the State of Sinaloa, Mexico. Washington, D.C., October 17, 2014; 125/14 - Rapporteurship on the Rights of the Child Culminates Visit to Mexico. Washington, D.C., October 20, 2014; R129/14 - Office of the Special Rapporteur Condemns Murders of Two Communicators in Mexico. Washington, D.C., November 3, 2014; 133/14 - IACHR Agrees on Terms of Agreement on Technical Assistance to Mexico. Washington, D.C., November 12, 2014; 136/14 - IACHR Makes Official Technical Cooperation Agreement about Ayotzinapa Students in Mexico. Washington, D.C., November 18, 2014; and 149/14 - IACHR Condemns the Assassination of Defenders of the Human Rights of Migrants in Mexico. Washington, D.C., December 11, 2014.

The following precautionary measures were awarded to beneficiaries in Mexico in 2014: PM 453/13 - Daniel Ramos Alfaro, Mexico, February 20, 2014; PM 252/14 - Members of the *Contralínea* magazine, México, July 18, 2014; PM 409/14 - Students of the rural school “Raúl Isidro Burgos”, México, October 3, 2014; PM 60/14 - Prudencio Ramos Ramos and others, Mexico, October 6, 2014; PM 423/14 - Clara Gómez González and others, Mexico, October 10, 2014; and PM 185/13 – Sofía Lorena Mendoza Martínez and others, Mexico, December 1, 2014.

In exercising the powers granted to it under Article 41 of the American Convention on Human Rights and Article 18 of its Statute, in 2014 the IACHR requested information from the State of Mexico regarding the following specific issues: Dictum on the law on Public Protests for the Federal District, January; Situation of internally displaced persons in Mexico, March; Mechanism of protection for human rights defenders and journalists in Mexico, April; Assassination of Sandra Luz Hernández, human rights defender, May; Secondary legislative initiative on telecommunication and radio broadcasting, June; and Situation of Grupo Juárez, Mexico City, August.

The Rapporteur, Felipe González Morales, was in Mexico City on August 18 and in Saltillo, Coahuila on August 19, 2014, presenting the report “Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico.”

From September 17 to 19, 2014, the Rapporteurship on the Rights of Persons Deprived of Liberty made a monitoring visit to Mexico that constitutes the first part of a two-part visit, the second part of which will take place in early 2015. In the course of this first visit the Rapporteur met with several authorities as well as with a group of experts on persons deprived of liberty and with civil society organizations devoted to monitoring the situation of the prison system in Mexico.

The Rapporteur on the Rights of Children and Adolescents of the IACHR, Commissioner Rosa María Ortiz, conducted a visit to Mexico between October 6 and 14, 2014. The main objective of the visit was to monitor the human rights of children and adolescents in Mexico, at the federal level and in four states and the Federal District, with particular emphasis on monitoring the systems for the promotion of the rights of girls and boys, as well as the impact of violence and migration on the exercise of their rights. The Rapporteur also participated in a working meeting on the implementation of the precautionary measures requested by the IACHR of the State in favor of 43 disappeared youths in the city of Iguala.

2015 - The following hearings on Mexico were held during the 154 Period of Sessions: “Reports of Acts of Forced Disappearance and Impunity in México”; “Energy Reform and Economic, Social, and Cultural Rights in Mexico”; “Reports of Sexual Torture of Women in Mexico”; and “Access to Justice for Migrant Persons in Mexico”. The following hearings on Mexico were held during the 156 Period of Sessions: “Case 12.790 – Manuel Santiz Culebra et al. (Acteal Massacre), Mexico (Merits)”; “Presentation of the Report “Investigation and First Conclusions of the Disappearances and Homicides of the Students of Ayotzinapa” (Scheduled by the Commission – Plenary)”; “Human Rights and Drug Policy in Mexico”; and “Reports of Extrajudicial Executions in Mexico”.

The following press releases on Mexico were issued in 2015: R1/15 - Office of the Special Rapporteur Expresses Concern over Disappearance of Journalist in the State of Veracruz, Mexico Washington, D.C., January 6, 2015; 8/15 - Interdisciplinary Group of Experts to Launch at IACHR Headquarters its Work on the Case of the Students of Ayotzinapa, Mexico. Washington, D.C., January 30, 2015; 9/15 - IACHR Condemns Killing of Julian Gonzalez Dominguez in Mexico. Washington, D.C., February 10, 2015; R10/15 - Office of Special Rapporteur Condemns Death and Attacks to Journalists in Mexico. Washington, D.C., February 11, 2015; 11/15 - IACHR Condemns Killing of Human Rights Defender in Mexico. Washington, D.C., February 12, 2015; 26/15 - IACHR Condemns Killing of Alberto Almeida in Mexico and Calls for Clarification of the Facts. Washington, D.C., March 6, 2015; R48/15 - Office of Special Rapporteur Condemns Killing of Journalist; Expresses Concern on the Disappearance of Another One in Mexico. Washington, D.C., May 11, 2015; 65/15 - IACHR Expresses Concern over Mexico’s Southern Border Plan. Washington, D.C., June 10, 2015; 75/15 - IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons. Washington, D.C., July 1, 2015; R76/15 - Office of the Special Rapporteur Condemns Killing of Two Journalists in Mexico. Washington, D.C., July 6, 2015; R84/15 - Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims. Washington, D.C., August 4, 2015; 87/15 - IACHR Expresses Concern regarding Allegations of Law Enforcement Participation in Acts of Violence in Mexico. Washington, D.C., August 7, 2015; 89/15 - IACHR Condemns Killing of Human Rights Defender in Mexico. Washington, D.C., August 17, 2015; 104/15 - IACHR Conducts On-Site Visit to Mexico. Washington, D.C., September 17, 2015; 108/15 - IACHR Begins On-Site Visit to Mexico. Mexico City, September 28, 2015; 112/15 - IACHR Wraps up Onsite Visit to Mexico. Washington, D.C., October 2, 2015 Annex to the Press Release: Preliminary Observations; 116/15 - Rapporteur on the Rights of Persons Deprived of Liberty Conducted Visit to Mexico. Washington, D.C., October 15, 2015; and 117/15 - Progress in

24. On November 24, 2015, the IACHR sent the Mexican State a copy of the preliminary draft of this report, and requested that it send its observations to it within a period of three weeks. On December 15, 2015, the State submitted its observations.
25. The Commission thanks the Mexican Government for the invitation to conduct the visit, as well as all the logistical support and assistance provided to make it a success. The Commission acknowledges and values the information furnished by the government, as well as its willingness to undertake constructive dialogue with the IACHR. The Commission likewise thanks the Government and the people of Mexico for the hospitality the delegation was shown. The IACHR highlights the availability, support, and collaboration shown both in organizing and during the visit. The Commission expresses its gratitude to all the actors it met with during its visit and values the information gathered and testimonies heard. The IACHR recognizes in particular, the victims and families who shared their testimonies and experiences with the delegation.
26. This report is divided into six chapters: The first contains the introduction to the report. The second chapter outlines an analysis of the factors that give rise to the violence in Mexico. The third chapter describes the structure of the Mexican State with regard to protection of human rights in the country, as well as its relationship with international human rights law. The fourth chapter addresses the situation of violence and citizen insecurity that Mexico is facing, with a focus on disappearances, attacks on life and personal integrity, the situation of persons deprived of liberty. Chapter 5 addresses the situation of human rights defenders, as well as journalists and attacks on freedom of expression. The sixth chapter addresses the response of the Mexican State to this situation, as well as access to justice. The seventh chapter contains the report's conclusions and

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Friendly Settlements and in Cases Pending before the IACHR involving Mexico. Washington, D.C., October 15, 2015.

The following precautionary measures were awarded to beneficiaries in Mexico in 2015: PM 5/15 – José Moisés Sánchez Cerezo, Mexico, January 26, 2015; PM 455/13 – Nestora Salgado Garcia, Mexico, January 28, 2015; PM 13/15 - Norma Mesino Mesino and 10 members of her family, Mexico, February 25, 2015; PM 314/13 – X, Y, and Z, Mexico, March 6, 2015; PM 77/15 - Defenders E. and K. and their relatives, Mexico, April 27, 2015; PM 106/15 - Cruz Sánchez Lagarda and others, Mexico, April 27, 2015; and PM 215/15 – Alejandro and others, Mexico, June 30, 2015.

In exercising the powers granted to it under Article 41 of the American Convention on Human Rights and Article 18 of its Statute, in 2015 the IACHR requested information from the State of Mexico regarding the following specific issues: Initiative for a General Law of Transparency and Access to Public Information, March; Reports of alleged slaughter in Apatzingan, Michoacan, May; Murders in electoral context in Mexico, June; and Events occurred in Villahermosa, Tabasco on August 14, 2015, August.

The Inter-American Commission on Human Rights (IACHR) had an on-site visit to Mexico that lasted from September 28 to October 2, 2015. The Commission observed the general human rights situation in the country, with particular emphasis on extrajudicial executions, forced disappearances, and torture. Additionally, the IACHR focused on the situation of citizen insecurity, access to justice for victims of human rights violations, and the situation of journalists, human rights defenders, and other groups particularly affected by the context of violence in Mexico.<sup>3</sup> An annex with its preliminary observations on the situation of human rights in the country was issued alongside the press release of the visit.

In his role as Rapporteur on the Rights of Persons Deprived of Liberty and Rapporteur on Mexico, Commissioner James Cavallaro of the Inter-American Commission on Human Rights (IACHR) conducted a working visit to Mexico on September 22-24, 2015. The purpose of the visit was to monitor the human rights situation of people in custody in that country, as well as to carry out activities related to the mechanisms for friendly settlement and follow-up on petitions and cases.

recommendations. The Commission presents the recommendations with the aim of assisting the Mexican State in its efforts to safeguard human rights in the country.



CHAPTER 2  
BRIEF ANALYSIS OF  
THE FACTORS BEHIND  
VIOLENCE IN MEXICO



## BRIEF ANALYSIS OF THE FACTORS BEHIND VIOLENCE IN MEXICO

27. Mexico has been undergoing a grave crisis of violence and security for several years. During the administration of former President Felipe Calderón and the 2006 launch of the so-called “war on drugs,” serious situations of violence rose to alarming levels, as did the the subsequent loss of more than 100,000 human lives, disappearances and a context that has caused the displacement of thousands of people in the country. This situation has significantly impacted the respect for and enjoyment of human rights. The Commission considers it pertinent to give a brief analysis of the factors that give rise to the violence in Mexico in order to better understand how it affects the country’s overall human rights situation.
28. A sample of the situation of violence shows that in August 2014, the Mexican government reported a total of 22,322 persons unaccounted for, 44% of whom were registered since December 2012. According to the National Registry of Missing or Disappeared Persons,<sup>4</sup> the number of people not found in Mexico, as of September 30, 2015, is 26,798<sup>5</sup>. Regarding homicides, according to information provided by the UN Special Rapporteur on extrajudicial, summary or arbitrary execution, 102,696 intentional homicides were committed between December 2006 and November 2012.<sup>6</sup> During the current administration, the President reported in his Third Government Report address, delivered on September 1, 2015, more than 94,000 homicides (intentional and negligent) in the current administration: 2012: 38,224; 2013: 34,903, 2014: 32,631; 2015: 27,047 (including up to September).<sup>7</sup>
29. Though the violence is widespread throughout much of the country, its impact has been harsher in certain regions. The states along the border with the United States —Baja California Norte, Sonora, Chihuahua, Coahuila, Nuevo León, and

<sup>4</sup> “The National Register of Data of Missing or Disappeared Persons (RNPED) includes data from “not found” people that were obtained from reports made to the corresponding ministerial authority. This record includes only people who, to date, remain to be found, namely, does not count people who have already been located. <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>; “The numbers show the total records of persons related to preliminary investigations in [both common and] federal investigations started in the period between January 2014 and July 2015, and remain unaccounted to July 31, 2015.” Available at: <http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerocomun.php>

<sup>5</sup> The registered statistics are mostly related to disappearances between 2007 and 2015. In addition, there are also statistics about disappearances before 2007 and others that do not have a specified date. As of September 30, there were 880 disappearances under federal jurisdiction, and 25,918 in local jurisdictions. See Executive Secretariat. Available at: <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>.

<sup>6</sup> United Nations. Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico, A/HRC/26/36/Add.1, April 28, 2014, para. 5.

<sup>7</sup> Government of Mexico: [http://cdn.presidencia.gob.mx/tercerinforme/3\\_IG\\_2015\\_ANEXO-ESTADISTICO.pdf](http://cdn.presidencia.gob.mx/tercerinforme/3_IG_2015_ANEXO-ESTADISTICO.pdf), updated until September 30, 2015



Tamaulipas—have particularly felt the effects of drug trafficking and organized-crime related violence. It is important to highlight that the violence is closely related to the presence of military forces in various areas of the country with the presence of organized crime, drug trafficking and social conflicts. The main migrant transit regions – the Isthmus of Tehuantepec in the southwest and the Chiapas-Tabasco-Veracruz-Tamaulipas corridor – are also hard hit by drug, weapons, and human trafficking-related violence. The state of Michoacán has seen a surge in self-defense forces (*autodefensas*) and community policing, in addition to the Ecuandureo shootout and Apatzingan massacre this year.

30. This serious human rights crisis was verified on the ground and is characterized by an extreme situation of violence and insecurity; critical rates of impunity; and inadequate and insufficient care for victims and their relatives. The effect of the violence and violations of fundamental human rights is especially grave and disproportionate for individuals in poverty and/or in marginalized areas, including immigrants, asylum seekers, refugees, and the internally displaced; women, children, and adolescents; and human rights defenders, journalists and indigenous peoples, among others. The goal of the violence against human rights defenders, justice operators, and journalists is to silence the allegations and the cries for truth and justice, as well as to perpetuate impunity for grave human rights violations. In this context, on every stop during its visit, the IACHR met with victims, their relatives, and human rights defenders who described the obstacles they have faced in their quests for justice and their distrust of the authorities. The lack of access to justice has created a situation of structural impunity, the effect of which is to perpetuate and in certain cases encourage the repetition of grave human rights violations. The threats, harassment, murders, and disappearances of individuals seeking truth and justice have had the effect of intimidating Mexican society. The IACHR confirmed this through the repeated testimony of individuals who have not reported violations out of fear of retaliation, creating a serious problem of under-reporting in official numbers.
31. In its observations to the draft report, the State expressed that it does not share the description of the general context developed in this section. The State indicated that the IACHR did not include or consider adequately the following factors: Mexico's geographic, sub-regional and regional context and the complex problema of crime, drug and weapons trafficking and illicit flows of capital; the effort that Mexico has undertaken to face these challenges, which has been accompanied by important advances in terms of strengthening the legal framework for the prevention of violence and for the protection of human rights, such as the reforms to the criminal justice system in 2008, the constitutional reform of 2011, and after this latter one, other important developments in the legislation and public policies, such as draft general laws regarding disappearances and eradication of torture; the role and prestige of the armed forces in tasks related to the protection of the population, and their role to assist in the tasks of the police corps. The State informed that the presence of armed forces throughout the national territory is not

permanent or generalized, but rather it is a consequence of specific needs in certain regions.<sup>8</sup>

32. In its observations to the draft of this report, the State stated that Mexico shares a border with the United States, which spends around 130 billion dollars a year on illegal drugs. With those resources, transnational organized crime has an enormous capacity to spread violence and corruption. According to the State, the market for illegal drugs is fed primarily by the access to weapons coming from the United States, which give criminal groups an astounding capacity for violence. That is why Mexico spearheaded the Inter-American Convention Against the Illicit Manufacturing of and Trafficking in Firearms, Ammunition, Explosives, and Other Related Materials (CIFTA), the Protocol against Illicit Manufacturing of and Trafficking in Firearms of the United Nations Convention against Transnational organized Crime, and the United Nations Arms Trade Treaty. The State indicated that it is not possible to separate what happens in Mexico from what happens in the United States when it comes to drug trafficking. It is two sides of the same coin.<sup>9</sup>
33. Regarding drug policy in Mexico, the State stated that the policy is based on compliance with international commitments that arise from the three United Nations Conventions regarding regulation of drugs, as well as the political documents of the UN itself, as well as the Organization of American States (OAS), in particular the Hemispheric Strategy on Drugs and its 2010-2015 Plan of Action. According to the State:<sup>10</sup>

Mexico's drug policy is comprehensive. It grants a lot of importance to observing the principles of shared and common responsibility, of a balance between the measures to reduce supply and demand, as well as its aim to prioritize human rights from a focus on prevention and public health. That is, the drug policy is a lot more than the prosecution of crimes related to production, trafficking, or sales of illicit drugs, given that national efforts involve measures that range from public health, prosecution of justice, and fostering development.

## A. *Main Sources of Violence*

### 1. **State Actors**

34. In this context of the fight against drug trafficking and the consequent militarization of zones of the country, various authorities, such as the federal, state,

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<sup>8</sup> Communication of the Mexican State, *Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico*, Note No. OEA-03636, December 15, 2015. Available at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/MX-Observations2015.pdf>. See also *Executive Summary*, available at: <http://www.oas.org/en/iachr/docs/annual/2015/doc-en/MX-Summary.pdf>

<sup>9</sup> IACHR, Public Hearing, *Human Rights and Drug Policies in Mexico*, October 20, 2015.

<sup>10</sup> IACHR, Public Hearing, *Human Rights and Drug Policies in Mexico*, October 20, 2015.

and municipal police, members of the armed forces, and even public prosecutor's offices have been tied to alleged serious human rights violations that have gone unpunished. Moreover, the Commission has received a constant stream of information from civil society organizations reporting that the advances made in human rights in Mexico<sup>11</sup> contrast with practices violating human rights, like forced disappearances, extrajudicial executions, claims of torture perpetrated by federal and state officials and the armed forces, violence and overcrowding in prisons, the abusive use of pre-trial detention, lack of guarantees protecting freedom of expression, communication interception, among others.

35. In recent years, a number of high-profile incidents have taken place where State agents have been involved in acts of violence. These incidents, which were widely reported in the media, included the murder of 22 people in Tlatlaya, Mexico State, in June 2014, some of them allegedly extra-judicially executed by members of the Army, leading to charges against some soldiers for first degree murder, among other alleged crimes;<sup>12</sup> the murder, wounding, and disappearance of teaching students in Iguala, Guerrero, in September 2014; the death of civilians allegedly at the hands of members of the Federal Police in Apatzingán, Michoacán, in January 2015; the alleged attacks on civilians carried out by soldiers in Ostula, Michoacán, in May 2015; and the alleged confrontation at Rancho Del Sol in Ecuandureo, Michoacán, in June 2015, where 42 civilians and one member of the Federal Police lost their lives.<sup>13</sup> In addition, there have been numerous acts of violence and murder perpetuated against journalists. Excluding countries that are at war, Mexico is considered one of the most dangerous countries in the world in which to practice journalism.<sup>14</sup>
36. In fact, in Mexico state actors can be seen as sources of violence, be they armed forces such as the National Defense Ministry (SEDENA) or the Navy (SEMAR); the Federal Police and various corps of state and local police; members of the Attorney General's Office, an of the various prosecutors' offices of the federal entities; personnel from the prison system, both federal and local; as well as members of other state agencies, such as the National Immigration Institute (INM). The response by the State to acts of violence frequently increases the number of police (or even military) agents who operate in areas of the country with the highest levels of violence.
37. The participation of the military in citizen security activities in contemporary Mexico had been seen in the decades of the 1960's and 1970's, and subsequently in the 1990's with the armed uprising in Chiapas, in the south of the country. This

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<sup>11</sup> For additional details regarding the advances regarding human rights, see section on the State's Response.

<sup>12</sup> Visit of the Inter-American Commission on Human Rights to Mexico: Information from the Mexican State," Mexico City, Mexico, September 25, 2015, Section 1.4, p. 23.

<sup>13</sup> Press Release 87/15 - IACHR Expresses Concern regarding Allegations of Law Enforcement Participation in Acts of Violence in Mexico. Washington, D.C., August 7, 2015.

<sup>14</sup> Reporters Without Borders. *World Press Freedom Index 2015*. Available at: <https://index.rsf.org/#!/index-details>. Committee to Protect Journalists (CPJ); *CPJ's 2014 Global Impunity Index*, Available at: <https://cpj.org/reports/2014/04/impunity-index-getting-away-with-murder.php>; Committee to Protect Journalists, "The Road to Justice: Breaking the Cycle of Impunity in the Killing of Journalists," October 2014. Available at: [https://cpj.org/reports/road\\_to\\_justice2014-english.pdf](https://cpj.org/reports/road_to_justice2014-english.pdf)

participation intensified significantly and reached large vast areas of the country starting in late 2006, and continues to be a concern almost a decade later. According to the United Nations, in 2012, there were 50,000 soldiers working on citizen security.<sup>15</sup> According to SEDENA itself, soldiers continue to participate actively in anti-drug trafficking operations.<sup>16</sup> In operations to combat drug trafficking, SEDENA reports having detained more than 17,000 individuals so far in the current presidential administration: 559 in December of 2012; 7,040 in 2013; 6,195 in 2014, and 3,227 through July 2015.<sup>17</sup> The domestic citizen security operations carried out by the armed forces have led to a considerable number of complaints of human rights violations. According to numbers from SEDENA, the National Human Rights Commission (CNDH) has made 115 recommendations related to human rights violations by members of the military in the form of torture, homicide, rape, and other violations;<sup>18</sup> and in confrontations between soldiers and civilians between 2007 and 2012, the dead included 158 soldiers, 2,959 “alleged” civilian attackers, and 40 “individuals not involved in the incidents.”<sup>19</sup>

38. In its observations to the draft of this report, the State indicated that starting in 2013 the recommendations addressed to SEDENA decreased notably. The State informed that from December 1, 2012 to November 28, 2015, 2,007 complaints have been filed at the National Human Rights Commission (CNDH) for acts that allegedly constitute human rights violations attributable to military personnel—without specifying which ones. Of those, 1,625 were concluded by the CNDH and 382 are currently pending, noting that between January 1 and December 31, 2014, compared to the same period in 2012, there was a decrease of 42.10% and, compared to 2014, there is a decrease of 60.52%, as well as a 63.50% decrease to date in 2015. Regarding SEMAR, the State informed that from December 1, 2012, to November 27, 2015, it received 1,105 complaints from the CNDH; however, 652 were concluded without any recommendation to SEMAR, while only 9 recommendations have been notified to that Ministry. Given this, there is a

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<sup>15</sup> United Nations, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, after his visit to Mexico*, December 29, 2014, para. 20.

<sup>16</sup> SEDENA, Combating drug trafficking, Results of Seizures. Available at: <http://www.sedena.gob.mx/-actividades/combate-al-narcotrafico> (last accessed on August 27, 2015). In addition to marijuana and cocaine, SEDENA provides statistics in its drug trafficking seizure results on heroin, opium gum, methamphetamines, land vehicles, aircraft, ships, firearms, grenades, ammunition, detained individuals, US dollars, Mexican currency, secret laboratories, secret airstrips, hectares of marijuana eradicated, and hectares of poppies eradicated.

<sup>17</sup> SEDENA, Combating drug trafficking, Results of Seizures, Detention of Persons, last updated July 1, 2014. Available at <http://www.sedena.gob.mx/images/stories/archivos/ocn/2015/detenidos.jpg> (last accessed on August 27, 2015)

<sup>18</sup> SEDENA, Human rights, Complaints and recommendations, Military personnel tried and convicted, last updated July 1, 2014. Available at: [http://www.sedena.gob.mx/images/stories/archivos/derechos\\_humanos/quejasyrecom/2013/octubre/PNAL\\_MIL\\_SENTENCIADO.pdf](http://www.sedena.gob.mx/images/stories/archivos/derechos_humanos/quejasyrecom/2013/octubre/PNAL_MIL_SENTENCIADO.pdf) (last accessed on August 28, 2015)

<sup>19</sup> SEDENA, Human rights, Complaints and recommendations, Attacks on military personnel, last updated July 1, 2014. Available at: <http://www.sedena.gob.mx/derechos-humanos/agresiones-contra-personal-militar> (last accessed on August 28, 2015).

downward trend in terms of recommendations from CNDH to SEMAR between 2013 and 2015.<sup>20</sup>

39. The State also notified that, according to the National Institute for Statistics and Geography (INEGI), in the face of existing situations of violence derived from organized crime, Mexican society recognized the armed forces as an institution that has provided protection and in which they have the most confidence, above other institutions.<sup>21</sup>
40. During its visit, the Commission was able to confirm with extreme concern that the involvement of the armed forces in citizen security activities continues, and there is no expected date for its conclusion.<sup>22</sup> In its observations to the draft of this report, the State noted that: “the temporary and extraordinary participation of the federal forces in tasks that are of local competence is undertaken in full coordination with the different state authorities, in the framework of the coordination agreements subscribed pursuant to section XVII of article 27 of the Organic Law of the Federal Public Administration, which allows the participation of federal authorities in public safety roles when it is requested by local authorities.”<sup>23</sup> This issue is examined later on in this report.

## 2. Organized Crime

41. In Mexico, like in other parts of Latin America, “corruption and impunity have enabled criminal organizations to develop and establish parallel power structures.”<sup>24</sup> In many cases, criminal groups act in apparent direct collusion with State authorities, or at least with their acquiescence. In line with this, the Ayotzinapa case is an emblematic example of collusion between State agents and members of criminal organizations, since according to the official version of events, the Iguala municipal police colluded with a criminal group to disappear the students. In addition, according to the GIEI, members of the state police, the federal

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<sup>20</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also, Public hearing, Reports of Extrajudicial Executions in Mexico, October 20, 2015.

<sup>21</sup> The figures provided by the State indicate that according to the survey carried out by INEGI in 2015, 81.6% of the population identify the Navy (SEMAR) as the institution in which they have the most confidence, (84.4% in 2014); followed by the Army (SEDENA) with 77.6% (80.7% in 2014), and the Federal Police with 56.2% (57.5%). Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>22</sup> On the contrary, it was public knowledge that hundreds of soldiers were deployed in the state of Michoacán in October 2015 to continue performing citizen security operations. See news article published on AnimalPolítico.com, “Desplazan a 500 militares en nuevo ‘Operativo Michoacán’ (500 soldiers deployed in ‘Operation Michoacán’),” October 18, 2015. Available at: <http://www.animalpolitico.com/2015/10/desplazan-a-500-militares-en-nuevo-operativo-michoacan/>

<sup>23</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>24</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 33.

police, and members of the army were present during the events.<sup>25</sup> Therefore they may have also been colluded with organized crime groups.

42. The impact of drug trafficking in Mexico is complex given the country's geographic location and border of nearly 3,000 kilometers with the United States of America, the main destination country for narcotics in the hemisphere.<sup>26</sup> Mexico is a country of origin, a transportation route, and a destination market for drugs, which no doubt goes hand in hand with the high crime rates Mexicans are currently experiencing.
43. The de facto power exercised by drug cartels in the country added to the degree of corruption of many State agents enabling those cartels to act with impunity in many cases foster the high levels of violence battering the country.<sup>27</sup> According to government figures, in 2014, 6,809 intentional homicides were recorded, allegedly related to rivalries between organized criminal groups, mainly alleged drug traffickers.<sup>28</sup> The fragmentation of the drug trafficking cartels as a result of the arrest of their leaders and the dismantling of some groups; disputes over control of territory; and the new alliances between the same criminal groups, as well as the emergence of new criminal groups, have all exacerbated the phenomenon.<sup>29</sup>

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<sup>25</sup> These are some excerpts of the report of the Group of Experts in this regard: "In addition to the municipal police forces of Iguala and Cocula that were the direct aggressors, in the two crime scenes at Juan N. Alvarez and at the Palace of Justice where *normalistas* were arrested and where there were forced disappearances, members of the army, the federal police and the ministerial police were also present at different times [...] Later, another army patrol vehicle arrived between 6 and 7 am and protected the place where Julio Caesar Mondragón's tortured dead body had appeared, before the civilian authorities arrived," p. 318; "The level of intervention of the different police forces in the various crime scenes and the attacks at different times as portrayed in the documents, testimonies and expert opinions evaluated by the IGIE clearly show there was coordination and a chain of command in order to carry out such actions. The operational necessity of coordination between the police forces from two different municipalities (Iguala and Cocula), and at least 18 municipal patrol cars and one from the Civil Defense that participated in what happened that night indicate there necessarily had to be a central coordination level from which orders were issued," (p.318). "The scenes of violence that night of show a panorama of defenselessness of the victims before the aggressors. This not only due to the fact that it was the municipal police, but because no other police force of the State took action in protection of the *normalistas* in spite of having knowledge of the facts or being present in some of the crime scenes when the crimes took place and in spite of the fact that they had been witnessing the level of aggression and human rights violations," p. 325). GIEI, *Ayotzinapa Report, Investigation and first conclusions of the disappearance and murders of the teaching students of Ayotzinapa*. Official Translation from the Summary, Ayotzinapa Report.

<sup>26</sup> United Nations Office on Drugs and Crime, *World Drug Report 2015*, June 26, 2015, pages v-viii. Available at: [https://www.unodc.org/documents/wdr2015/World\\_Drug\\_Report\\_2015.pdf](https://www.unodc.org/documents/wdr2015/World_Drug_Report_2015.pdf)

<sup>27</sup> According to information received by the Commission, up to 98% of the crimes committed in Mexico remain in impunity. IACHR, *Hearing on citizen security and human rights in Mexico*, 143rd Period of Sessions, Washington, D.C., October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

<sup>28</sup> Main Progress in Security Policy 2014, Secretary of Governance (SEGOB), Secretary of the National Defense (SEDENA), Secretary of the Navy (SEMAR), and the Office of the Attorney General of the Republic (PGR). Available at: [http://www.senado.gob.mx/sgsp/gaceta/62/3/2015-02-24-1/assets/documentos/Informe\\_Politica\\_de\\_Seguridad\\_2014.pdf](http://www.senado.gob.mx/sgsp/gaceta/62/3/2015-02-24-1/assets/documentos/Informe_Politica_de_Seguridad_2014.pdf)

<sup>29</sup> Mexico's organized crime groups include the Sinaloa Cartel, the Gulf Cartel, the Jalisco New Generation Cartel, the Knights Templar, the Michoacan Family, Warriors United, the Zetas, the Line, the Juárez Cartel, the Beltrán Leyva Cartel, The Reds, The Ardillos, and many others.

44. The organized criminal groups focus mainly but not exclusively on drug trafficking. Their other criminal activities include assassinations, extortion, kidnapping, robbery, protection money,<sup>30</sup> control of immigration routes, illegal immigrant trafficking and human trafficking, and arms trafficking, among others.<sup>31</sup> As for the kidnappings, they often murder their victims even after their relatives have paid the ransom.<sup>32</sup> This diversification of criminal activity added to the real power these groups exercise in a large portion of the country turn the phenomenon of organized crime into the main source of violence committed by private actors in Mexico, and at the same time it entails Mexican State responsibility due to its failure to effectively respond to the problem.<sup>33</sup>
45. The issue of organized crime is also reflected in threats and forced recruitment of persons. For example, in April of 2015, the IACHR requested the Mexican State to adopt precautionary measures in favor of the “El Manzano” community in the state of Chihuahua. The Commission determined that this community had received threats and that young people in the community had been murdered, allegedly in the context of recruitment by organized criminal groups.<sup>34</sup> The IACHR has also received countless reports of violence connected to the activities of criminal organizations in the context of human mobility in recent years. These include the kidnapping and murder of 72 immigrants in August 2010 and the later discovery of 193 bodies of immigrants in 2011, both of which took place in the municipality of San Fernando, Tamaulipas,<sup>35</sup> as well as multiple unresolved reports of confrontations, extortion, kidnappings, rapes, femicides, torture, robbery, and other related crimes. The Commission has also learned how organized criminal groups control immigrant and human trafficking networks.<sup>36</sup>
46. During its visit, the delegation from the Commission confirmed that many individuals, including victims of human rights violations and their relatives, human

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<sup>30</sup> When organized criminal groups charge business owners and even citizens who do not own businesses a fee in exchange for not “bothering” them, that is, not committing acts of violence against them.

<sup>31</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 75.

<sup>32</sup> News item published on Milenio.com, “*Secuestran y matan a hija de empresario en Valles*” (daughter of businessman kidnapped and killed in Valles), August 17, 2015. Available at: <http://www.milenio.com/policia/Matan-hija-empresario-Ciudad-Valles-0-574742638.html>

<sup>33</sup> Information received during the *in loco* visit of the IACHR, September 28-October 2, 2015. Also see IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 100.

<sup>34</sup> IACHR, Precautionary Measures. 105-15. Matter of Cruz Sánchez Lagarda et al. regarding Mexico. April 27, 2015. In its observations to the draft of this report, the State stated the representatives of the beneficiaries have requested that the Army be the one to provide security to the beneficiaries. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also, IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>35</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, paras. 23, 118.

<sup>36</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, paras. 100: “(...) the main difference that distinguishes the present situation from the situation in 2002 is the full involvement of organized crime groups, especially drug cartels, in activities associated with migrant abduction, human trafficking, smuggling of migrants, and the other crimes and human rights violations that they commit in the process.”

rights defenders, members of the justice system, and journalists, are exposed to the violence that these criminal groups represent. The Commission received testimony—especially in the rural parts of the country—on the collusion between criminal groups and members of the municipal police forces.<sup>37</sup> Some Mexican authorities have also recognized to the IACHR that many municipal police officers are either overwhelmed or coopted by organized crime.<sup>38</sup>

### 3. Other Actors as Sources of Violence

47. In addition to the main sources of violence mentioned so far, there are other sources that exacerbate the problem in certain areas of the country. In recent years, and especially in states in the center and south of the country, the phenomenon of “community police forces” or “self-defense groups” has arisen. According to information the Commission has received, the self-defense groups are groups of civilians that have taken up arms supposedly to defend and protect their communities from criminals, especially from organized criminal groups.<sup>39</sup> They do so in response to the absence of an effective State presence to enforce the rule of law.
48. The self-defense groups (*autodefensas*) emerged at the beginning of 2013 mainly in rural areas of the country with high rates of crime and impunity, although they have emerged in urban and semi-urban areas as well.<sup>40</sup> At the beginning, a common denominator of a majority of the self-defense groups was desperation at the high crime rates in their communities, which they say government forces have not been capable of controlling.<sup>41</sup> Over time, some of these groups have transformed into violent, criminal groups. This has been the case with some groups in Michoacán, which supposedly started as community self-defense groups but then turned into drug cartels, contributing to the increase in violence in the region.<sup>42</sup> The supposed evolution of self-defense groups reaffirms the IACHR’s concern that they arose in reaction to the high levels of violence in some areas of the country and the State’s inability to address this problem, but that in the end, some have simply turned into additional sources of violence.<sup>43</sup>

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<sup>37</sup> Testimony received during the *in loco* visit in Mexico City, Nuevo León, Coahuila, Guerrero, and other places, September 28–October 2, 2015.

<sup>38</sup> Meeting between the plenary of the IACHR and federal authorities at the offices of the Secretary of Foreign Relations, Mexico City, September 28, 2015.

<sup>39</sup> CNDH, *Informe especial sobre los grupos de autodefensa y la seguridad pública en el estado de Guerrero*, 2013. Available at: [http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2013\\_IE\\_grupos\\_autodefensa.pdf](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2013_IE_grupos_autodefensa.pdf)

<sup>40</sup> Information available to the public indicates that the first self-defense group was formed on February 24, 2013, in the municipality of Tepalcatepec, Michoacán, but some groups had been formed prior to that.

<sup>41</sup> News article published in July of 2013 on ForeignAffairs.com, *The Rise of Mexico’s Self-Defense Forces*. Available at: <https://www.foreignaffairs.com/articles/mexico/2013-06-11/rise-mexico-s-self-defense-forces>

<sup>42</sup> News article published in July of 2013 on ForeignAffairs.com, *The Rise of Mexico’s Self-Defense Forces*. Available at: <https://www.foreignaffairs.com/articles/mexico/2013-06-11/rise-mexico-s-self-defense-forces>

<sup>43</sup> The Mexican State invited the Commission to visit Michoacan during the *in loco* visit, but due to logistical limitations during the visit it was not possible to visit this federal entity during this visit.



49. In its observations to the draft of this report, the State indicated that in the face of the insecurity conditions in certain specific municipalities in the state of Michoacan, different armed civilian groups emerged. To address this phenomenon, the Federal Government, in response to an express request by the state government, entered into an agreement establishing the terms to provide support in terms of public safety. The State informed that the Federal Police assumed the control of public safety tasks in municipalities where there were the highest crime rates, and developed permanent surveillance tasks in coordination with the authorities of all three levels of government. This way, according to the State, this action allowed it to contain the crime levels in the region through the presence of authorities and the prompt attention to citizen reports. The Federal Police developed different actions to create cooperation links with the population, foster the reporting of crimes and strengthen trust in security institutions. Similarly, it indicated that with the strengthening of the public safety and justice institutions, armed civilian groups have seen their demands addressed. According to the State, only those persons who were able to comply with the necessary requirements were incorporated institutionally into the police work in their communities.<sup>44</sup>
50. According to the information available to the Commission, in May 2014, some self-defense groups agreed to register themselves and their arms with the SEDENA in a symbolic act in the municipality of Tepalcatepec, Michoacán.<sup>45</sup> The Mexican State registered these groups, trained them on what kinds of weapons were allowed, and incorporated them into a new State force called the Rural Police.<sup>46</sup> The Commission has closely followed the evolution of these self-defense groups, as well as the State's response to them. The IACHR observed with concern the incidents that took place in Apatzingán, Michoacán, in January of 2015 when members of the Federal Police supposedly attacked members of a self-defense group, resulting in civilian deaths.
51. Additionally, the IACHR has received information on private security forces in Mexico. According to some reports, many of these have arisen in response to the incompetence of State security forces. Some large national and international companies have their own private security forces. Private security forces also tend to be sources of violence.<sup>47</sup> Should these private companies commit human rights violations, the State could be responsible, since the guarantee of human rights

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<sup>44</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>45</sup> News article published on May 12, 2014, on ViceNews.com, *New Rural Force Emerges After the Death of Mexico's Autodefensas*. Available at: <https://news.vice.com/article/new-rural-police-force-emerges-after-the-death-of-mexicos-autodefensas>

<sup>46</sup> News article published on May 12, 2014, on ViceNews.com, *New Rural Force Emerges After the Death of Mexico's Autodefensas*. Available at: <https://news.vice.com/article/new-rural-police-force-emerges-after-the-death-of-mexicos-autodefensas>

<sup>47</sup> The IACHR has indicated that "The privatization of the functions involved in citizen security is a departure from the concept of human rights, where the State is responsible for guaranteeing that citizen security is defended, protected and ensured. Instead, citizen security becomes a mere product to be bought on the market and, in most cases, is available only to those sectors of society with the means to buy it." IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 72.

associated with citizen security implies state responsibilities on the matter.<sup>48</sup> During its *in loco* visit, the IACHR was able to observe the proliferation of private security forces in Mexico as a new but growing phenomenon. The scarcity of available information makes it difficult to properly analyze the impact of privatization, since information is not publicized on contracts with private security companies, but it is sufficient to formulate some conclusions.<sup>49</sup>

52. Similarly, the IACHR has received information regarding the growing trend of private companies operating some of Mexico's penitentiaries.<sup>50</sup> As with the proliferation of private security forces, the IACHR expresses concern at the lack of legislative framework to properly regulate the private security forces that operate in the country.

## ***B. Other Factors that have an Effect in the Situation of Violence***

53. Other factors exacerbate the situation facing the country. The impact of these factors on different sectors of the population varies depending on geographic location, age, socioeconomic situation, and other factors. In a country as large as Mexico, with an estimated population of 120 million people, not only are the factors behind the violence very complex, but they vary by region. Still, some of the factors that the IACHR considers it appropriate to highlight include the socioeconomic situation of the individuals; immigration routes; drugs and arms trafficking.

### **1. Socioeconomic Situation**

54. Social and economic inequality in the hemisphere is one of the main generators of violence according to the United Nations Office on Drugs and Crime (UNODC).<sup>51</sup> The most recent figures published by the National Council for the Evaluation of Social Development Policy (CONEVAL) indicate that there are approximately 55.3 million people living in poverty in Mexico, 11.4 million of which live in extreme

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<sup>48</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 72. The Commission has outlined the parameters that States must follow to properly regulate private security forces, in line with international human rights standards.

<sup>49</sup> In its observations to the draft of this report, the State indicated that report No. A/HRC/30/24 of the UN Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination provides, among other things, on the issue of private security companies, that Mexico has plans to study the issue of human rights and that Mexico's legal framework provides that a service provider must train its personnel, at least once a year, on courses that must follow an authorized model that includes human rights content.

<sup>50</sup> Observatorio Ciudadano del Sistema de Justicia, information received in the context of the Public Hearing on *Challenges to Implementing the Criminal Justice System in Mexico*, during the 150th Ordinary Period of Sessions of the Inter-American Commission on Human Rights, March 27, 2014, pp. 14-15.

<sup>51</sup> United Nations Office on Drugs and Crime, *Crime and Development in Central America: Caught in the crossfire*, 2007.

poverty.<sup>52</sup> That is, almost half of Mexico's population (46.2%) lives in poverty, while according to information the Commission recently received, the richest 1% of the population controls more than a fifth of the country's wealth.<sup>53</sup> Inequality has a particular effect on the most vulnerable sectors of the population, such as indigenous peoples—among whom the poverty rate is four times higher—and immigrants.<sup>54</sup> This situation contributes greatly to the levels of violence in the country. According to World Bank data, the level of inequality in Mexico between the 1990's and 2012 has been modestly but gradually reduced, although it has suffered some ups and downs.<sup>55</sup>

55. In Mexico, the areas of the country with the highest rates of violence are also the areas with the highest rates of poverty, inequality, and marginalization. According to a study commissioned by the World Bank, a one point increase in the Gini coefficient<sup>56</sup> at the municipal level correlates with an increase of 10 drug trafficking-related homicides per 100,000 inhabitants.<sup>57</sup> According to World Bank figures, the Gini index in Mexico was 48.1 in 2012, in a scale from 0 to 100 in which 0 represents perfect equality and 100 represents perfect inequality.<sup>58</sup> According to the National Council for the Evaluation of Social Development Policy, the Gini index went from 49.8 to 50.3 between 2012 and 2014, which means the level of inequality increased.<sup>59</sup> Meanwhile, the average in Latin America in 2013 was around 50.7.<sup>60</sup> Some of the socioeconomic factors that have an impact on the levels of violence in Mexico include inequality and social exclusion, poverty, stigmatization and stereotypes, unemployment (especially of young people), low salaries, discrimination, forced immigration, low levels of education, unstable housing conditions, insufficient healthcare services, easy access to weapons,

<sup>52</sup> National Council for the Evaluation of Social Development Policy (CONEVAL), Measurement of Poverty, United Mexican States, 2014, Percentage, number of persons, and scarcities, average by poverty indicator, 2010-2014, July 23, 2015. Available at: <http://www.coneval.gob.mx/medicion/Paginas/Pobrezalncio.asp>

<sup>53</sup> National Council for the Evaluation of Social Development Policy (CONEVAL), Measurement of Poverty, United Mexican states, 2014, Percentage, number of persons, and scarcities, average by poverty indicator, 2010-2014, July 23, 2015. Available at: <http://www.coneval.gob.mx/medicion/Paginas/Pobrezalncio.asp>; Oxfam México, *Desigualdad Extrema en México, Concentración del poder económico y político en México*, June 2015, pp. 5, 7. Available at: [http://cambialasreglas.org/images/desigualdadextrema\\_informe.pdf](http://cambialasreglas.org/images/desigualdadextrema_informe.pdf)

<sup>54</sup> Oxfam México, *Desigualdad Extrema en México, Concentración del poder económico y político en México*, June 2015, p. 9. Available at: [http://cambialasreglas.org/images/desigualdadextrema\\_informe.pdf](http://cambialasreglas.org/images/desigualdadextrema_informe.pdf)

<sup>55</sup> World Bank, Data, Gini Index, data from 1981 to 2012. Available at: <http://data.worldbank.org/indicator/SI.POV.GINI>

<sup>56</sup> The Gini coefficient is a tool used in Economics to measure inequality.

<sup>57</sup> World Bank, Poverty Reduction and Economic Management Unit, Ted Enamorado, Luis Felipe López Calva, Carlos Rodríguez Castelán, Hernan Winkler, *Income Inequality and Violent Crime: Evidence from Mexico's War on Drugs*, June 2014. Available at: [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/06/24/000158349\\_20140624090206/Rendered/PDF/WPS6935.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2014/06/24/000158349_20140624090206/Rendered/PDF/WPS6935.pdf)

<sup>58</sup> World Bank, Data, Gini Index. Available at: <http://datos.bancomundial.org/indicador/SI.POV.GINI>. The most recent figures in the World Bank Data are from 2012.

<sup>59</sup> National Council for the Evaluation of Social Development Policy, CONEVAL, notifies the results of poverty measurements 2014, Mexico City, July 23, 2015. Available at: [http://www.coneval.gob.mx/SalaPrensa/Documentos/Comunicado005\\_Medicion\\_pobreza\\_2014.pdf](http://www.coneval.gob.mx/SalaPrensa/Documentos/Comunicado005_Medicion_pobreza_2014.pdf)

<sup>60</sup> Inter-American Development Bank, "Inequality in Latin America: A change of direction?" Available at: <http://www10.iadb.org/intal/cartamensual/cartas/Articulo.aspx?id=c6784605-010d-4a07-8568-22416ef16-3db>

impunity, among others.<sup>61</sup> According to some estimates, in Mexico there are approximately one and a half million children between the ages of 5 and 17 who do not study or work, which contributes to them being more easily coopted and exploited by drug traffickers and organized crime groups.<sup>62</sup>

56. In its observations to the draft of this report, the State indicated that the results of poverty in 2014, carried out by the National Council for the Evaluation of Social Development Policy (CONEVAL), indicated that the percentage of extreme poverty decreased from 9.8% to 9.5%. According to the State, extreme poverty was reduced from 11.5 to 11.4 million people between 2012 and 2014. The number of average necessities among the population in poverty decreased between 2012 and 2014 from 2.4 to 2.3. The average necessities of the population in extreme poverty went from 3.7 to 3.6. Between 2012 and 2014, the percentage of rural population in poverty went from 61.6 to 61.1 percent. In 24 states, there was a reduction in the percentage of population living in poverty or extreme poverty. The increase in income of the decile with highest poverty (decile 1), as well as a decrease in social necessities of that population, contributed to the decrease in extreme poverty between 2012 and 2014.<sup>63</sup>
57. During its visit to the country, the Commission was able to observe and listen to victims and their relatives describe how the lack of financial resources tends to be one more obstacle to access to justice.<sup>64</sup> For example, some victims and their family members expressed that often public servants charge them or request from them financial contributions and that, if payment is not made, these servants do not carry out their corresponding duties. The Executive Commission for Attention to Victims (CEAV) has found that a lack of financial resources is one of the reasons many people do not report crimes committed against them.<sup>65</sup>
58. In some rural areas and territories of indigenous communities in the country, violence also takes place in connection with a variety of natural resource extraction projects, highway construction, and other so-called "megaprojects." Violence in this context has a number of different aspects. It takes place mainly

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<sup>61</sup> Oxfam México, *Desigualdad Extrema en México, Concentración del poder económico y político en México*, June 2015, p. 35. Available in Spanish at: [http://cambialasreglas.org/images/desigualdadextrema\\_informame.pdf](http://cambialasreglas.org/images/desigualdadextrema_informame.pdf)

<sup>62</sup> Red por los Derechos de la Infancia de México (REDIM), *“Infancia y conflicto armado en México. Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los Derechos del Niño relativo a la participación de los niños en los conflictos armados”*, 2011, p. 36. Available at: <http://derechos-infancia.org.mx/documentos/iaespanol.pdf>

<sup>63</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>64</sup> The main barriers have to do with the costs associated with hiring an attorney, transportation to and from the offices where proceedings (which can be lengthy) take place, financial resources and means necessary to pursue the procedures related to the judicial process, and for cases of indigenous people, the lack of knowledge of the language and legal jargon, among other barriers. Facultad Latinoamericana de Ciencias Sociales, *Pobreza y Acceso a la Justicia* (Poverty and Access to Justice), July 18, 2014, p. 35. Available at: [http://bibdigital.flacso.edu.mx:8080/dspace/bitstream/handle/123456789/4013/Torres\\_MA.pdf?sequence=1](http://bibdigital.flacso.edu.mx:8080/dspace/bitstream/handle/123456789/4013/Torres_MA.pdf?sequence=1)

<sup>65</sup> Information provided by the Executive Victim Services Commission, “Draft Comprehensive Victim Care Program, 2014-2018,” p. 28 (filed at the IACHR).

when individuals living in the area where a project is to be developed oppose that project. The confrontation with those who propose or support the project then escalates to violence.<sup>66</sup> This type of violence has a particular effect on indigenous peoples and communities and their territories. Some social leaders who oppose mining projects, timber extraction plans, and the construction of dams or highways have been subject to threats, harassment, attacks, torture, and even assassination.<sup>67</sup>

## 2. Immigration Routes, Drug and Arms Trafficking

59. Mexico currently serves as a country of origin, a transit route, a destination country, and a place of return for immigrants. Due to its geography, Mexico is strategically located to serve all manner of immigration and commercial flows, which typically move south to north and vice versa. The fact that Mexico is on the southern border of the United States of America, a leading global destination for immigrants, explains why the immigration corridor between these countries is the busiest in the world.<sup>68</sup> The majority of undocumented immigrants entering Mexico do so by land via Mexico's southern border with Guatemala, specifically through certain entry points in the states of Chiapas and Tabasco.<sup>69</sup>
60. Currently, illegal transnational immigration is one of the main sources of income for organized crime in Mexico and in the region. The involvement of organized criminals in the business of illegal immigration is explained by the high profits earned compared to the low risk and high rates of impunity for these organizations when they commit crimes against immigrants. Through the use of violence and of enormous sums of money for corrupting State officials and authorities, organized criminal groups handle illegal trafficking in drugs, arms, and immigrants. They also operate kidnapping and extortion networks and forced recruitment. At the same time, factors such as the broad transnational scope of these organizations, the convergence of immigration routes and drug and arms trafficking routes, and the collusion of a variety of State authorities have helped organized criminals enter a business that earns them millions of pesos and dollars every year: the exploitation of undocumented immigration. This situation affects in a differentiated manner

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<sup>66</sup> Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. *Han destruido la vida en este lugar: Megaproyectos, violaciones a Human Rights y daños ambientales en Mexico* (They've destroyed the life of this place: Megaprojects, human rights violations, and environmental damage in Mexico), 2012. Available at: [http://www.ohchr.org/Documents/Issues/FAssociation/NaturalResource/Centro\\_de\\_DDHH\\_S.pdf](http://www.ohchr.org/Documents/Issues/FAssociation/NaturalResource/Centro_de_DDHH_S.pdf)

<sup>67</sup> Centro de Derechos Humanos Miguel Agustín Pro Juárez, A.C. *Han destruido la vida en este lugar: Megaproyectos, violaciones a Human Rights y daños ambientales en Mexico* (They've destroyed the life of this place: Megaprojects, human rights violations, and environmental damage in Mexico), 2012, p. 6.

<sup>68</sup> Mexico is by necessity the entryway for a mix of different migrant flows composed of hundreds of thousands of immigrants (both documented and undocumented) asylum applicants, refugees, and victims of human trafficking, all of whose main destination is the United States and, to a lesser degree, Canada. IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, paras. 53-54.

<sup>69</sup> Individuals from Guatemala, Honduras, and El Salvador represented between 93% and 90% of immigrants detained for being undocumented in Mexico. Government of Mexico, INM, Immigration Statistics. September 28, 2015, p. 2. [Document in the archive of the Commission].

children and adolescents who, whether alone or accompanied, travel through these routes.

61. The majority of immigrants travel along isolated routes and areas in an attempt to avoid detection by authorities. These routes mainly include the Isthmus of Tehuantepec and the Tabasco-Veracruz-Tamaulipas immigration corridor.<sup>70</sup> These routes tend to coincide with routes for trafficking drugs and arms, which are controlled by drug trafficking cartels and organized criminal groups. This quickly exposes immigrants, asylum applicants, refugees, and human trafficking victims to contexts in which criminal organizations have been able to establish a generalized regime of violence and serious human rights violations, in some cases with the collusion of State authorities.<sup>71</sup>
62. Arms trafficking also affects the levels of violence. The General Directorate of the Federal Fire Arms Registry and Explosives Regulation, a division of SEDENA, is the department in charge of registering guns, pursuant to the Federal Firearms and Explosives Act. Mexican law allows gun ownership, but only of certain calibers and for certain purposes.<sup>72</sup> The law establishes specific requirements for the sale of firearms, including registration and obtaining permits from SEDENA, as well as sanctions for failing to comply with those requirements.<sup>73</sup> Despite this legislation and the formal requirements with regard to the ownership and sale of guns, as well as the international treaties on the subject to which Mexico is a party,<sup>74</sup> the information indicates that in reality, there is a worrying amount of illegal arms trafficking in Mexico.<sup>75</sup> The arms trafficked from abroad come mainly from the United States of America.<sup>76</sup> The presence and financial power of the drug cartels increases demand for guns in Mexico, which are relatively easy to get in the United States.<sup>77</sup> From 2009 to the present day, the portion of illegal guns entering Mexico

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<sup>70</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 89.

<sup>71</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 101.

<sup>72</sup> The Federal Firearms and Explosives Act allows gun ownership for protecting a home, protecting land or communal land; hunting; collecting; and carrying. Certain additional requirements apply to each of these scenarios. Federal Firearms and Explosives Act, published in the D.O.F on January 11, 1972, final amendment published on January 23, 2014, Second Heading, Ownership and Carrying, article 7.23, available at: [http://www.senado.gob.mx/comisiones/defensa\\_nacional/docs/LFAFE.pdf](http://www.senado.gob.mx/comisiones/defensa_nacional/docs/LFAFE.pdf)

<sup>73</sup> Federal Firearms and Explosives Act, published in the D.O.F on January 11, 1972, final amendment published on January 23, 2014, Third Heading, Manufacture, Sale, Import, Export, and Related Activities, articles 37-76. Available at: [http://www.senado.gob.mx/comisiones/defensa\\_nacional/docs/LFAFE.pdf](http://www.senado.gob.mx/comisiones/defensa_nacional/docs/LFAFE.pdf)

<sup>74</sup> Mexico is a State Party to the Inter-American Convention against the Explicit Manufacturing of and Trafficking in Firearms and the Arms Trade Treaty.

<sup>75</sup> News item published on AnimalPolitico.com, “*Violencia armada y policía en México*,” August 3, 2015. Available at: <http://www.animalpolitico.com/blogueros-seguridad-180/2015/08/03/violencia-armada-y-policia-en-mexico/>

<sup>76</sup> Desarma México, *Data on firearms, report submitted to the IACHR*, September 5, 2015 (IACHR archive). Also see Information Bulletin: Seizure and tracking of weapons on Mexico, Who has control?, How many weapons are tracked? [*Decomiso y rastreo de armas en México, ¿Quién tiene el control?, ¿Cuántas armas se rastrean?*], May 6, 2014. Available at: [http://desarmamexico.org/images/documentos/comunicados/Decomiso\\_rastreo\\_de%20armas\\_06\\_05\\_14.pdf](http://desarmamexico.org/images/documentos/comunicados/Decomiso_rastreo_de%20armas_06_05_14.pdf)

<sup>77</sup> Report of the Bureau of Alcohol, Tobacco, Firearms and Explosives of the United States Justice Department, *Mexico*, March 10, 2015. Available at: <https://www.atf.gov/file/2751/download>. News article published on

from the United States has remained stable at around 70% of all illegal guns entering the country.<sup>78</sup> According to information from experts, there may be as many as 20 million unregistered firearms in Mexico.<sup>79</sup> To prevent arms trafficking and easy access to guns from contributing to the wave of violence, it is crucial for the State to comply with and enforce the legal requirements for owning, carrying, and selling guns, as well as its international obligations on the issue.<sup>80</sup>

### 3. Impunity and its Grave Consequences for the Rule of Law

63. The climate of generalized violence described in the previous sections has serious consequences for the rule of law in the country. The IACHR has indicated that the lack of due diligence in response to acts of violence gives rise to impunity, which in turn leads to new incidents of the same kind of violence that should have been eliminated.<sup>81</sup> In particular, when violent crimes—whether committed by private parties or State agents—end up in impunity, the violence is perpetuated, as the perpetrators do not face the consequences of their actions, creating a spiral of impunity. It has also been corroborated that the impunity that surrounds the majority of acts of violence contributes to their repetition.<sup>82</sup> This impunity is itself a form of discrimination in terms of access to justice. This subject will be addressed in more detail in Chapter VI of this report.
64. The current crisis of serious human rights violations Mexico is experiencing is in part a consequence of the impunity that has persisted since what is known as the “dirty war” and that has contributed to its repetition up to the present.
65. According to information received by the IACHR, more than 98% of crimes committed in Mexico remain in impunity.<sup>83</sup> Records show that hundreds of complaints of torture and other mistreatment made to judges who have forwarded them to the PGR, and the CNDH has sent more than 115 recommendations to

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Aristegui Noticias, “Operación ‘Rápido y Furioso’ se gestó con Medina Mora en PGR” (“Fast and Furious” operation carried out while Medina Mora headed the PGR), published on March 5, 2015. Available at: <http://aristeguinoticias.com/0503/mexico/operacion-rapido-y-furioso-se-gesto-con-medina-mora-en-pgr/>

<sup>78</sup> Desarma México, *Data on firearms*, report submitted to the IACHR, September 5, 2015, p. 3 (IACHR archive).

<sup>79</sup> News article published in *El Daily Post*, “How many illegal guns are there in Mexico?” *Probably more than you think*,” published on June 3, 2015. Available at: <http://www.eldailypost.com/news/2015/06/how-many-illegal-guns-are-there-in-mexico-probably-more-than-you-think/>

<sup>80</sup> Mexico signed the Arms Trade Treaty on June 13, 2013. The Senate of the Republic ratified the treaty on September 19, making Mexico the first country in Latin America to do so. The treaty is available at: [http://www.thearmstradetreaty.org/images/ATT\\_documents/TratadosobreelComerciodeArmas.pdf](http://www.thearmstradetreaty.org/images/ATT_documents/TratadosobreelComerciodeArmas.pdf)

<sup>81</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II, doc. 30/14, December 21, 2014, para. 183; IACHR, *The Situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 69.

<sup>82</sup> IACHR, *The Situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 69.

<sup>83</sup> IACHR, *Hearing on citizen security and human rights in Mexico*, 143rd Period of Sessions, Washington, D.C., October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

SEDENA on torture, homicides, rapes, and other mistreatment.<sup>84</sup> The CNDH also reports that it has issued 15 recommendations on forced disappearance to governors, the Ministry of the Interior, SEDENA, municipal presidents, SEMAR, the Secretary of Public Safety, and others, regarding at least 40 victims.<sup>85</sup> Despite this number of torture complaints, which have led the PGR to open 2,420 investigations into torture, the State has reported only 15 convictions for this crime.<sup>86</sup> For its part, the CNDH reported that despite the fact that the crime of forced disappearance is defined in all 27 federal entities, so far not a single conviction has been handed down for this crime.<sup>87</sup> (As will be seen later on, this information conflicts with other information provided by State authorities.) In a study on impunity, Mexico was second to last (58 of 59) among the countries where levels of impunity were studied, as measured by security, justice, and human rights.<sup>88</sup>

66. This level of impunity, which has historically been high in Mexico, perpetuates the violence, as the actors responsible for the violence do not suffer the consequences of their actions.<sup>89</sup> The Commission recalls that States must carry out an “investigation (...) without delay, by all available legal means with the aim of determining the truth and the investigation, prosecution and punishment of the perpetrators.”<sup>90</sup> A lack of capacity or willingness to carry out a serious and timely investigation into incidents of violence increases the perception of impunity in the country.<sup>91</sup> In addition, impunity and corruption erode citizen trust in the

<sup>84</sup> SEDENA, Human rights, Complaints and recommendations, Military personnel tried and convicted, last updated July 1, 2014. Available at: [http://www.sedena.gob.mx/images/stories/archivos/derechos\\_humanos/quejasyrecom/2013/octubre/PNAL\\_MIL\\_SENTENCIADO.pdf](http://www.sedena.gob.mx/images/stories/archivos/derechos_humanos/quejasyrecom/2013/octubre/PNAL_MIL_SENTENCIADO.pdf) (last accessed on August 28, 2015); Also see news article published on *ElEconomista.com*, “En estados, sólo ocho condenas por tortura en 10 años” (only eight torture convictions in 10 years at the state level), published on September 4, 2015. Available at <http://eleconomista.com.mx/sociedad/2015/09/04/estados-solo-ocho-condenas-tortura-10-anos>

<sup>85</sup> Report of the National Human Rights Commission during the *in loco* visit of the IACHR, September 27, 2015, p. 13.

<sup>86</sup> “Visit of the Inter-American Commission on Human Rights to Mexico: Information from the Mexican State,” Mexico City, Mexico, September 25, 2015, Section 1.3, p. 15. According to press reports, there have been only five convictions for torture at the federal level and eight at the state level over the last 10 years. News article published on *ElEconomista.com*, “En estados, sólo ocho condenas por tortura en 10 años” (only eight torture convictions in 10 years at the state level), published on September 4, 2015, citing government figures obtained by the Centro de Derechos Humanos Miguel Agustín Pro Juárez. Available at: <http://el-economista.com.mx/sociedad/2015/09/04/estados-solo-ocho-condenas-tortura-10-anos>

<sup>87</sup> Report of the National Human Rights Commission during the *in loco* visit of the IACHR, September 27, 2015, p. 14.

<sup>88</sup> Universidad de las Américas Puebla, Center of Studies on Impunity and Justice, *Global Impunity Index 2015*, April 2015. Available at: [http://www.udlap.mx/cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/cesij/files/IGI_2015_digital.pdf)

<sup>89</sup> IACHR, *Report on the human rights situation in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 357. IACHR, *Situation of the rights of women in Ciudad Juárez, Mexico: the right to be free from violence and discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003, para. 69.

<sup>90</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 45.

<sup>91</sup> In cases involving grave human rights violations, the Commission and the Inter-American Court have established that amnesties, prescription provisions, and responsibility exclusions that would impede the investigation and the punishment of those responsible, as applicable, are unacceptable. IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 46 (citing the Inter-American Court, *Case of Barrios Altos v. Peru*. Judgment of March 14, 2001, Series C No. 75, para. 41; *Case of Almonacid Arellano et al. v. Chile*. Judgment of September 26, 2006, Series C No. 154, para. 112; and *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment of July 1, 2006, Series C No. 148, para. 402.



authorities, which also leads to impunity that exacerbates the climate of violence.<sup>92</sup> These figures confirm the structural and systemic nature of impunity in Mexico. The problem permeates the police, the courts, and many public prosecutors' offices, producing a generalized perception of impunity. During its *in loco* visit in 2015, the Commission repeatedly heard complaints from victims and their relatives on this perception and on their generalized dissatisfaction with justice institutions.<sup>93</sup>

67. Corruption is a closely-related phenomenon and central for understanding impunity in Mexico. The IACHR was informed of allegations of corruption by public officials at various branches and levels of government.<sup>94</sup> According to information from academia, "historical trends of patronage, corruption, and a crisis of representation have resulted in a democratic process that is inefficient, costly, and merely procedural."<sup>95</sup> The accusations of corruption against public officials at the very lowest up to the very highest levels must be investigated in a timely, impartial, and exhaustive fashion. Those responsible must be punished as applicable. According to international standards on the issue, these investigations must be carried out by truly impartial and politically independent bodies that do not in any way answer to the entities they are investigating or supervising. Otherwise, the perception of corruption and impunity persists, and the State's efforts to combat it will be fruitless. In its observations to the draft of this report, the State indicated that on May 27, 2015 a decree was published on the Official Gazette of the Federation which adopted modifications to the Mexican Constitution to create the National Anti-Corruption System and the National Fiscalization System. According to the State, the objective of these modifications is to "encourage the impartiality and independence of criteria of the investigative authorities and of the sanctioning authorities; achieve a long-term impact to reduce the perception of corruption, and keep it as a governmental practice."<sup>96</sup>
68. The sources of and factors behind the violence in Mexico are historically, politically, and socially complex. The mechanisms for combating it must take each of these aspects into account. The following chapter analyzes Mexico's legal and political system to establish a comprehensive context for the phenomenon of violence.

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<sup>92</sup> IACHR, *Report on the human rights situation in Mexico*, OEA/Ser.L/V/II.100, Doc. 7 rev. 1, September 24, 1998, para. 357. "Problems in the protection of the right to life in Mexico are due to various factors including deficiencies in the legal system; increased organized crime activity and drug trafficking; unwillingness or lack of capacity of police and prosecutors to investigate; distrust in the judicial system by citizenry; and lack of accountability for violations;" United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, Summary.

<sup>93</sup> The Commission received this testimony from victims, their relatives, and civil society organizations in every place it visited: Mexico City, Coahuila, Guerrero, Nuevo León, Tabasco, and Veracruz.

<sup>94</sup> Information received during the *in loco* visit to Mexico City, Guerrero, and Coahuila, September 28 and 29, 2015.

<sup>95</sup> Document presented by the Universidad Iberoamericana to the IACHR during the *in loco* visit.

<sup>96</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

CHAPTER 3  
PROTECTION OF  
HUMAN RIGHTS IN MEXICO



## PROTECTION OF HUMAN RIGHTS IN MEXICO

### A. *Structure of the Mexican State*

69. In this chapter the Commission refers briefly to the structure of the Mexican state regarding aspects that are relevant to the analysis that follows. According to the Political Constitution of the United Mexican States, Mexico is a representative, democratic, federal Republic, composed of 31 states<sup>97</sup> and the Federal District, united in a single federation. The supreme executive power of the Republic is exercised by the President of the United Mexican States.
70. The public government of the Federation is divided into the Legislative, Executive, and Judicial branches. The government of the 31 states, in turn, is divided into Executive, Legislative and Judicial branches. The Executive power is exercised by the governors of the various states. The Legislative branches consist of the states' legislatures. The Judicial branches of the various states are composed of the tribunals established by the respective state constitutions.
71. With respect to the judicial power of the Federation, it is vested in a Supreme Court of Justice, in an Electoral Tribunal, in Circuit Courts, as a "collegiate" body and as single judges in appeals, and in district courts, and a Federal Council of the Judicature. In order to appoint Justices to the Supreme Court of Justice, the President is required to submit a shortlist of three candidates for the consideration of the Senate. After interviewing the candidates, the Senate then designates the justice who will fill the vacancy in question. The Supreme Court is made up of 11 Justices, one of whom is designated as the President. The Plenary is the reunion of all 11 Justices of the Supreme Court of Justice, which is in charge of resolving the most important matters, all of them related to compliance with the constitution and federal laws. The Plenary of the Supreme Court may resolve disputes regarding interpretation of the constitution, and actions related to the lack of compliance with it. In some cases, it can also review judgments issued by other bodies of the federal Judiciary, when the responsible authority does not comply with a federal judgment. The Plenary can also directly resolve matters, or submit them to either Chamber or to the Collegiate Circuit Courts. The Supreme Court is divided in two Chambers, each of which consists of 5 Justices, without the participation of the President of the Supreme Court. Each Chamber has its own president. The First Chamber hears civil and criminal matters, and the Second Chamber hears administrative and labor matters.

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<sup>97</sup> In this Report, the Commission uses "State" (upper case S) to refer to the Mexican State in its entirety, and "state" (lower case s) when referring to each one of the federal entities of Mexico.

72. Among other things, the Plenary of the Court decides *amparo* actions. According to the Law on *Amparo*, the *amparo* action has as its objective to resolve all disputes related to general laws, acts, or omissions by authorities that violate human rights recognized in Mexico, general laws, acts or omissions by federal authorities that violate or curtail the sovereignty of the states of the sphere of competence of the Federal District, as long as there is a violation of a recognized human right and the guarantees established in the Constitution for its protection; and general laws, acts or omissions of the authorities of the states or the Federal District that invade the sphere of competence of the federal authorities, as long as there is a violation of a recognized human right and the guarantees established in the Constitution. The *amparo* is designed to protect persons from general laws, acts or omissions by the public government branches or by private individuals in the cases established by law.

## ***B. Mexico and International Human Rights Law***

73. Mexico has ratified a number of international treaties regarding human rights. Among the treaties from the Inter-American Human Rights System ratified by Mexico are the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the area of Economic, Social, and Cultural Rights “Protocol of San Salvador,” the Protocol to the American Convention on Human Rights to Abolish the Death Penalty, the Inter-American Convention on the Forced Disappearance of Persons, the Inter-American Convention to Prevent and Punish Torture, among others.<sup>98</sup>
74. Particularly, in a press release issued in 2014, the IACHR welcomed the withdrawal of the Mexican State of the reservations to three instruments adopted at the Organization of American States, namely: the Convention on the Status of Aliens, the Inter-American Convention on the Forced Disappearance of Persons, and the Declaration Recognizing the Contentious Jurisdiction of the Inter-American Court of Human Rights. In that context, the IACHR recognized that these actions broaden the possibility of protecting those rights recognized internationally by Mexico, and therefore, constitute an important step in the commitment assumed by Mexico towards the promotion and protection of said rights.<sup>99</sup>

### **1. Constitutional Reform regarding Human Rights**

75. The Mexican legal framework has undergone important progress in terms of human rights in recent years that have been recognized by the IACHR.<sup>100</sup> Starting

<sup>98</sup> For a complete list of the treaties ratified by Mexico regarding human rights, see (in Spanish): <http://www2.scjn.gob.mx/red/constitucion/TI.html>

<sup>99</sup> IACHR, *IACHR welcomes Mexico’s withdrawal of treaty reservations*, Press Release No. 076, July 22, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/076.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/076.asp)

<sup>100</sup> IACHR, *Important human rights progress in Mexico*, Press Release No. 73/11, July 22, 2011. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2011/073.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/073.asp)

with the reforms of July 2011, the Mexican Constitution raised to constitutional level all human rights norms contained in treaties signed by the Mexican State. Article 1 of the Constitution provides that all persons shall enjoy the human rights recognized in the Constitution and in the international treaties to which Mexico is a party, and establishes guarantees for their protection.<sup>101</sup> This equivalency of the human rights contained in the treaties to which Mexico is a party and their jurisprudence, and the Mexican constitutional norms, represents an improvement in the right direction, but, as discussed below, in practice has faced important challenges.

76. In its observations to the draft of this report, the State indicated that the constitutional reform on 2011 regarding human rights represents the broadest expansion of rights since the adoption of the current Constitution, since the reform entails a root modification in the way authorities must justify their actions. Such actions must be governed by international standards and obligations on the matter to ensure their direct application in the country:<sup>102</sup>

With the reform, the concept of human rights was incorporated into our Constitution, the repertoire of rights was expanded to include all human rights recognized in the international treaties to which Mexico is a Party. In addition, the *pro personae* principle was included in the expansion and interpretation of human rights norms.

In addition, the reform reflects the obligation of the State to prevent, investigate, sanction and repair human rights violations; the reforms incorporate these obligations as a principle of public education; it prohibits the suspension by the Army of a series of human rights in cases of state of exception; it grants the right to a hearing to all foreigners subject to an expulsion proceeding; it includes the right of all persons to seek asylum for political reasons and refuge for humanitarian reasons; it establishes human rights as an element of reinsertion into society in the penitentiary system; it authorizes the National Human Rights Commission to investigate gross human rights violations, broadens its competence to hear human rights violations in the labor field, and it makes it mandatory to accept and comply with the recommendations of the national and state ombudspersons; and it establishes, as a ruling principle of foreign policy, the respect, promotion and protection of human rights.

77. The State also informed that the Executive has created an entity to follow up on and coordinate the implementation of the 2011 constitutional reform regarding human rights, as well as to build a State policy on human rights. In addition, the President presented a series of proposed reforms regarding human rights, including a Regulatory Law for Article 29 of the Constitution, which will ensure that all the rights that cannot be suspended are consistent with Mexico's international obligations. The President also proposed a Regulatory Law for Article 33 of the Constitution, through which foreign persons who are facing a removal process due to national security reasons shall be guaranteed the conditions to

<sup>101</sup> Mexican Constitution, Article 1.

<sup>102</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

ensure an adequate respect of their rights and of due process. The State also informed that it is carrying out trainings of public servants of the federal government regarding the human rights constitutional reform, in order for it to influence their daily work. To this end, the government also established the Citizens' Council for the Implementation of the Constitutional Reform on Human Rights, which aims to foster citizen participation in this process. Moreover, the government also holds travelling sessions throughout the various states to disseminate the human rights constitutional reform, with the objective of distributing information about the reforms and strengthening their mandatory nature.<sup>103</sup>

78. The Commission observes that as a consequence of the judgment of November 2009 of the Inter-American Court in the case regarding the forced disappearance of Rosendo Radilla Pacheco, which took place in 1974 in the state of Guerrero, the Mexican Supreme Court ruled that federal and state judges shall verify the compatibility of their decisions with international human rights treaties to which Mexico is a party, including the American Convention and the decisions of the Inter-American Court of Human Rights.<sup>104</sup> That is, it established for all tribunals in the country the power to carry out the conventionality control.
79. In addition, the Supreme Court declared unconstitutional item A, section II, of article 57 of the Code of Military Justice, which states that whenever a crime is committed involving military personnel and civilians, the military personnel shall be tried in military courts, as it was contrary to article 13 of the Constitution. The Justices indicated that “in no case and for no reason, may [military courts] exercise their jurisdiction over persons who are not members of the armed forces.” Importantly, on June 13, 2014, a reform of the Code of Military Justice was adopted to exclude the application of military justice in cases of violations of human rights.<sup>105</sup> Despite this important improvement, the legislative reform did not restrict military jurisdiction in cases of human rights violations committed by military personnel against other military personnel.
80. In addition, in that case, the Supreme Court found for the first time that victims and their family members have standing to challenge, through an *amparo* action, that a competent, civilian (not military) authority intervene in the criminal investigation or trial. The decision of the Supreme Court encompasses a recognition of the right of victims and their families to have an effective and adequate recourse to challenge the actions of public authorities when they violate their human rights in such processes, as established by the Inter-American Court of Human Rights in the cases of Ines Fernandez Ortega, Valentina Rosendo Cantu and Rodolfo Montiel Flores and Teodoro Cabrera Garcia, as well as the IACHR in various cases.

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<sup>103</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>104</sup> IACHR, *Important human rights progress in Mexico*, Press Release No. 73/11, July 22, 2011. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2011/073.asp](http://www.oas.org/en/iachr/media_center/PReleases/2011/073.asp)

<sup>105</sup> Article 57 of the Code of Military Justice, as reformed, available in Spanish at: [http://www.diputados.gob.mx/LeyesBiblio/pdf/4\\_130614.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/4_130614.pdf)

81. The Commission recognizes and welcomes the reforms as well as the initiatives adopted as a consequence.

### **C. Implementation of the Conventionality Control**

82. As a starting point, the IACHR acknowledges the positive progress achieved since the Mexican State, and particularly the Supreme Court of Justice, recognized the obligation of all public authorities to carry out the conventionality control. This recognition by the State represents significant progress towards the protection of and respect for human rights in Mexico.

83. Without prejudice to the foregoing, the implementation of the so-called diffuse conventionality control by Mexican courts has generated debates.<sup>106</sup> Several rulings by the Mexican Supreme Court have confirmed that the judgments of the Inter-American Court of Human Rights are binding on the Mexican State, as long as the Mexican State was a party in the case, and have established parameters and contours of the conventionality control in practice.<sup>107</sup> The Supreme Court has, on the one hand, indicated that the conventionality control shall be carried out by all judicial authorities in the country, within their respective jurisdictions, “adopting the interpretation that is most favorable to the corresponding human right, which is known in the doctrine as the *pro personae* principle.”<sup>108</sup> On the other hand, the Supreme Court itself appears to indicate that when a judgment of the Inter-American Court entails going against a “constitutional restriction,” such restriction shall prevail.<sup>109</sup> This reasoning appears to be inconsistent with the State’s obligation to comply with its duties and obligations in accordance with the human rights treaties it has ratified.

84. Secondly, to implement the conventionality control as established by the Inter-American Court of Human Rights, it is indispensable to unify judicial criteria in

<sup>106</sup> “Diffuse Conventionality Control in Mexico: Dogmatic elements for a practical application” (*El control difuso de convencionalidad en México: Elementos dogmáticos para una aplicación práctica*), Zamir Andrés Fajardo Morales, available in Spanish at: [http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/material\\_lectura/Fajardo%20Control%20Convencionalidad.pdf](http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/material_lectura/Fajardo%20Control%20Convencionalidad.pdf)

<sup>107</sup> See, e.g., *Varios* 912/2011; *Tesis* 293/2011. Judgment issued by the Plenary in file No. *Varios* 1396/2011, published in the Official Gazette of the Federation on August 14, 2015.

<sup>108</sup> Judgment issued by the Plenary in file No. *Varios* 1396/2011, published in the Official Gazette of the Federation on August 14, 2015.

<sup>109</sup> The Supreme Court stated: “to establish and specify the obligations of the federal Judiciary regarding international judgments, we consider it adequate to always analyze the relation that must exist between the human rights that the Inter-American Court deemed were violated, and those contained in the Mexican Constitution or in the treaties that the Mexican State has entered into and which therefore has agreed to abide by, with the understanding that, if any of the obligations under the judgment entails the disregard of a constitutional restriction, the restriction shall prevail in accordance with the terms established by the Plenary of the Supreme court of Justice when it ruled on the thesis contradiction 293/2011, during the session held on September 3, 2013, and which resulted in the jurisprudence P./J. 20/2014 (10a.), entitled: “Human rights contained in the constitution and in international treaties. they constitute the parameter for the control of constitutional regularity, but when in the constitution there is an express restriction on the exercise of those rights, the constitutional text shall prevail.” Judgment issued by the Plenary in file No. *Varios* 1396/2011, published in the Official Gazette of the Federation on August 14, 2015.



terms of human rights. This becomes particularly relevant for federal countries such as Mexico, as the possibility of disparate application of the same concepts, principles, and standards is multiplied at the federal level, on the one hand, and the state level, on the other.

85. In order to achieve this homologation, it is necessary to carry out integral and uniform training of all justice operators, which has happened to some degree in Mexico.<sup>110</sup> The State reports that 62,440 people have been trained in the context of the implementation of the new criminal justice system, including judges, defense attorney, public prosecutors, experts, police, penitentiary personnel, among others.<sup>111</sup> The IACHR recognizes and congratulates the Mexican State for such substantial progress regarding the training of public servants.
86. Notably, the conventionality control, in the terms established by the Inter-American Court, is binding also for military, administrative, and labor tribunals, and for all public authorities, and therefore the justice operators that work at these entities should also receive the same level of training.<sup>112</sup> The IACHR is aware that this represents an enormous challenge for the justice system in Mexico, particularly since, as pointed out publicly by a Mexican judge, there is still in Mexico a certain reticence to apply Inter-American jurisprudence and standards in terms of human rights.<sup>113</sup>

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<sup>110</sup> Some analysts consider, for example, that with the diffuse conventionality control, it may be that a judge may have to deviate from certain interpretative principles, such as that of temporality, specificity or hierarchy, and instead give preference to a subsequent norm (temporality), a more general norm (specificity) or even an inferior norm (hierarchy), if the conventionality control so requires. “Diffuse Conventionality Control in Mexico: Dogmatic elements for a practical application” (*El control difuso de convencionalidad en México: Elementos dogmáticos para una aplicación práctica*), Zamir Andrés Fajardo Morales. Available in Spanish at: [http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/material\\_lectura/Fajardo%20Control%20Convencionalidad.pdf](http://www.sitios.scjn.gob.mx/reformasconstitucionales/sites/default/files/material_lectura/Fajardo%20Control%20Convencionalidad.pdf)

<sup>111</sup> “Visit of the Inter-American Commission on Human Rights to Mexico: Information of the Mexican State” (“Visita de la Comisión Interamericana de Derechos Humanos en México: Información del Estado mexicano”), Mexico City, September 25, 2015, p. 54.

<sup>112</sup> I.A. Court H.R., *Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 193.

<sup>113</sup> Judicial Channel, “In Mexico there is still resistance to adopt the jurisprudence issued by the IACourHR, assures district judge” (“En México persiste la Resistencia para adoptar la jurisprudencia emitida por la CoIDH, asegura juez de distrito”), September 1, 2015. Available in Spanish at: <https://canaljudicial.wordpress.com/2015/09/01/en-mexico-persiste-la-resistencia-para-adoptar-la-jurisprudencia-emitida-por-la-coidh-asegura-juez-de-distrito-2/>

CHAPTER 4  
VIOLENCE AND  
CITIZEN SECURITY



## VIOLENCE AND CITIZEN SECURITY

### A. *Situation of Violence and Violations of Human Rights*

87. As part of the “war on drugs” that began in 2006, Mexican authorities opted to increase the involvement for the Armed Forces—particularly SEDENA and SEMAR—in public security duties, including a policy of confronting organized crime and the deployment of joint operations between the armed forces and state and municipal security agencies. This situation has sparked greater violence, as well as gross violations of human rights and impunity.<sup>114</sup> Despite a change in government in December 2012 and a shift in official discourse that has left out the concept of “war” in public pronouncements, there have been no substantial changes with regard to security policies in practice and the violence that these trigger.

88. This fight against drug trafficking and the resulting militarization of areas of the country has at several points resulted in an increase in violence, violations of human rights, as well as greater impunity. In other words, providing the armed forces a role that should correspond to civilian police forces and the deployment of joint operations between the armed forces and state and municipal security agencies in different parts of the country, has led to more human rights violations.

89. According to civil society organizations, in 2007 there were 45,850 members of the armed forces involved in public security duties, and by 2011 there were 92,261. Information in the media indicates that the current administration has during its term in office so far spent 100 times more on weapons than previous administrations.<sup>115</sup> To date there is no known plan by the Mexican Government to gradually withdraw armed forces from citizen security tasks. To the contrary, in the administration’s third report from September 2015, the President reiterated that the work of the armed forces in public security duties would continue. The IACHR considers it indispensable that the federal government present a concrete, written plan on their gradual withdrawal from these duties, which by their nature should correspond to the police.

<sup>114</sup> Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. [Mexican Commission for the Defense and Promotion of Human Rights], *Informe sobre el incumplimiento de México a obligaciones derivadas de la Convención internacional para la protección de todas las personas contra la desaparición forzada* [Report on Mexico’s non-compliance with obligations stemming from the *International Convention for the Protection of All Persons from Enforced Disappearance*], October 7, 2014; CADHAC, CEDHEM, *Desapariciones Forzadas e Involuntarias en México. Informe Alternativo para la Evaluación de México ante el Comité de Desaparición Forzada de Naciones Unidas* [Forced and Involuntary Disappearances in Mexico. Alternative report for Mexico’s evaluation by the UN Committee on Enforced Disappearance], June 2014.

<sup>115</sup> Press article, “What’s behind Mexico’s military buying binge?” *The Washington Post*, June 15, 2015.

90. In its observations to the draft of this report, the State indicated that the territorial division, the deployment and the actions taken by the armed forces are in compliance with general missions that have been assigned to them for purposes of exterior defense and interior security of the country, as well as to support the civilian population in cases of disasters and public necessities. It informed that the armed forces support the civilian authorities of the three levels of government in public safety tasks to protect persons and their goods, at the express request of those authorities, who provide the reasons and basis for making such request, without being substituted in their roles. In this sense, the deployment of the Mexican armed forces “is aimed at guaranteeing the security of the population and preserving the Rule of Law, and not, as stated, at responding to a policy of committing generalized attacks against the civilian population”.<sup>116</sup> The State also highlighted the rulings in cases 36/2000, 37/200 and 38/2000 of the Supreme Court, which held that the participation of the armed forces in public safety tasks, in support of civilian authorities, is legal. Such participation must be preceded by a reasoned request, when the civilian authorities making the request establish that they have been surpassed in their capacity to respond by organized crime, and must take place strictly complying with the laws, respecting the individual rights of the population.<sup>117</sup>

91. Given the militarization situation that Mexico is experiencing, the Commission expresses its concern with the involvement of military forces in professional duties that, by their nature, would correspond exclusively to police forces. The Commission and the Court have repeatedly highlighted that inasmuch as the armed forces lack appropriate training in citizen security enforcement, it is the job of a civilian police force that is efficient and respectful of human rights, to fight insecurity, crime, and violence domestically.<sup>118</sup> As established by the Commission in its Report on Citizen Security, a public policy regarding citizen security, constituted as an efficient tool for Member States to comply adequately with their obligations to comply with and guarantee the human rights of all persons in their territory, must include institutions and a professional operative structure that are adequate for those purposes.<sup>119</sup> The distinction between the functions within the competence of the armed forces, which are limited to defending national sovereignty, and the functions within the competence of the police forces, which are the entities exclusively responsible for citizen security, is a fundamental starting point that cannot be ignored in the design and implementation of such public policy. The Inter-American Court has pointed out in this regard that “States

<sup>116</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>117</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>118</sup> IACHR, *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II. Doc. 57, December 31, 2009, para. 100; IACHR, Justice and Social Inclusion: The Challenges of the Democracy in Guatemala, OEA/Ser.L/V/II. 118, Doc. 5, rev. 1, 29 December 2003, para. 113; IACHR, *Report on Citizen Security and Human Rights*; I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*. Judgment of July 5, 2006, Series C No. 150, para. 78: “(...) the States must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces”.

<sup>119</sup> IACHR, *Report on Citizen Security and Human Rights*, OEA/Ser.L/V/II, Doc. 57, December 31, 2009, para. 109.

must restrict to the maximum extent the use of armed forces to control domestic disturbances, since they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces.”<sup>120</sup>

92. In the American continent experience has shown that the involvement of the armed forces in domestic security tasks goes hand in hand with violence and serious violations of human rights.<sup>121</sup> Since its *in situ* visit to Mexico in 1998, the IACHR has expressed its concern about using members of the armed forces to discharge police duties. Prior to the *in situ* visit of 2015, the IACHR received information on an agreement entered into between SEDENA and some municipal governments and the state governments of Nuevo León, Tamaulipas, and San Luis Potosí regarding 3,200 military police who would operate in those states.<sup>122</sup> During the visit, federal and state representatives assured the IACHR that this agreement would only refer to the building of facilities and not additional involvement of military personnel in citizen security activities.<sup>123</sup> The Commission will closely follow the implementation of said agreement and its scope.
93. This framework of confronting organized crime and the resulting militarization has led to an increase in the excessive use of force. Experts from the Center for Economic Research and Teaching [*Centro de Investigación y Docencia Económicas*—CIDE] and the Institute for Juridical Research of the National Autonomous University of Mexico (UNAM) conducted an analysis of the fatality index, which is the number of civilian deaths for every civilian wounded in situations described by the authorities as “confrontations.” These indices are alarmingly high in Mexico. The researcher who designed the fatality index highlights that “any coefficient above 1 points to an abuse of force and the existence of summary executions.”<sup>124</sup> This is because in authentic confrontations, there tend to be more people wounded than killed, because when police use force legitimately, they seek to maim and not to kill. According to the report, in Mexico the fatality index of the army was 7.7 civilian deaths for every civilian wounded in 2013 and 11.6 in the first quarter of 2014.<sup>125</sup> Using data in the press, the fatality

<sup>120</sup> I/A Court H.R., *Case of Montero Aranguren et al. (Retén de Catia) v. Venezuela*. Judgment of July 5, 2006, Series C No. 150, para. 78.

<sup>121</sup> IACHR, *Report on the Situation of Human Rights in Venezuela*, OEA/Ser.L/V/II.118, Doc. 4 rev. 1, October 24, 2003, para. 272. The IACHR has also examined cases regarding the intervention of armed forces in domestic security tasks. See, e.g., Case No. 11.566, Cosme Rosa Genoveva, Evandro de Oliveira and others (Favela Nova Brasília), with respect to Brasil. The Commission has also received information regarding this phenomenon at different times in Peru, Honduras, Venezuela, Colombia, among others.

<sup>122</sup> The Military Police is a special group within the army whose duties are regulated under Article 109 of the Mexican Army and Air Force Act. These duties include guarding military prisons, defendants, and convicts; cooperating in the prevention of espionage, sabotage and “other subversive activities;” “protecting persons and public property and preventing pillaging and looting in cases of emergency,” among others.

<sup>123</sup> Meetings between the plenary of the IACHR and federal authorities at facilities of the Secretariat of Foreign Relations, September 28, 2015; meeting with the then governor of Nuevo León, September 29, 2015 at the Palace of Government in Monterrey, Nuevo León.

<sup>124</sup> Ignacio Cano, Police and its evaluation. *Proposals to establish evaluation indicators for police work* [*La Policía y su evaluación. Propuestas para la construcción de indicadores de evaluación en el trabajo policial.*]. Available in Spanish at: <http://www.observatoriodeseguranca.org/files/ignacio%20cano.pdf>

<sup>125</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad. Menos enfrentamientos, más opacidad*. [Fatality index. Fewer clashes, less transparency.] 2015. Revista Nexos.

index reveals in general terms the trend for official data. Both official and press data indicate that the rate of fatalities in confrontations involving SEDENA reached their peak in 2011 and 2012, but the subsequent drop reveals rates that are still high in a context in which official information is likely not being recorded or made public. The National Defense Ministry reported that, “since April 6, 2014, such statistics have no longer been kept as this is no longer necessary for this federal executive agency, given that [...] the Ministry’s personnel, after fending off an attack, limit themselves to preserving the scene of the incident, and once the competent authorities arrive, they dissociate themselves from the corresponding investigation processes.”<sup>126</sup>

94. In addition to the armed forces, the IACHR notes that this problem also affects police forces: federal, state, and municipal. In the case of the Federal Police for example, according to official data, the fatality index was low until 2010 and rose until 2013 to a level of 20.2 civilian deaths per each wounded individual.<sup>127</sup> In 2014, according to official statistics, there was a decrease to 4.6 civilians killed for each civilian wounded, while the study by specialists from the *Centro de Investigación y Docencia Económicas* (CIDE) and by the Institute of Juridical Research of the National Autonomous University of Mexico (UNAM) indicated that according to press statistics the fatality index for 2014 was 25.5.<sup>128</sup>
95. As pointed out in Chapter II, the levels of violence and insecurity that Mexico is experiencing are also due to a lack of effective state response to organized crime that acts in its own interest, and is exacerbated when it colludes with officials and authorities of the State, very particularly at a state and municipal level. In these cases citizens are completely powerless in the face of violence, as well as in accessing justice. The case of Ayotzinapa, which is analyzed later in this Report, is a clear example of this.
96. As pointed out on previous occasions, the Commission reiterates that the obligations undertaken by the State demand public policies on security and the fight against crime that prioritize the functioning of an efficient institutional structure. This structure must guarantee the population effective exercise of their human rights with regard to prevention and control of violence and crime, including organized crime.<sup>129</sup>

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<sup>126</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad, Menos enfrentamientos, más opacidad* [Fatality Index, Fewer Clashes, Less Transparency], 2015. *Nexus Magazine*. The document in question was issued by the National Defense Secretariat, No. 4277, January 7, 2015.

<sup>127</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad. Menos enfrentamientos, más opacidad*. [Fatality index. Fewer clashes, less transparency.] 2015. *Revista Nexus*.

<sup>128</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad. Menos enfrentamientos, más opacidad*. [Fatality index. Fewer clashes, less transparency.] 2015. *Revista Nexus*. *Animal Político, Clashes between the Army and Federal Police against civilians, more fatal than the Vietnam and Gulf Wars [Choques del Ejército y PF contra civiles, más letales que guerras de Vietnam y del Golfo]*, July 2, 2015. Available in Spanish at: <http://www.animalpolitico.com/2015/07/choques-de-ejercito-y-pf-contra-civiles-mas-letales-que-guerras-de-vietnam-y-del-golfo/>

<sup>129</sup> IACHR, *Report on Citizen Security and Human Rights*. OEA/Ser.L/V/II, doc. 57, December 31, 2009, para. 7 (Executive Summary).

97. Regarding the strengthening of civilian security corps, in its observations to the draft of this report, the State stated that in August 2014 the personnel of the Federal Police was increased by five thousand members, with the creation of the seventh division of that institution, the “Gendarmerie Division.” According to the State, this increase in non-military security personnel of the federal government “contributes to the efforts of the Mexican State to have more and better human, technical, and logistical resources to face organized crime in the regions of the country with the greatest needs, and where it is necessary to continue working on the consolidation of the local institutions.”<sup>130</sup>
98. In the following section, the Commission analyzes grave violations of human rights in Mexico, such as disappearances and extrajudicial executions stemming from the violence and insecurity in the country and their impact on some groups who are particularly vulnerable.

## 1. Disappearances and Forced Disappearances

99. The Inter-American Convention on Forced Disappearance of Persons defines forced disappearance as “the act of depriving a person or persons of his or their freedom, in whatever way, perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, thereby impeding his or her recourse to the applicable legal remedies and procedural guarantees.”<sup>131</sup>

100. During its visit the IACHR was able to confirm that the disappearance of persons in large swathes of Mexican territory has reached critical levels. The figures and testimonies the IACHR has gathered also reveal kidnappings at the hands of organized criminal groups. The phenomenon of forced disappearances has occurred in Mexico at different times with varying intensity, such as in the 1960s in the context of the so-called “Dirty War” up until the 1980s, and currently has spiked dramatically in the country. What is especially grave is the widespread and consistent information the IAHCRC has received through different channels on the existence of a practice of forced disappearances at hands of agents of the State or with their involvement, acquiescence, or tolerance.

101. Some civil society organizations have affirmed that, in contrast to what Mexico underwent in the years of the so-called “Dirty War,” “when disappearances were committed for political reasons, “today’s disappearances include any person, “without any ties to social or political groups; those who are suspect for any circumstance or fingered by public officials of different governments for belonging

<sup>130</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>131</sup> Inter-American Convention on Forced Disappearance of Personas, Article II.



to organized criminal gangs have been victims of forced disappearance.”<sup>132</sup> During the Commission’s visit it heard testimony from relatives of disappeared persons in various states and the Federal District. The victims of disappearance include men, women, children, indigenous people, peasant farmers, students, migrants, defenders, even state officials. In some dramatic cases, individuals have even lost more than one family member. The IACHR learned of the case of a woman from Piedras Negras, Coahuila, who reported 11 disappeared family members.<sup>133</sup> The common thread in the testimony heard was the incessant search for loved ones “until they are found” and an alarming impunity.

102. Tamaulipas is, by far, the state in which there are more disappeared persons, and is, at the same time, one of the states with the largest presence of armed forces involved in citizen security tasks.<sup>134</sup> Even in those cases in which authorities have recognized their involvement, the perpetrators remain unpunished as no criminal proceedings exist in these cases.<sup>135</sup>

### **i. Magnitude of the Phenomenon of Disappearances**

103. According to the National Registry of Disappeared or Missing Persons,<sup>136</sup> the number of “unlocatable” persons in México as of September 30, 2015, was

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<sup>132</sup> CMDPH, *Report on Mexico’s non-compliance with obligations stemming from the International Convention for the Protection of All Persons from Enforced Disappearance*, October 7, 2014; Meeting with civil society organizations, City of Mexico.

<sup>133</sup> Information provided during the *in situ* visit to Saltillo, Coahuila, September 30, 2015.

<sup>134</sup> Comité de Derechos Humanos de Nuevo Laredo [Nuevo Laredo Human Rights Committee], “*Desaparición forzada, ejecuciones extrajudiciales, tortura y agresiones sexuales cometidas por las fuerzas armadas en Tamaulipas: Expedientes para la Comisión Interamericana de Derechos Humanos (CIDH)*” [Forced disappearance, extrajudicial executions, torture, and sexual assault committed by armed forces in Tamaulipas: Files for the Inter-American Commission on Human Rights (IACHR)], Monterrey, Nuevo León, September 2015.

<sup>135</sup> Nuevo Laredo Human Rights Committee, “*Forced disappearance, extrajudicial executions, torture, and sexual assault committed by armed forces in Tamaulipas: Files for the Inter-American Commission on Human Rights (IACHR)*,” Monterrey, Nuevo León, September 2015. This organization reported on a case of forced disappearance in Nuevo Laredo by Navy (SEMAR) troops. There is a CNDH recommendation regarding this case (39/2012), and SEMAR even accepted its responsibility and agreed to provide scholarships to the children of the disappeared. However, there have been no criminal proceedings against any of the perpetrators, given that, according to Official Letter No. 61/2015 of Case File AP/PGR/TAMPS/REY-II/1979/2011 of the PGR, “the evidence in the proceedings does not point to who the perpetrators of the crime are (...).” (IACHR File).

<sup>136</sup> “The National Registry of Data of Missing or Disappeared Persons, RNPED, integrates the data of persons who are issuing obtained based on the reports presented to the corresponding ministerial authorities. The registry includes only the persons who, as of the date of last consultation, remain missing; that is, it does not include the persons who have been found.” Available at: <http://secretariadoejecutivo.gob.mx/rnped/-consulta-publi-ca.php>; The figures present the total number of persons related to investigations at the local and federal jurisdictions for the period between January 2014 and July 2015, and which have not been found as of July 31, 2015. Available at: <http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerocomun.php>

26,798.<sup>137</sup> In August 2014, figures from the Attorney General's Office (PGR) reported 22,322 "unlocatable" persons<sup>138</sup>.

104. In June 2014, the Secretary of the Interior [*Secretario de Gobernación*] stated that the number of "unfound" or missing persons totaled 16,000 and not 8,000 as he had stated in May 2014 when he appeared before the Mexican Senate.<sup>139</sup> The Mexican National Human Rights Commission (CNDH) for its part has publically acknowledged that despite the seriousness of the problem "there is no certainty when attempting to provide clear figures and reliable statistics, inasmuch as in the analysis there is no appropriate classification in keeping with international standards on the different cases that emerge."<sup>140</sup>

105. The official figures provided, together with the information received from different regions in the country show that disappearances are generalized in Mexico. In this regard, the high numbers reported also led the UN Committee on Enforced Disappearances to refer to a "context of generalized disappearances in a large part

<sup>137</sup> The registered statistics correspond primarily to disappearances between 2007 and 2015. There are also statistics regarding disappearances before 2007 and others for which no date is specified. As of September 30, 2015, there were 880 disappearances under federal jurisdiction and 25,918 in local jurisdictions. See Executive Secretariat. Available at: <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php>; In its observations to the draft of this report, the State stated that the statistic of 26,000 disappeared persons included in the National Registry of Data of Missing or Disappeared Persons "contemplates persons who are disappeared for any reason and is not a reference point nor should it be considered as such to evaluate the magnitude of the problem of disappearance of persons in Mexico." Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>138</sup> According to the federal government, unlocatable persons are "those whose whereabouts are not known and this situation is made known to the authorities through a report present to such authority." Attorney General's Office, Unlocatable Persons. Message to the media by the Deputy Attorney General for International Affairs of the Attorney General's Office, August 21, 2014. Available in Spanish at: <http://www.secretariadoejecutivosnp.gob.mx/work/models/SecretariadoEjecutivo/Resource/1/1/MensajeaMedioPersonasNoLocalizadas21082014.pdf>; At a press conference, the then-Deputy Attorney General indicated that President Peña Nieto's government received as of November 30, 2012, a total of 26,121 records of "unlocatable" persons, and after an update with the statistics of the states' attorney general, it increased to 29,707 persons. She also indicated that of those, as of July 31, 2014, 17,175 persons have been found, 16,274 of whom were found alive, and the search for the other 12,532 continued. Thus, she indicated that from December 1, 2012 to July 31, 2014, the attorney generals' offices reported that they have found 13,444 persons, 12,821 of them alive, and continued the search for the other 9,790. With that, adding the persons that have not been found during the Calderon administration and those during the present administration, the official statistic reached 22,322 persons. *El Economista* newspaper. Available in Spanish at: <http://eleconomista.com.mx/sociedad/2014/08/21/hay-22322-desaparecidos-segun-cifras-snp>

<sup>139</sup> *El Universal*, Segob specifies figures on disappeared; they total 16,000 [*Segob precisa cifras de desaparecidos; ascienden a 16 mil*], June 16, 2014. Available at: <http://archivo.eluniversal.com.mx/nacion-mexico/2014/segob-precisa-cifra-de-desaparecidos-ascienden-a-16-mil-1017375.html>; CNN México, SEGOB "corrects the figures for 'unlocatable persons'": there are 16,000 [*La SEGOB "corrige la cifra de "personas no localizadas": son 16,000*]. Available at: <http://mexico.cnn.com/nacional/2014/06/16/la-segob-corrige-la-cifra-de-personas-no-localizadas-son-16000>; *El Economista*, There weren't 8,000 disappeared, rather 16,000, corrects SEGOB [*No eran 8,000, sino 16,000 desaparecidos, corrige la SEGOB*]. Available at: <http://eleconomista.com.mx/sociedad/2014/06/17/no-eran-8000-sino-16000-desaparecidos-corrige-segob>

<sup>140</sup> CNDH, *Consideraciones de la Comisión Nacional de los Derechos Humanos ante el Comité contra la Desaparición Forzada de la Organización de las Naciones Unidas* [Considerations of the National Human Rights Committee before the UN Committee on Enforced Disappearance].

of Mexican territory, many of which could be described as forced disappearances.”<sup>141</sup> In August 2014, the UN High Commissioner for Human Rights affirmed that Mexico was in “a critical situation as regards disappearances.”

106. The mother of a disappeared man in the State of Nuevo León told the IACHR that “there are thousands disappeared like him. The investigations have yielded no results and we are the ones who have to carry out the search. The prosecutor of Nuevo León says that there are 2,300 disappeared [in Nuevo León]. Imagine what the real numbers are. We are suffering because of the indifference.” The IACHR found an absence of appropriate mechanisms nationally to correctly establish when it is a case of disappearance; official figures are not reliable and constitute the first barrier to finding disappeared persons, revealing the truth, and justice.

107. Despite the lack of precise figures on the numbers of disappeared and forcibly disappeared persons, there is evidence that the problem is of an enormous scale. Information available does not specify the cases in which there may be circumstantial evidence indicating forced disappearance, missing persons, or other kinds of absence. It is indispensable that the Mexican State adopt measures to substantially improve information gathering and systematizing.

108. Preliminary observations of the UN Working Group on Enforced or Involuntary Disappearances presented in March 2011 indicated that civil society human rights organizations reported that based on their estimates more than 3,000 people have been forcibly disappeared in the country since 2006. The CNDH reported a sustained increase in the number of complaints on forced disappearances—increasing from 4 complaints in 2006 to 77 in 2010. The UN Working Group stated that a potential forced disappearance can only be discounted through an independent, impartial, complete, and effective investigation.

109. The Commission acknowledges as progress the enactment in 2012 of the Law on the National Missing and Disappeared Persons Data Registry, the aim of which is to establish and regulate the operation, functioning, and administration of a National Data Registry from which figures on disappeared persons in Mexico can be obtained.<sup>142</sup> This registry consists of the figures provided by attorneys general and prosecutor’s offices of the states and the federal district.<sup>143</sup> Nevertheless, measures must be adopted to produce reliable, public, and transparent information. In this regard, the Registry needs to be improved and made more functional as regards the itemization and uniformity of the information it contains.

110. It is also noted that this Law does not include the category that allows a person to be registered as a victim of forced disappearance. Furthermore, three years after its creation, the State has yet to publish the corresponding regulations in keeping

<sup>141</sup> Report of the UN Committee on Enforced Disappearance. Available at: [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_COB\\_MEX\\_19564\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_COB_MEX_19564_S.pdf)

<sup>142</sup> Report presented by the Mexican State to the Committee on Enforced Disappearance, CED/CMEX/1, April 17, 2014. See also the Law on National Missing and Disappeared Persons Data Registry, DOF [Official Gazette] 04-17-2012. Available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/LRNDPED.pdf>

<sup>143</sup> Mexican State, Information provided as part of the *in situ* visit to Mexico, September 25, 2015.

with the second transitional article which provides that the competent authorities shall issue laws, regulations, and other provisions to implement the Law in a period of no greater than six months after its publication.<sup>144</sup> In principle it would be expected that a new national law on forced disappearance would be the only tool at a national level and that there would be a sole registry of disappearances, which would include disappearances from the past, such as victims of the “Dirty War”.

111. The IACHR also considers that it is important to have a single national registry for persons detained as a measure to prevent the disappearance of persons.

## ii. Definition of the Crime of Forced Disappearance

112. Several civil society organizations, the CNDH as well as the IACHR itself and the Inter-American Court have stated that the current definition of the crime of forced disappearance provided for in Article 215-A of the Federal Criminal Code since June 1, 2001 is not consistent with international human rights standards. The definition set forth under said Article reads as follows:

Public servants shall be guilty of the crime forced disappearance where, regardless of whether they were involved in the legal or illegal detention of one or several persons, they intentionally encourage or maintain concealment of that detention, whatever its nature.

113. In the judgment of *Rosendo Radilla Pacheco v. Mexico*, the Inter-American Court indicated that said definition restricts responsibility for the crime solely to “public servants,” while the active subject of the crime in keeping with the Inter-American Convention on Forced Disappearance of Persons must ensure punishment of all “authors, accomplices, and accessories of the crime of forced disappearance of persons,” whether agents of the State or “people or groups of people that act with the authorization, support, or acquiescence of the State.”<sup>145</sup> Thus, for the Court, the legal classification of forced disappearance of persons of the Federal Criminal Code of Mexico presents an obstacle to the guarantee of punishment of “all the authors, accomplices, and accessories” arising from “any of the powers or bodies of the State.” In order to satisfy the minimum elements of the correct legal classification of the crime, the nature of the “State agent” shall be established in the most ample way possible.<sup>146</sup> The Court also indicated:

that Article 215-A of the mentioned Federal Criminal Code does not refer to “persons or groups of persons acting with the authorization, support, or

<sup>144</sup> According to the CNDH, in October 2013, the Chamber of Deputies of the Federal Congress issued a non-binding resolution urging the head of the federal executive branch to publish the corresponding regulations in order to ensure and execute the creation of the aforementioned Registry, in keeping with the terms set forth under the Law.

<sup>145</sup> I/A Court H.R., Case of *Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 320.

<sup>146</sup> I/A Court H.R., Case of *Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 321.

acquiescence of the state”. In this regard, it mentioned that the punishment for the criminal actions of individuals can be concluded from Article 212, second paragraph, of the mentioned Federal Criminal Code, according to which “the same punishments established for the specific crime will be imposed on any person who participates in the perpetration of any of the crimes established in this Title or the following one.” Despite the aforementioned, it is not clear to this Tribunal if the intervention of “any person” as a participant in the crime, in the sense of the mentioned Code, is equivalent to the idea that the perpetrator of the same, that is, the active subject, is an individual that acts “with the authorization, support, or acquiescence of the state.” This idea acknowledges both the actions of individuals as perpetrators of the crime, under certain circumstances, and the different forms of participation of State agents in it.<sup>147</sup>

114. Furthermore, the current definition of forced disappearance the Federal Penal Code also fails to refer to the refusal to acknowledge the deprivation of liberty or to provide information about the fate or whereabouts of persons and by not leaving prints or evidence, which is a component recognized in the Inter-American Convention on Forced Disappearance of Persons.
115. As far as the 31 states and the Federal District are concerned, the State has reported that 19 have provided for forced disappearance as an independent crime in their criminal codes.<sup>148</sup> Chiapas, the Federal District, Guerrero, and Querétaro have approved specific laws to prevent and punish this crime.<sup>149</sup> The IACHR has been informed however that not all the definitions set forth under those criminal codes are consistent with international human rights standards. Moreover, where there is circumstantial evidence that it could be a forced disappearance, the events are described as a different crime—like kidnapping—which means the investigations are not conducted appropriately. Furthermore, some justice officials in the state of Guerrero have stated that they do not have jurisdiction to apply special laws, affirming they only have jurisdiction to prosecute crimes provided for in the state’s criminal code.
116. Currently there are several draft bills on forced disappearance at a federal level. Civil society organizations and the academic sector have emphasized the need to define at a federal and local level the crime of forced disappearance of persons. They have also stated that it is imperative to establish the judicial decree of absence for disappearance of persons in the bill. In its observations to the draft of this report, the State stated that the draft bill “General Law on Forced

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<sup>147</sup> I/A Court H.R., Case of *Radilla Pacheco v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, para. 322.

<sup>148</sup> Report by Mexico on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, CED/C/MEX/1, March 11, 2014, para. 87, Available at: [http://www.ohchr.org/\\_Documents/HRBodies/CED/StatesReportsarticle29/29.1\\_CED\\_Mexico\\_sp.pdf](http://www.ohchr.org/_Documents/HRBodies/CED/StatesReportsarticle29/29.1_CED_Mexico_sp.pdf); In the information the Mexican State presented to the IACHR during its *in situ* visit on September 25, 2015, the Mexican government identified only 13 states whose local criminal codes define the crime of forced disappearance. Section 2.2, p. 28.

<sup>149</sup> Mexican State, Information from the Mexican State presented to the IACHR during its *in situ* visit, September 25, 2015, supplemented by information from CADHAC and CEDEHM, Forced and Involuntary Disappearances in Mexico. *Alternative Report for Mexico’s Evaluation by the UN Committee on Enforced Disappearance*, June 2014.

Disappearance” was sent by President Peña Nieto to Congress on December 10, 2015.<sup>150</sup> The State informed that the preparation of this draft bill was completed through a process of consultation that consisted of three phases, which included the participation of citizens, civil society organizations, the federal states, and was accompanied by the International Committee of the Red Cross. According to the State (ICRC), this draft bill will allow the establishment of a new public policy focused on the search and finding of disappeared persons, and proposes the creation of four basic instruments<sup>151</sup>:

- i. The National Search System, which will seek to ensure the immediate activation of public safety agencies, prosecutors’ offices, and specialized personnel after a report of a disappearance. Its objective is to ensure a broad, agile and prompt institutional response in the hours following a disappearance.
  - ii. The National Registry of Missing or Disappeared Persons, a registry with updated information provided by hospitals, detention centers, and forensic medical services, both at the state and federal levels, which will allow relatives to follow up on their reports of disappearances.
  - iii. The National Forensic Registry, which will make it easier to find and identify disappeared persons.
  - iv. The National Citizens’ Council, made up of human rights defenders, specialists and relatives of victims, whose objective will be to advise and issue opinions for the National Search System.
117. In its observations to the draft of this report, the Mexican State also recognized that the pending challenge is to push for the adoption of the General Law, as well as to ensure its full implementation.<sup>152</sup> The IACHR urges the State to adopt a general law on the matter of disappearances in consultation with civil society, victims, and their family members, and in keeping with international human rights standards.

### iii. Investigation and Punishment

118. Despite the enormous number of cases of forced disappearance, the figures provided by the State or international organizations point to the fact that there have only been six federal court judgements issued in Mexico for the crime of

<sup>150</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>151</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>152</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

forced disappearance.<sup>153</sup> Furthermore, according to the information reviewed the cases of forced disappearances in which there have been convictions are from 1977, 2002, 2003, with three from 2005.<sup>154</sup> The IACHR has several petitions and cases being processed that present allegations of forced disappearance.

119. For its part, the CNDH reports it issued 11 recommendations for forced disappearance between 2006 and 2015, involving 37 victims, directed at federal, state, and municipal authorities. Of these recommendations, 5 were directed at SEDENA regarding 13 victims, and 2 were for SEMAR regarding 7 victims.<sup>155</sup>
120. The State has stated before the United Nations that the PGR's Deputy Attorney General's Office for Special Investigations on Organized Crime Investigation [*Subprocuraduría Especializada en Investigación de Delincuencia Organizada—SEIDO*] is the authority charged with opening investigations at the federal level for suspected cases of forced disappearance.<sup>156</sup>
121. In practice, the Commission has received repeated complaints from victims about the actions of state attorneys general's offices during their quest for justice, and to a lesser extent also about the PGR. Many victims are not assisted or are not

<sup>153</sup> The Mexican State informed the UN Committee on Enforced Disappearance about the following six federal judgments handed down in cases of forced disappearance: (1) Final judgment in criminal proceedings 179/2006 of September 30, 2009, handed down by the Ninth District Court in the State of Sinaloa; (2) Final judgment in criminal proceedings 20/2005-I of June 30, 2010, handed down by the First District Court of Federal Criminal Proceedings in the Federal District; (3) conviction in criminal case 27/2005 of May 10, 2006, handed down by the Sixth District Court of Federal Criminal Proceedings in the State of Jalisco; (4) conviction in criminal case 142/2003 of May 11, 2005, handed down by the Sixth District Court in the State of Guanajuato; (5) Conviction in criminal case 72/2005 of December 14, 2005, handed down by the First District Court of the State of Michoacán; and (6) conviction in the criminal case 159/2005 of November 14, 2006, handed down by the Fifth District Court in the State of Chihuahua. The IACHR observes that in the report it was provided the CNDH stated that "on May 6, 2015, [the CNDH] requested information from 27 states that have the crime of forced disappearance on the books. To date responses have been received from 22 states, the analysis of which revealed that in 9 of them 95 preliminary inquiries have been initiated for the crime of forced disappearance of persons, with only 4 leading to indictments (1 with an arrest, 3 without arrests), and no convictions issued in any criminal case." Report by the National Human Rights Committee (CNDH) during the IACHR's *in situ* visit, September 27, 2015, p. 14. See also, CMDPDH, *Report on Mexico's non-compliance with obligations stemming from the International Convention for the Protection of All Persons from Enforced Disappearance*. October 7, 2014, p. 10. Available at: <http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT CED NGO MEX 19375 S.pdf>

<sup>154</sup> CMDPDH, *Report on Mexico's non-compliance with obligations stemming from the International Convention for the Protection of All Persons from Enforced Disappearance*. October 7, 2014, p. 10. Available at: <http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT CED NGO MEX 19375 S.pdf>

<sup>155</sup> Report by the National Human Rights Committee (CNDH) during the IACHR's *in situ* visit, September 27, 2015, p.20 (IACHR archive). The IACHR notes that the CNDH reported to the UN Committee on Enforced Disappearance that it had issued 13 recommendations for forced disappearance to the CNDH [*sic*], *Considerations of the National Human Rights Committee before the UN Committee on Enforced Disappearance*. Available at: <http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT CED IFN MEX 19449 S.pdf>

<sup>156</sup> This authority is charged with applying "The Protocol of Proceedings related to Investigations" and forwarding an itemized list to the Special Unit for the Search of Disappeared Persons, of the Deputy Attorney General's Office for Human Rights, Crime Prevention, and Community Services of the PGR. According to the State, in this manner two separate investigations are undertaken: one for the disappearance of the person, and the other for possible commission of the crime of forced disappearance. *Report presented by Mexico to the Committee on Enforced Disappearance*, CED/C/MEX/1, April 17, 2014.

assisted adequately when they try to file a complaint. In extreme cases, family members face so many obstacles and have so much distrust that they prefer not to report the crime or not to follow up with the authorities.

122. In those cases in which a complaint is filed, the authorities' response presents serious flaws. The IACHR received hundreds of testimonies of persons who indicate that no search mechanism is activated with the necessary immediacy. When an investigation is opened, the victim's relatives face serious obstacles, given that some officials of state prosecutors' offices request money from them to carry out inquiries and deny them access to case files. Some victims even stated that there is a set fee required to conduct investigations. There are also usually delays in the investigation proceedings when inquiries in the initial hours are decisive, as is the case in disappearances. This is especially dire inasmuch as the first 48 to 72 hours after a person's disappearance are key, after which the likelihood of find the person alive diminishes. "Our country has no search mechanisms", a mother of a 14-old girl who disappeared in 2010 told the IACHR. "When I went to file a report they told us she had run away with her boyfriend. This is what they tell us, that they run away because they want to. Our pain is so great! When our children disappear, we don't know what to do, where to turn, where we have to go so they will help us to find our children."
123. There are also irregularities in the search for and interviews with potential eye witnesses, the collection, analysis, and handling of potential evidence, investigation of telephone call reports, facial composite sketches of possible perpetrators, connections with activities or other disappearances, among others. Disappeared persons' family members indicated that the search merely consists of phone calls and home visits that the personnel of the prosecutor's office make sporadically to them not to provide information about the case, rather to ask them if their family member has returned or if they have any additional information.<sup>157</sup> The mother of two disappeared persons in Guerrero—a 21-year old son and a 19-year old daughter—recounted to the IACHR that several neighbors told her they had been kidnapped by the police and taken away in a truck. "We filed reports but we were never provided a response. They were never able to tell us anything," she said. Furthermore, on repeated occasions the events are described as other crimes when there is circumstantial evidence of forced disappearance.
124. The family members also reported a lack of efficient coordination and cooperation between state and federal justice authorities. This hinders the investigations, which are an imperative obligation of the State. Furthermore, the IACHR was told time and again that the information that exists in the case files, if such files exist, is what relatives have provided. Additionally, during the visit and in meetings with civil organizations held in the Federal District victims constantly described the irregular handling of case files. One testimony heard by the IACHR stated:

We went to review the case file and it turns out they didn't have it, that they had sent it to another area; we spoke [to them] and it wasn't there, that the Special Prosecutor's Office on Violence against Women and Trafficking in

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<sup>157</sup> Information presented to the IACHR on September 28, 2015 by organizations from Jalisco.



Persons [*Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata*—FEVIMTRA] had it. At any rate, the case file was missing for approximately a year [...] When we managed to get it back, we noticed that pages were missing, such as statements, lists of calls, and some investigations, which we were not able to recover.<sup>158</sup>

125. The testimonies heard reveal deep distrust of state and local authorities, apathy on the part of the State, negligence, and a lack of will to address their situation. Specifically, the IACHR received information that some federal and state police agents, as well as many municipal police, are allegedly colluding with organized criminal groups.
126. Testimony was also provided by many relatives about threats and harassment that they were subjected to so they would stop seeking truth and justice. One mother in Mexico City stated, “They tell me, don’t look because I’m going to cut your tongue out. Don’t look because your three other children are going to end up lying at the door of your house and that will be on your conscience. They leave us this void, this absence, and our hearts frozen because we can’t even cry.” Another mother pointed out: “When we did demand justice, we realized that we were an annoyance. We tell them what leads to follow, because we have become investigators.” A woman from the State of Nuevo León told IACHR that for four months she and her husband have been looking for their disappeared son. “They tell us we are advocates, but we are just mothers looking for our children, families seeking justice, seeking truth,” she pointed out.
127. The discovery of unmarked mass graves and mass graves in cemeteries with dozens of bodies all over Mexico has demonstrated that in many cases family members are the ones that have had to undertake the search for their loved ones, as well as underscoring the multiple shortcomings and lacunae in handling and identifying the bodies and in assisting and protecting victims’ relatives. In keeping with the information gathered throughout the visit, the Commission noted that in many cases when bodies were found in mass graves there was a failure to apply protocols of accepted criteria for removing the bodies, taking custody of the scene, chain of custody, autopsies, attention to victim’s relatives, identification of remains found, among others. When the remains of an individual are located, family members report difficulties in recovering them in an appropriate, dignified manner, and in the certainty of their identity. The Commission heard testimony from some family members in Iguala indicating that in some cases their relatives’ [remains] were provided to them in a closed coffin, which they were prohibited from opening. This situation leads to suspicion and distrust of authorities as to whether the remains being given to them are really their relatives.<sup>159</sup> In Veracruz, family members highlighted that the prosecutor’s office provided them with the alleged remains of a relative and when they asked about the possibility of DNA

<sup>158</sup> Testimony heard on September 29 on the disappearance of a woman in Torreón, Coahuila, Mexico.

<sup>159</sup> Information received on September 30, Iguala, Guerrero.

- testing the prosecutor’s office would not allow for it and told them if they didn’t take the body right then and there, it would be returned to the mass grave.<sup>160</sup>
128. The IACHR has been able to confirm that a large percentage of disappeared persons come from situations of poverty or extreme poverty, which is worsened and exacerbated when a family member who was the sole breadwinner disappears. The IACHR heard the testimony of one woman from Iguala whose husband was disappeared and she was left with her six children to support. Similar to her testimony, the Commission received numerous testimonies of families who face even greater impoverishment when one of their family members, who was employed and contributed to support the family or was the main breadwinner, disappears. The obstacles to accessing aid are daunting. For example, the IACHR heard testimonies indicating there is the possibility of obtaining MEX\$300.00 a month (some US\$18.00) in support from the Executive Committee for Victims’ Support [*Comisión Ejecutiva de Atención a Víctimas—CEAV*]; however, to have access thereto, the family must first publish the court decree of absence in three national newspapers, which costs MEX\$30,000.00 (US\$1,800.00).
129. In an IACHR public hearing about “Reports of Acts of Forced Disappearance and Impunity in Mexico”<sup>161</sup> held in March 2015, the Mexican State acknowledged that despite the progress made on human rights, it still had many challenges to overcome.<sup>162</sup> At this hearing the State recalled the announcement by President Peña Nieto in 2014 of a list of ten security measures, including: (i) the bill sent to Congress on torture and forced disappearance, (ii) the creation of a national search system, (iii) the national genetic information system, (iv) protocols so that investigations are more expeditious.<sup>163</sup>
130. The State likewise indicated that it is working on creating in all states genetic databases that include deceased and detained individuals, which they hope will be a tool to facilitate searching for and locating individuals. Some civil society organization have acknowledged the measures undertaken by the PGR as part of the agreements of the National Justice Administration Conference [*Conferencia Nacional de Procuración de Justicia*], with the implementation of the Combined DNA Index System (CODIS), made up of information from genetic profiles and analysis of biological samples, provided by different bodies that administer justice as part of an exchange of information in order to create and update the national database.

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<sup>160</sup> Information from Xalapa Collective for Peace [*Colectivo por la Paz Xalapa*] received during the *in situ* visit.

<sup>161</sup> IACHR, Public Hearing, *Reports of Acts of Forced Disappearance and Impunity in Mexico*, March 20, 2015, at the request of 21 national and international organizations.

<sup>162</sup> IACHR, Public Hearing, *Reports of Acts of Forced Disappearance and Impunity in Mexico*, March 20, 2015, at the request of 21 national and international organizations.

<sup>163</sup> IACHR, Public Hearing, *Reports of Acts of Forced Disappearance and Impunity in Mexico*, March 20, 2015, at the request of 21 national and international organizations. See also Office of the President, Broadcasting of the Event: *Mensaje a la Nación – por un México en Paz, con Justicia, Unidad y Desarrollo* [Message to the Nation—for a Mexico in Peace, with Justice, Unity, and Development], November 27. Available at: <http://www.presidencia.gob.mx/multimedia/transmision-del-evento-mensaje-a-la-nacion-por-un-mexico-en-paz-con-justicia-unidad-y-desarrollo/>

131. There has also been recognition of the agreement entered into between the PGR and the International Committee of the Red Cross (*ICRC*) to use the software license of the Ante Mortem-Post Mortem database, fed with information for the search for live persons and for the identification of deceased persons. The database is expected to come on line at the end of 2015 in all the PGR offices, prosecutors' offices, and forensic medical services in all the federal entities in the country.<sup>164</sup> In this respect, the PGR informed the public in a press release dated October 26, 2015 that as of that date it had begun operating the Ante Mortem-Post Mortem Database System (AM/PM) as part of the National Plan on Disappeared Persons.<sup>165</sup> It was also noted that the PGR is working on training personnel who are in charge of running the aforementioned Database and is conducting updates to meet the digital platform's technical requirements so that the software runs in all PGR offices of the states and the Federal District. The PGR also indicated that it had taken measures to coordinate format harmonization and standardization to integrate all national databases with forensic data at the federal level.
132. In its observations to the draft of this report, the State expressed that it "recognizes that it faces numerous challenges in the attention to disappeared persons, and particularly in the creation of a national registry that, through its database, can allow us to understand the magnitude of the problem we face."<sup>166</sup> The State referred to the following actions it has already undertaken:<sup>167</sup>

The National Registry of Date of Missing or Disappeared Persons (RNPED) has entered into a process of revision, updating, and purging since 2013, when by agreement of the National Conference of Prosecutors adopted during its XXIX Plenary Assembly, on May 30, 2013, it created working groups in each one of the prosecutors' and attorneys general's offices at the federal state and which, based on uniform criteria, carried out this process.

In the context of Mexico's commitments in its 2013-2015 Action Plan of the Alliance for an Open Government, it re-organized and improved the RNPED: during 2014, it created and published a technical feature to download the information from the database, with the purpose of distinguishing between the persons in which cases there is reason to believe, based on the investigation, that their cases may be forced disappearance, as opposed to missing persons, at the federal level; it published the database of the RNPED at the federal level as open data, which since January 2014 and so far in 2015 it allows to distinguish between the cases of forced disappearance investigated at the federal level (Article 215 of the Federal Penal Code), the cases of persons reported simply as missing or disappeared, persons found

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<sup>164</sup> IACHR, Public Hearing, *Reports of Acts of Forced Disappearance and Impunity in Mexico*, March 20, 2015, at the request of 21 national and international organizations; Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>165</sup> PGR, Comunicado 667/15 of October 26, 2015. *PGR pone en operación Sistema de Datos Ante Mortem/Post Mortem* [PGR puts the Ante Mortem/Post Mortem Data System into operation]. Available at: <http://www.pgr.gob.mx/sala-de-prensa/Paginas/Boletines.aspx>

<sup>166</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>167</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

dead or alive, etc. This information is broken down by the person's gender and by the state of the country where the events took place.

133. Given the scale of the disappearances and the few cases that have been resolved, it is urgent to establish a national immediate search system for disappeared persons in Mexico. For the Commission it is likewise urgent that a national unified database of all disappeared persons be created. In this regard, the Inter-American Court indicated in the "Cotton Field" case that a database must have personal data on the disappeared person, and all the necessary information—principally genetic information and cell samples—of their family members, as well as genetic information and cell samples from the bodies of any unidentified person who were deprived of life.<sup>168</sup>
134. The forensic piece of the investigations into disappearances in Mexico shows shortcomings that hinder both the search for the victims, as well as the eventual criminal proceedings, and demand the creation of an independent forensic service agency. In practice, forensic authorities are not always charged—as they should be—with removal of bodies, which frequently leads to the loss of key evidence for the investigation and eventual judicial proceedings.<sup>169</sup> The UN High Commissioner indicated in his visit to Mexico in October 2015, that the limitations and irregularities pointed to by the GIEI (described later in the report) and the Argentine Forensic Anthropology Team (EAAF) demand the creation of a national forensic services agency in Mexico that is shielded from political and other kinds of interference, and is governed strictly by technical and scientific criteria.<sup>170</sup> The problem is such that the UN Special Rapporteur on extrajudicial, summary, or arbitrary executions also recommended this agency be created in Mexico.<sup>171</sup> The Rapporteur highlighted that the agency must be independent, provide services to all parties and authorities that are involved in federal and/or state trial proceedings, as well as to human rights and civilian citizen committees, and must have the appropriate infrastructure with sufficient human and financial resources, and nationally standardized protocols.<sup>172</sup>
135. The IACHR considers it a priority for the State of Mexico to consider the creation of a National Forensic Institute, one that is independent of all interference, political or otherwise, and that is governed strictly by scientific and technical criteria. The

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<sup>168</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, p. 153. The Court makes specific reference to disappeared women and children.

<sup>169</sup> United Nations. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 47. Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_36\\_Add.1\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC)

<sup>170</sup> UN Committee on Enforced Disappearance, *Concluding observations on the report presented by Mexico pursuant to Article 29(1) of the Convention*, Statement by the UN High Commissioner for Human Rights, Zied Ra'ad Al Hussein, on the occasion of his visit to Mexico, October 7, 2015.

<sup>171</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 98. Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_36\\_Add.1\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC)

<sup>172</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 98. Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_36\\_Add.1\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC)

IACHR welcomed the information from the Mexican State that the draft bill of the General Law to Combat Torture from the PGR provides for creating the National Institute of Forensic Sciences and Services, which would have legal status, its own assets, technical and management independence, and would not report to the PGR.<sup>173</sup> If it materializes, the creation of this Institute would be a fundamental step toward having an effective forensic service that could be decisive in fighting impunity in Mexico.

136. For the Commission it is also indispensable that a national registry be created of the unidentified remains of individuals who died from violent causes buried in cemeteries all across the country, and that it include the corresponding preliminary investigation undertaken in the case. This entails a restructuring of cemeteries to facilitate the return of the deceased to their families. It is also recommended that there be a search for unmarked mass graves in states where there have been high levels of violence in recent years.
137. It is important to also highlight that on August 19, 2015, the 23rd National Justice Administration Conference [*XXXIII Conferencia Nacional de Procuración de Justicia*] approved the Investigation Protocols for Forced Disappearance and for Torture that entered into force that same day.<sup>174</sup> Both protocols will operate in the old criminal justice system, as well as the new adversarial criminal system (addressed later in the report). For the Commission it is indispensable and urgent that substantial and comprehensive progress be made in the plans mentioned by the State and that there be involvement of civil society organizations and organizations of the families of victims of disappearance in formulating and implementing such initiatives.
138. The IACHR welcomed the news that the PGR has created the Office of the Special Prosecutor for the Search of Disappeared Persons [*Fiscalía Especializada para la Búsqueda de Personas Desaparecidas*], under the PGR's Office of the Deputy Attorney General for Human Rights, Crime Prevention, and Community Services.<sup>175</sup> The new prosecutor's office will have the authority to conduct, coordinate, and where appropriate, undertake forensic identifications; prosecute crimes related to the disappearance of persons; coordinate with state attorneys general's offices as regard the disappearance of persons; assist and inform the disappeared persons' family members, among others.<sup>176</sup> In its observations to the draft of this report, the

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<sup>173</sup> Information provided by the Secretariat of the Interior (SEGOB) during the visit of the Inter-American Commission on Human Rights, "Datos Solicitados por la IACHR al Estado mexicano en materia de derechos humanos" [Data the IACHR requested from the Mexican State on human rights], p. 2.

<sup>174</sup> Information provided by the Mexican State pursuant to Note OEA-02702 of September 1, 2015; Secretariat of Foreign Relations, Circular No. 10, August 26, 2015.

<sup>175</sup> General Directorate for Human Rights and Democracy of the Secretariat of Foreign Relations, Circular No. 12/2015, October 14, 2015.

<sup>176</sup> General Directorate for Human Rights and Democracy of the Secretariat of Foreign Relations, Circular No. 12/2015, October 14, 2015. In the announcement about the creation of the Special Prosecutor's Office, the IACHR values the Mexican government's acknowledgement that "it faces challenges in the matter of disappearances, and in this regard maintains and underscores its commitment to have the necessary institutional structures to go forward in keeping with the law, justice, and respect for human rights. In particular, [the government] reiterates its unflagging and unremitting willingness to work closely with the families of victims of disappearance and to support them in an ongoing manner." Circular No. 12/2015, p.2.

State indicated that this special prosecutor's office currently has 120 servants and it is in a strengthening phase; it works on the integration of a National Registry of Clandestine Graves, a DNA databank, which is expected to be the most complete such bank in Latin America, and the use of drones for the location of victims.<sup>177</sup>

139. In this regard, the IACHR also received information from civil society organizations and from the State about some initiatives that have yielded positive results regarding the search for disappeared persons. For example, in Nuevo León, with the creation of the Special Groups for Immediate Search (GEBI, their Spanish acronym), backed by the adoption of a specific protocol regarding searching for disappeared persons, the state government reported that around 80% of persons reported as disappeared have been found.<sup>178</sup> The GEBIs are designed to operate almost immediately upon the report of a disappeared person, concentrate and systematize information, carry out timely actions in relation to the search, and in many cases they have been able to find the person reported as disappeared alive.<sup>179</sup> As it is well known, the actions taken in the first 72 hours after a disappearance takes place are critical for the search and possible finding of the victim. The IACHR considers that this is an example of good practices that could be perfected and implemented in other areas of the country, taking into account the particular characteristics of the different regions and the disappearances' own circumstances.
140. During the visit, different civil society organizations informed the Commission that it is imperative to provide for a legal decree of absence for disappeared persons. In keeping with the provisions of the General Law on Victims, "it is the obligation of the State to recognize the juridical personality of the victims of disappearance, as well as to implement a special procedure for the decree of absence for disappearance, so that the indirect victims may quickly exercise the absentee's economic and family rights to safeguard the essential interests of the nuclear family."
141. In this regard, the UN Committee on Enforced Disappearances expressed its concern that most laws in Mexico regarding the legal status of disappeared persons whose fate is unknown do not reflect in specific terms the phenomenon of forced disappearance. The Committee indicated that this is despite the fact that the National Conference of Governors made the commitment to go forward with the necessary legislative reforms on this matter. As of the date this report was

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The IACHR reiterates its expectation that these pronouncements will in practice translate into concrete measures.

<sup>177</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>178</sup> Information received during the Commission's visit to the state of Nuevo Leon, September 29, 2015; Information received during the meetings with civil society organizations in Monterrey, Nuevo Leon, September 29, 2015.

<sup>179</sup> UN highlights model of the government of Nuevo Leon to search for disappeared persons ("*Exalta Naciones Unidas modelo del Gobierno de Nuevo León para localizar personas desaparecidas*"), Bulletin of the Government of the state of Nuevo Leon, October 1, 2015. Available in Spanish at: <http://www-.nl.gob.mx/noticias/exalta-naciones-unidades-modelo-del-gobierno-de-nuevo-leon-para-localizar-personas>

approved, the IACHR has learned that only the states of Coahuila and Querétaro have regulated the legal concept of absence by disappearance.<sup>180</sup>

142. The IACH emphasizes that as part of the duty to act with due diligence, States have the obligation to ensure access to appropriate and effective legal remedies not only for victims, but also for their families.<sup>181</sup> The Inter-American Court of Human Rights has held that families are entitled to have everything necessary done to know the truth about what happened to the victims and their whereabouts through an effective investigation, prosecution of the perpetrators, imposition of pertinent punishment, and fair and adequate reparation.<sup>182</sup>

## a. The particular Situation in the State of Guerrero

### i. Ayotzinapa

143. In this context of unresolved disappearances, the forced disappearance of 43 young students from the Rural Teacher’s College “Raúl Isidro Burgos” in the state of Guerrero on September 26 and 27, 2014, during which other persons were wounded and murdered, is a grave tragedy in Mexico, as well as a national and international wakeup call about disappearances in Mexico, particularly in the state of Guerrero. It also brings attention to the serious shortcomings in the investigation of these events and the structural and almost total impunity that permeate these kinds of serious crimes.
144. In the immediate aftermath of the events, civil society organizations denounced a lack of action on the part of the state government and the delayed involvement of the PGR. For example, the students themselves and their family members were the ones who drew up a complete list of the 43 disappeared students by reviewing official registration lists at the school, verifying who had participated, as well as by interviewing mothers and fathers who were searching for their children.<sup>183</sup> It took the PGR eight days to collaborate in the case investigation.<sup>184</sup>

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<sup>180</sup> UN Committee on Enforced Disappearance. *Concluding observations on the report presented by Mexico pursuant to Article 29(1) of the Convention*.

<sup>181</sup> IACHR, *Missing and Murdered Indigenous Women in British Columbia, Canada*, OEA/Ser.L/V/II. Doc. 30/14, December 21, 2014, para. 159.

<sup>182</sup> IACHR, *The Right to Truth in the Americas*, OEA/Ser.L/V/II.152 Doc. 2, August 13, 2014, para. 60; I/A Court H.R., *Anzaldo Castro v. Peru*, Preliminary Objections, Merits, Reparations, and Costs, Judgment of September 22, 2009, Series C No. 202, para. 118.

<sup>183</sup> Tlachinollan, Red Guerrerense de Organismos Civiles de Derechos Humanos [Guerrero Network of Civil Society Human Rights Organizations], Centro Prodh, Additional information sent as part of the UN Committee on Enforced Disappearance’s review of the Mexican State, at its 8th session, January 8, 2015.

<sup>184</sup> In this regard see also, the Human Rights Watch press release: *Mexico: Delays, Cover-Up Mar Atrocities Response*, November 7, 2014. Available at: <https://www.hrw.org/news/2014/11/07/mexico-delays-cover-mar-atrocities-response>

145. On October 3, 2014, the Inter-American Commission granted precautionary measures in relation to these events.<sup>185</sup> On November 18, 2014, the IACHR signed a technical assistance agreement with the State of Mexico and representatives of the disappeared students from Ayotzinapa. This was done at the behest of the State, as well as that of the beneficiaries of the precautionary measures and their representatives, in keeping with the objectives of these measures.<sup>186</sup> Essentially the parties agreed on “the involvement of an Interdisciplinary Group of Independent Human Rights Experts to conduct a technical verification of the actions initiated by the Mexican State” after the disappearance of the 43 students who are the beneficiaries of the precautionary measures.<sup>187</sup>
146. In this regard, the IACHR appointed an Interdisciplinary Group of Independent Experts (GIEI) for a period of six months with the following responsibilities: analysis of the plans to find the disappeared persons alive, and where appropriate, to recommend best practices for a more efficient investigation; a technical analysis of lines of inquiry to determine criminal responsibilities; a technical analysis of the Comprehensive Plan for Assisting Victims of the events of September 26 and 27. The GIEI is composed of Carlos Beristain, Angela Buitrago, Francisco Cox, Claudia Paz y Paz, and Alejandro Valencia.
147. During its term, the GIEI has issued four reports.<sup>188</sup> From the outset, the Group has worked in coordination with authorities and relatives, as well as the students who survived the attacks. In all its reports, the GIEI has expressed its gratitude to the Mexican State for the material and logistical support provided. A request from the Group that has not been allowed by Mexican authorities as of the date of the preparation of this Report is the possibility of interviewing members of the Mexican army present during the events.
148. The GIEI’s report on the investigation and initial conclusions, presented on September 6, 2015, points to a series of irregularities, inconsistencies and/or omissions in the investigation of the events on the part of State authorities. In particular, the GIEI questions “the historical version” of the facts provided months before by the then Attorney General of México, Jesús Murillo Karam, that the students had been incinerated. In fact, based on an expert analysis by a highly regarded expert on the subject, the GIEI concluded that the hypothesis of a large fire is impossible, since it would have required “between 20,000 and 40,000 kg of wood or between 9,000 and 18,000 kg of tires in order to consume one body,”<sup>189</sup>

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<sup>185</sup> IACHR, Resolution No. 28/2014, Precautionary Measure No. 409-14 of October 3, 2014, Students of the rural school “Raúl Isidro Burgos”, Mexico.

<sup>186</sup> All information regarding the signing of this agreement is available at the following specific section of the IACHR official webpage: <http://www.oas.org/es/IACHR/mandato/acuerdos.asp>

<sup>187</sup> In this regard, the IACHR appointed an Interdisciplinary Group of Independent Experts (GIEI) for a period of six months with the following responsibilities: analysis of the plans to find the disappeared persons alive, and where appropriate, to recommend best practices for a more efficient investigation; a technical analysis of lines of inquiry to determine criminal responsibilities; a technical analysis of the Comprehensive Plan for Assisting Victims of the events of September 26 and 27.

<sup>188</sup> To access the reports: <http://prensagieiyotzi.wix.com/giei-ayotzinapa#!informe-/c1exv>

<sup>189</sup> GIEI, Ayotzinapa Report, *Investigation and first conclusions of the disappearance and murders of the teaching students of Ayotzinapa*, p. 147.



and 60 hours of fire with flames of 7 meters and smoke or up to 300 meters.<sup>190</sup> In addition, the GIEI also determined that there was a fifth bus involved that was not investigated and no statements were taken from the drivers; there were videos whose content was erased; some areas of the crime scene were not examined; the autopsies were done poorly; and some of the persons detained between October and December 2014 alleged that they had suffered abuses, mistreatment and torture by the security forces. Specifically, the GIEI report indicates that of the 80 detained persons who underwent a medical exam, 19, or 23%, did not present any injuries, while 77% of them did report injuries.<sup>191</sup> In its observations to the draft of this report, the State indicated that 111 persons—including alleged perpetrators and masterminds—have been charged in related to the events in Iguala, and that the investigation is still ongoing. In addition, it informed that the PGR, in a show of transparency and good faith, has carried out the corresponding investigations of such allegations.<sup>192</sup>

149. The State also emphasized the close collaboration with the Interdisciplinary Group of Independent Experts (GIEI) and the opening of new investigation avenues in response to its recommendations.<sup>193</sup>
150. To date, according to information received, the remains of one of the students have been identified and there is evidence of the possible identification of a second student. In that respect the Argentine Forensic Anthropology Team (EAAF) has stated that it was not present when the PGR allegedly recovered the bag in the San Juan River that contained the sample of the bone fragment of Alexander Mora Venancio, which was larger than the rest of the bone samples presumably found.<sup>194</sup> As for the bone remains obtained from the same bag that were sent to the Gerichtsärzte am Institut für Gerichtliche Medizin der Medizinischen Universität Innsbruck Laboratory in Innsbruck, Austria, for possible identification of Jhosivani Guerrero de la Cruz, the EAAF considers that the results show only a possible match.<sup>195</sup>
151. During the IACHR's *in situ* visit, it met with the GIEI. The Commission backs the work the Group has undertaken to date in all its aspects, and supports the reports and recommendations submitted by the Group. Furthermore, on October 20, 2015, a hearing took place at IACHR headquarters with the participation of the Mexican State, victims' relatives and representatives, and the full Commission. The State confirmed at that hearing, in keeping with the GIEI's recommendations, that the

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<sup>190</sup> GIEI, Ayotzinapa Report, *Investigation and first conclusions of the disappearance and murders of the teaching students of Ayotzinapa*, pp. 147-149.

<sup>191</sup> GIEI, Ayotzinapa Report, *Investigation and first conclusions of the disappearance and murders of the teaching students of Ayotzinapa*, pp. 200-201.

<sup>192</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>193</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>194</sup> Press release issued by the EAAF, February 7, 2015. Available at: [http://www.eaaf.org/files/comunicado-eaaf\\_7feb2015.pdf](http://www.eaaf.org/files/comunicado-eaaf_7feb2015.pdf)

<sup>195</sup> Press release issued by the EAAF, September 17, 2015. Available at: <http://www.eaaf.org/files/comunicado-de-prensa-eaaf-17sept2015-2.pdf>

PGR had decided to: transfer responsibility for the investigation of the case from the Deputy Attorney General's Office for Special Investigations on Organized Crime Investigation (SEIDO) to the Deputy Attorney General's Office for Human Rights, Crime Prevention, and Community Services (SDHPDSC); appoint a new team to investigate the case, including a new special prosecutor to lead up the investigation, in consultation with the GIEI, and replacement of all its members, who will be selected respecting the principle of impartiality, autonomy, and independence through transparent processes; and reorient the investigation in order to follow lines [of inquiry] that stem from the GIEI's report. The Attorney General informed on October 8, 2015, that that day the case file would be sent from SEIDO to SDHPDSC.<sup>196</sup> However, information received by the Commission indicates that as of early November 2015, certain proceedings were still being carried out at SEIDO, which indicates that the file was not transferred in its totality to SDHPDSC.<sup>197</sup> On a separate aspect of the case, the IACHR welcomed the publication of the case file on the Internet in October 2015.

152. In its observations to the draft of this report, the State indicated that on November 10, 2015, the Specialized Unit for Investigation and Search for the Ayotzinapa case started operations. This office depends of the Deputy Attorney General's Office for Human Rights, Crime Prevention and Community Services. The Unit is made up of a multidisciplinary team that includes public prosecutors, doctors, ministerial police and will be collaborating constantly with the GIEI.<sup>198</sup>
153. One of the pending points in the GIEI's work is the interview with the soldiers of the 27th Infantry Battalion who were present in Iguala on September 26 and 27, 2014, which the Group requested as of the first weeks of its work. To date, the Mexican government has not given its go ahead for the GIEI to interview these soldiers, offering instead the possibility of them to respond in writing. During the public hearing on October 20, 2015, the Mexican State reiterated that any proceedings involving the 27th Battalion would take place under the purview of the Public Ministry in charge of the case. In its observations to the draft of this report, the State stated that almost 50 members of that Batallion have given their official statements, and that there is full willingness on the part of the State to expand those statements, within the applicable legal framework.<sup>199</sup> In the above mentioned Public Hearing, the State underscored that the decision as to whether to allow members of the GIEI to interview soldiers is not up to military leaders, rather the President of the Republic, who is the supreme commander of the armed forces by constitutional mandate. The IACHR reiterated its call to the Mexican State to allow the GIEI experts to interview the soldiers of the 27th Infantry Battalion, as the Group has requested.

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<sup>196</sup> PGR Press Release "Attorney General Arely Gomez testifies before the Plenary of the Senate regarding the Third Government Report," October 8, 2015. Available in Spanish at: <http://www.gob.mx/pgr/prensa/com- pare-procuradora-arely-gomez-ante-pleno-del-senado-por-glosa-del-tercer-informe-de-gobierno>

<sup>197</sup> Press article published in The Sun of Chilpancingo, "SEIDO still in charge of the investigation of the Ayotzinapa case," November 6, 2015. Available in Spanish at: <http://elsoldechilpancingo.mx/?p=3169>

<sup>198</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>199</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

154. The IACHR expresses once again its appreciation for the Mexican State's openness to international scrutiny, and the GIEI's work in particular. The Commission is convinced that this openness and the cooperation agreements that have given rise to the GIEI's work, which are based on the requests made by the State and representatives of the victims' family members, are key to making progress in the protection of human rights in Mexico and to shedding light on the fate of 43 students from Ayotzinapa, as well as punishing the perpetrators. The IACHR agreed to extend the GIEI's mandate for six more months until April 30, 2016.<sup>200</sup>

## ii. "The Other Disappeared" in Iguala

155. Due to the search for the disappeared students of the Raul Isidro Burgos rural school in September 2014 and the national and international attention focused on Iguala, the families of other disappeared persons in Iguala and surrounding areas began sharing their stories. The Commission met with this group in Iguala. They call themselves "the other disappeared," because that's how "the press has dubbed them."

156. There are currently more than 400 families that meet and conduct their own searches for unmarked graves, with the hope of finding their families members – men, women, boys and girls – who have been missing since 2007. All of the cases have gone unpunished. They told the Commission that "people stay quiet out of fear of going missing. This still happens." The IACHR expresses its alarm over the information it has received indicating that 30 people of varying ages and sexes, with no apparent connection among them, disappeared on July 1, 2013 from several different places in Cocula. Their whereabouts are still unknown and there is no information on the investigation.

157. Sixty unmarked mass graves were found in the search for the students of Ayotzinapa. So far, 129 bodies have been found and only 16 have been identified.<sup>201</sup> The institutional inability to address this problem is why the families themselves are carrying out their own searches for unmarked graves in Iguala, in search of their missing family members. Since November 2014, 106 bodies have been found.<sup>202</sup> To date, only 7 have been officially identified.

<sup>200</sup> The decision adopted by the IACHR, based on its authority to monitor the situation of human rights in keeping with Article 106 of the Charter of the Organization of American States, Article 41 of the American Convention on Human Rights, and Article 18 of its Statute, as well as paragraph 10 of the above-referenced Technical Assistance Agreement.

<sup>201</sup> *Diario Excelsior*, *Localizan en Iguala 60 fosas clandestinas con 129 cadáveres en 8 meses* [60 Unmarked Graves with 129 Bodies Found in Iguala in 8 Months], July 28, 2015. Available in Spanish at: <http://www.excelsior.com.mx/nacional/2015/07/28/1036892>; *Diario la Jornada*, *Hallan 60 fosas clandestinas en Iguala en 8 meses* [60 Unmarked Graves Found in Iguala in 8 Months], July 26, 2015. Available in Spanish at: <http://www.jornada.unam.mx/ultimas/2015/07/26/hallan-60-fosas-clandestinas-en-iguala-en-8-meses-458-2.html>

<sup>202</sup> Press article published in *Diario El Universal*, "People from Guerrero find 106 bodies in one year" [*Guerrerenses hallan en un año 106 cuerpos*], November 18, 2015. Available at: <http://www.eluniversal.com.mx/articulo/estados/2015/11/18/guerrerenses-hallan-en-un-ano-106-cuerpos>

158. The brother of one of the disappeared persons told the IACHR in Iguala that he quit his job to work full time on searching for his brother's remains "because my mother is dying of grief and I have to find him." Going off of anonymous reports on the lands where the unmarked graves are located, the families described their search techniques. "We go out in a borrowed car and we go to the mountain and wherever the ground sinks a little, that could be a sign that someone is buried there. We stick this rod in and smell it and if it smells putrid, we know a body is there. [...] And that's the technology we use to find bodies, but the Attorney General's Office won't let us use the rod anymore," described the family member of a missing person to the IACHR on a piece of land where 18 bodies were found outside Iguala.
159. The IACHR reaffirms its particular concern over the insecurity in the Iguala Municipality. The testimonies it heard were categorical in signaling their concern over the creation of the new law enforcement team. According to testimonies, the new heads of security in the new local administration in Iguala had been investigated and interrogated over the disappearance of the Ayotzinapa students. The IACHR, therefore, urgently calls on the Mexican State to adopt protection measures for the families of the "Other Disappeared" in Iguala.

### iii. Status of the Disappearances that Occurred during the So-Called "Dirty War"

160. Several civil society organizations have reported to the Commission that the repression, culture of impunity and arbitrariness, and lack of justice that have existed in Guerrero since the time of the dirty war have allowed a context of widespread violence and serious human rights violations, similar to those of the past, to persist to the present day.<sup>203</sup> The IACHR is currently processing some of these cases.
161. From the late 1960's to the end of the 1970's, the Mexican State "applied a strategy of political and social containment, the so-called "dirty war," to contain and destroy real or perceived dissident groups."<sup>204</sup> Against this backdrop, numerous forced disappearances reportedly occurred,<sup>205</sup> in addition to the massacres and torture carried out by both military armed forces and civilian police.<sup>206</sup> A testimony

<sup>203</sup> IACHR, Public Hearing, *General Human Rights Situation in the State of Guerrero, Mexico*, March 20, 2015. In its observations to the draft of this report, the State noted that "the Mexican State has recognized its responsibility in the events that took place during the sixties and seventies in some federal states, and, in that sense, it has taken actions to investigate the crimes committed in that context and to make due reparations to the victims. There is no support for the affirmation that there is a problem of impunity that dates back to the dirty war." Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>204</sup> Report from the Mexican Commission to the United Nations Committee on Enforced Disappearances.

<sup>205</sup> See Inter-American Court of Human Rights. *Radilla Pacheco v. Mexico* case. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209, paragraph. 132. Available at: [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_209\\_ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_209_ing.pdf)

<sup>206</sup> IACHR, Public Hearing, *Challenges to the Work of the Truth Commission of the State of Guerrero*, March 27, 2013. See also the *Informe Histórico la Sociedad Mexicana, Fiscalía Especial para Movimientos Sociales y*

received by the IACHR in the Federal District indicated that: “In 1974, my father and four siblings were arrested. We’ve been searching for them ever since. We know that it was the Mexican State who took our parents and brothers and we seek justice.” In its Recommendation 26/2001, the CNDH examined 532 files that it received addressing the alleged disappearances that occurred during the decade of the 1970’s and early 1980’s. In 275 of the cases, forced disappearance could be demonstrated.<sup>207</sup> The CNDH report also confirmed actions involving torture and other cruel and inhuman treatment.<sup>208</sup>

162. As part of this report, the CNDH ordered a series of measures for the families of the victims, such as granting guarantees of non-repetition, the creation of a special prosecutor’s office to deal with these events, and compensation for damages and losses incurred by the surviving victims and their families. During the 2013 public hearing held by the IACHR, the then Assistant Secretary of Human Rights indicated that by accepting CNDH’s Recommendation 26/2001 and offering acts of public apology for the Rosendo Radilla Pacheco case before the Inter-American Court, the State accepted responsibility for the events.<sup>209</sup> The Inter-American Court issued a judgment in 2009 in the Rosendo Radilla Pacheco case against the Mexican State for his forced disappearance in 1974.<sup>210</sup>
163. As a result of the CNDH recommendation, the Special Prosecutor’s Office for Social and Political Movements of the Past [*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado*—FEMOSPP] was created, which ceased to operate in November 2006, leaving the cases unpunished.<sup>211</sup> During the public hearing on “General Human Rights Situation in the State of Guerrero, Mexico,” held in March 2015, the state indicated that with the FEMOSPP being defunct, any pending criminal proceedings under the charge of the special prosecutor would be referred to the General Coordination for Investigation. In January 2007, 527 preliminary investigations from this prosecutor’s office on inquiries into forced disappearances

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*Políticos del Pasado* [Historic Report on Mexican Society, Special Prosecutor’s Office for Social and Political Movements of the Past], Attorney General’s Office. 2006.

<sup>207</sup> The CNDH also determined that in 97 complaint files “there are few pieces of evidence that are themselves insufficient, in legal terms, to conclude the existence of forced disappearance or other human rights violations, which cannot be ruled out; and in 160 cases investigated, forced disappearance was not verified, but it should not be ruled out as an investigation hypothesis [...]” Recommendation 26/2001, issued November 27, 2001. Available in Spanish at: [http://www.cndh.org.mx/sites/all/doc/Recomendaciones/20-01/Rec\\_2001\\_026.pdf](http://www.cndh.org.mx/sites/all/doc/Recomendaciones/20-01/Rec_2001_026.pdf)

<sup>208</sup> The CNDH ordered a series of measures for the families of the victims, such as granting guarantees of non-repetition, the creation of a special prosecutor’s office to deal with these events, and compensation for damages and losses incurred by the surviving victims and their families. During the 2013 public hearing held by the IACHR, the then Undersecretary of Human Rights indicated that by accepting CNDH’s Recommendation 26/2001 and offering acts of public apology for the Rosendo Radilla Pacheco case before the Inter-American Court, [the State] accepted responsibility for the events. IACHR, Public Hearing, *Challenges to the Work of the Truth Commission of the State of Guerrero*, March 27, 2013.

<sup>209</sup> IACHR, Public Hearing, *Challenges to the Work of the Truth Commission of the State of Guerrero*, March 27, 2013.

<sup>210</sup> I/A Court H.R., *Radilla Pacheco v. Mexico* case. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 23, 2009. Series C No. 209.

<sup>211</sup> CNDH considerations before the United Nations Committee on Enforced Disappearances.

that occurred during the dirty war were filed. By March 2014, there were 247 inquiries filed for alleged forced disappearances, of which 121 were in Guerrero.<sup>212</sup>

164. As a result of the CNDH recommendation, the Truth Commission for the State of Guerrero (COMVERDAD) was created in March 2012. It was charged with investigating the human rights violations that occurred from 1969 to 1979 in the state of Guerrero. Despite the obstacles in fulfilling its mandate, on October 15, 2014, the COMVERDAD issued its final report with conclusions and recommendations.<sup>213</sup> In an IACHR public hearing, members of COMVERDAD indicated that the report concluded that there was a demonstrable context of widespread and systematic repression during the dirty war, in which there were serious violations to the rights to life, humane treatment, personal liberty, legal certainty, and the right to a fair trial.<sup>214</sup>
165. The Commission learned that in August 2015, a member of the armed forces was convicted in the first instance of forced disappearance, but the judgment was still not final. A family member of a disappeared person in Guerrero told the IACHR, “We are suffering from the same pain and, sirs, ours has been so cruel that we have spent more than 40 years searching for our loved ones. The government swallowed them up and we have never, hear me, stopped fighting. They must tell us what happened to them!” The wife of another person who was disappeared during the same period said, “The Attorney General’s Office has been sluggish and shown a lack of interest in solving these cases. We family members have acted as investigators, handing over evidence to the Attorney General’s Office.”
166. The Commission believes that the State has a pending debt in terms of serving justice to the victims of the so-called “Dirty War.” The IACHR reaffirms the content of its 1998 report, in which it recommended that the State conduct serious, expeditious, and impartial investigations into all of the cases of disappearances that were still unsolved and that it punish those responsible. It also urges the State to register the victims that were not included in the CNDH report, in order to

<sup>212</sup> In terms of comprehensive reparations for harm suffered by victims of human rights violations during the dirty war, the State indicated that it had initiated a second phase of the program outlined in Recommendation 26/2001, with the development of a diagnostic plan for psycho-social intervention in the Atoyac de Álvarez community, the general goal of which is to create a first point of contact with the target population. It has also implemented a comprehensive medical care program for 533 people. In terms of direct and indirect economic compensation for victims, the State noted that it had amended the purpose of the trust to meet human rights obligations, to include the payment of recommendations issued by the CNDH. It also indicated that it has approved payment in 44 new cases, the amounts of which were calculated according to the trust’s rules of procedure published on May 29, 2014. Individual checks were issued to each one of the family members of the victims. Out of the 44 cases, payment has been made in 31 cases, a partial payment in three cases, and payment is in processing for the remaining 10 cases. It bears noting that 95% of the payments issued were for the State of Guerrero. Since 2011, the payments for 152 of the 275 cases verified by the CNDH have been handled by the Secretariat of Interior. IACHR, Public Hearing, *General Human Rights Situation in the State of Guerrero, Mexico*, March 20, 2015.

<sup>213</sup> Among the obstacles mentioned are the following: restricted access to information, restricted access to the victim’s registry, safety of the Truth Commission team. See: IACHR, Public Hearing, *General Human Rights Situation in the State of Guerrero, Mexico*, March 20, 2015; IACHR, Public Hearing, *Challenges to the Work of the Truth Commission of the State of Guerrero*, March 27, 2013.

<sup>214</sup> IACHR, Public Hearing, *General Human Rights Situation in the State of Guerrero, Mexico*, March 20, 2015.

consolidate a registry of those persons disappeared during this period, as well as grant comprehensive reparations.

## b. Disappearance of Migrants

167. As part of the violence that has affected Mexico in recent years, one of the most worrisome phenomena has to do with the lack of attention to cases of disappearances, which is particularly serious for migrants, and the additional challenges that the families of disappeared migrants face in searching for their loved ones and accessing justice.<sup>215</sup> During its visit, the Commission again received information on the serious problem of migrants disappearing in Mexico and all along the migration routes leading to the United States.

168. During the last several years, the IACHR has followed closely the situation of migrants, asylum-seekers, refugees, victims of human trafficking and internally displaced persons in Mexico. Considering the multiple effects of the immigration phenomenon in Mexico, and particularly as a consequence of the serious situation of insecurity that migrants experience as they transit through the country, a delegation headed by the Rapporteur on the Rights of Migrants visited the country between July and August 2011.<sup>216</sup> In that opportunity, the delegation visited 7 cities in 5 federal states: Mexico City; Oaxaca and Ixtepeque, in the state of Oaxaca; Tapachula, in the state of Chiapas; Tierra Blanca and Veracruz, in the state of Veracruz; and Reynosa and San Fernando, in the state of Tamaulipas. The decision to visit these cities was based on the fact that in each of them different aspects of the immigration phenomenon in Mexico could be observed, and on the fact that some of these places are the main access routes for migrants and where the higher number of human rights violations against migrants had taken place, particularly kidnappings.<sup>217</sup> As a result of the visit and of the monitoring process that those situations have received during the last several years, on December 30, 2013, the IACHR approved the Report titled “*Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico.*”<sup>218</sup>

169. During the in loco visit carried out this year, in its meetings with groups of families of disappeared migrants and civil society organizations in Mexico City, Tenosique, and Saltillo, the Commission received information and testimonies on the various types of situations that led to the migrants losing contact with their families as they traveled to the United States. Some of these situations include: migrants who

<sup>215</sup> IACHR, *Hearing on Citizen Security and Human Rights in Mexico*, October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=en&session=123&page=2>. [Accessed September 19, 2014]. See also IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013.

<sup>216</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 7.

<sup>217</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 9.

<sup>218</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013.

had not communicated with their families; those in state custody under arrest at migrant holding centers; those being criminally prosecuted or serving a criminal sentence; those who did not communicate with their families due to homelessness or because they had been kidnapped, murdered, or disappeared by organized crime; or because they died as a result of inclement or extreme weather conditions on their way to the United States.<sup>219</sup> The Commission also received credible information on cases involving INM (National Institute for Migration) agents and law enforcement participating or collaborating with criminal organizations in the kidnapping of migrants, which constitute forced disappearances when these authorities do not provide information or deny that the incidents occurred.<sup>220</sup>

170. The Inter-American Commission takes note and echoes what the United Nations Committee on Enforced Disappearances said in February 2015, when it voiced its concern over the information recounting numerous cases of disappearances of migrants, including children, some of which were cases of forced disappearances. It also shares concern over the challenges that this dramatic situation poses in relation to the full respect of the rights to justice and truth, particularly given that the alleged disappeared persons typically do not reside in Mexico. To this end, the Committee recommended that Mexico – in cooperation with the countries of origin and destination, and with the participation of victims and civil society – redouble its efforts to prevent and investigate the disappearance of migrants, criminally prosecute those responsible, and properly protect informants, experts, witnesses, and defenders. It also recommended that the transnational mechanism for access to justice should guarantee: (a) the search for missing migrants and identification and restitution in cases in which remains are found; (b) *ante mortem* information gathering and entry into the Ante-Mortem/Post-Mortem Database; and (c) that the families of disappeared persons, regardless of their place of residence, are able to obtain information and participate in the investigations and search for the disappeared persons.<sup>221</sup>
171. The Mexican State has acknowledged the complex situation posed by disappeared, unlocatable migrants and unidentified remains.<sup>222</sup> The IACHR recognizes as progress the signing of the Collaboration Agreement for the Creation Commission of Forensic Experts to Identify Remains [*Convenio de Colaboración para la Creación de una Comisión Forense para la Identificación de Restos*], signed in 2013 between

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<sup>219</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 156.

<sup>220</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 161.

<sup>221</sup> United Nations Committee on Enforced Disappearances, *Concluding observations on the report submitted by Mexico, in keeping with Article 29, paragraph 1 of the Convention*. 23 and 24. February 11, 2015. Available in Spanish at: [http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_COB\\_MEX\\_19-564\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_COB_MEX_19-564_S.pdf)

<sup>222</sup> Interventions of the director of Human Rights and Democracy of the Secretariat of Foreign Relations [SRE], Ambassador Alejandro Negrín; Assistant Secretary for Legal Affairs and Human Rights of the Secretariat of the Interior [SEGOB], Mr. Max Diener Salas; and the Coordinator of Advisors to the General Directorate for Legal and International Affairs of the Office of the Attorney General [PGR], Mr. Leopoldo Velarde Ortiz, *IACHR hearing on the situation of missing migrants and unidentified remains in Mexico*. Washington, March 23, 2012. Audio and video available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=125> [Accessed September 19, 2014]



the PGR and civil society organizations, with the objective of collaborating with the PGR in the identification and determination of the cause of death of the remains found in clandestine graves in the states of Tamaulipas and Nuevo Leon. Since its creation, the Commission of Forensic Experts has identified the remains of 22 migrants.<sup>223</sup> See section on the State's Response.

172. In its observations to the draft of this report, the State indicated that the PGR has been working on the design of a Mechanism of Exterior Support that consists of a series of actions and measures to guarantee access to justice for migrants or their families who are in another country and who want to have access to authorities located in Mexico, as well as to carry out support action in the search of disappeared migrants and in the investigation of crimes committed against them, seeking to guarantee the rights of the victims. This mechanism will operate through the PGR's remote offices located at the Mexican embassies in other countries.<sup>224</sup> In addition, the State referred to the Integral Strategy for the prevention of the kidnapping of migrants, which was formally launched with the Frame Collaboration Agreement for the Prevention and Fight against the Kidnapping of Migrants, entered into by SEGOB, PGR and the CNDH.<sup>225</sup>
173. The Foundation for Justice and Democratic Rule of Law, in collaboration with committees of family members of disappeared migrants from Central America, at the date of this report's approval, had documented 106 cases of disappeared migrants with the Committee of Family Members of Deceased and Disappeared Migrants of El Salvador (COFAMIDE); 142 cases with the Committee of Family Members of Migrants of El Progreso, Honduras (COFAMIPRO); and around 10 cases of migrant victims of massacre with the Committee of Family Members of Migrants of Central Honduras (COFAMICEDH). The Foundation for Justice has also documented around 90 cases of family members of deceased and disappeared

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<sup>223</sup> Collaboration Agreement for the identification of remains found in San Fernando, Tamaulipas and Cadereyta, Nuevo León which will be carried out through a Forensic Commission, entered into by the Attorney General's Office, the Argentinean Team of Forensic Experts; the Committee of Relatives of Migrants who have Died or Disappeared from El Salvador; the Committee of Relatives of Migrants from El Progreso; the Foundation for Justice and the Democratic Rule of Law; the House of the Migrant from Saltillo, Coahuila; the Diocese Center for Human Rights Fray Juan de Larios A.C.; the Civil Association Mesoamerican Voices; Human Rights Center Victoria Diez, A.C.; and the National Forum for Migration in Honduras. Published in the Federal Official Gazette of the Federation on April 9, 2013. Available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5312887&fecha=04/09/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5312887&fecha=04/09/2013).

<sup>224</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>225</sup> According to the State, the Strategy contemplates five lines of action that have as a common objective to eradicate crimes against migrants in Mexico: i) establishing coordination through the signing of specific agreements with the states' government, aimed at implementing specific actions to address and support migrants who are victims of a crime; ii) implementing an operative plan with the collaboration of the Communication and Transportation Ministry and other instances, with the goal of dismantling organized crime groups who act throughout the migration routes; iii) establishing a communication plan to prevent, inform and create awareness, geared towards the Mexican population and migrants in the country, as well as to sending countries; iv) updating the process for the detention of kidnapers and completion of the investigations; v) install mechanisms for the integral attention to foreign victims. The State indicated that in this context, it incorporates the work of the civilian networks of support for migrants and the Human Rights Commissions. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

migrants from Guatemala and 22 cases of disappeared Mexican migrants. There are also 814 disappeared persons registered in forensic databases coordinated by the Argentine Forensic Anthropology Team, which correspond to 767 families.

174. The Commission observes with great concern that the disappearance of persons has become common practice, gravely impacting migrants and Mexicans crossing Mexico on their way to the United States, as well as Mexicans deported from the United States to certain border areas. Based on the information gathered, the Commission observes that the migrants kidnapped by organized criminal groups are frequently victims of physical, psychological, and sexual abuse, prostitution, human trafficking, sexual and labor exploitation, murder, and disappearance.
175. The IACHR reiterates that it recognizes the signing of the Agreement to Create a Commission of Forensic Experts to Identify Remains [*Convenio de Colaboración para la Creación de una Comisión Forense para la Identificación de Restos*] as a step forward. Said agreement was signed in 2013 between the PGR, the Argentine Forensic Anthropology Team, the Committee of Family Members of Deceased and Disappeared Migrants of El Salvador (COFAMIDE), the Migrant Shelter in Saltillo (Coahuila, México), Foundation for Justice and Democratic Rule of Law, Guatemalan National Working Group on Migration, the Association of Missionaries of San Carlos Scalabrinianos in Guatemala, the Fray Juan de Larios Diocesan Center for Human Rights, Meso-American Voices, and the Honduran National Forum for Migration (FONAMIH). The Forensic Commission's aim is to cooperate with the PGR to identify and determine cause of death using the remains of 72 murdered migrants who were found on August 23, 2010, in San Fernando (Tamaulipas), at least 193 remains found between April and May 2011 in mass unmarked graves in San Fernando (Tamaulipas), and 49 remains found on May 14, 2012, in Cadereyta (Nuevo León). Since its creation, the Commission of Forensic Experts has identified the remains of 22 migrants.
176. In this regard, as in its 2013 report, the Commission reiterates its recommendations to further develop the work of the Commission of Forensic Experts to Identify Remains in cases occurring along migration routes. It also recommends that the state adopt the necessary measures to create the Transnational Mechanism for Access to Justice for Migrants and their Families, as well as a federal Special Prosecutor's Office for Crimes of Violence against Migrants.
177. As regards disappeared and missing migrants and unidentified remains, the IACHR recommends that when remains and/or bodies are found that shows signs that they could be those of migrants, that the unidentified remains be preserved adequately. It also recommends not allowing the remains that are still being held by SEMEFOS (Forensic Medical Services) to be cremated or sent to mass graves. It recommends protecting remains already in mass graves from any further handling. With a view to identifying disappeared migrants and unidentified remains, the IACHR repeats its recommendation to implement a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Mexicans and Central Americans disappeared in Mexico with the forensic databases of disappeared migrants that have been developed throughout the region, like those of El Salvador, Guatemala, Honduras, the State of Chiapas, and

others that might be created. This national mechanism should be integrated with a similar regional mechanism that would expand the sharing of forensic information among the countries of Central and North America. Both mechanisms must include the participation of civil society organizations in their management.

178. The Commission was informed during its on-site visit of the imminent creation of a special prosecutor's office of the PGR to address crimes against migrants.

### c. Disappearances and Forced Disappearances of Women

179. The IACHR has closely followed the disappearances of women in Mexico for many years.<sup>226</sup> According to information received by the IACHR, the number of cases of disappearances and forced disappearances of women and girls take place in various parts of the country. This has sparked alarm in civil society, as evidenced by the requests for gender warning alerts in several states.<sup>227</sup> In keeping with information updated on April 30, 2015 regarding disappearances falling under state and local jurisdiction,<sup>228</sup> there were 7,060 women reported missing and disappeared since 2011.<sup>229</sup> Of these women, 1,170 disappeared in Tamaulipas, 1,007 in the State of México, 579 in Baja California, 549 in Nuevo León, 412 in Coahuila, 367 in Guanajuato, 333 in Puebla, 323 in Jalisco, 281 in Mexico City [Federal District], 224 in Chihuahua, 218 in Michoacán, 206 in Sinaloa, 173 in Sonora, 154 in Guerrero, 148 in Hidalgo, 143 in Veracruz, 124 in Aguascalientes, 111 in Tabasco, 100 in Oaxaca, 99 in Querétaro, 72 in Quintana Roo, 54 in Campeche, 42 in Durango, 42 in Zacatecas, 40 in Morelos, 24 in Yucatán, 21 in Colima, 19 in Chiapas, 12 in San Luis Potosí, 7 in Tlaxcala, and 2 in Baja California Sur.

<sup>226</sup> IACHR, *The situation of the rights of women in Ciudad Juarez, Mexico: The right to be free from violence and discrimination*, OEA/Ser.L/V/II.117, Doc. 44, March 7, 2003. Available at: <http://www.cidh.org/annual-rep/2002eng/chap.vi.juarez.htm>

<sup>227</sup> Amnesty International, *Civil Society Organizations Demand the State Stop Feminicide Violence*. April 29, 2015. Article published March 5, 2015 in *Lado B*, *Puebla supera al Estado de México en desaparición de mujeres* [Puebla Surpasses the state of Mexico in Number of Disappearances of Women]. Article published November 25, 2011 in *CNN Mexico*, *Las denuncias por desaparición de mujeres aumentan en 600% en un año* [Claims of Disappearances of Women Increase 600% in One Year]. Article published February 28, 2015 in *Plumas Libres*, *Desaparecen 400 mujeres jóvenes en estado de México*; [400 Young Women Disappear in the State of Mexico]. Article published June 24, 2015 in *Proceso*, *Búsqueda de desaparecidas en Edomex, entre torpezas y omisiones* [Search for Disappeared Women in Edomex, between Ineptitude and Omissions].

<sup>228</sup> Information on missing individuals provided by the General Attorneys' and Prosecutors' Offices in the states based on data from preliminary investigations, investigative files, or substantiated reports. See: Secretariat of the Interior, Office of the Executive Secretary for the National Public Security System, *Nota Metodológica Fuero Común* [Methodological Note on State and Local Jurisdiction], Database of National and Local Cases of Missing Persons. According to this Note, the database only includes registries of persons who, at the date of the note, were still missing, i.e. the total number of individuals that were reported missing at some point, minus the number of persons found. The registries are compiled, verified, and regularly updated based on search and recovery actions. As such, the statistics are constantly adjusted and do not reflect trends

<sup>229</sup> SEGOB, Press release from the General Directorate for Legal and International Affairs of the Office of the Attorney General, August 21, 2014.

180. According to information from the National Registry for Missing and Disappeared Persons, through June 30, 2015 on cases falling under federal jurisdiction (preliminary investigations initiated by the Attorney General's Office as of January 2014),<sup>230</sup> there were a total number of 125 women reported as disappeared or missing.<sup>231</sup> Of these 125, 33 were reported missing in Guerrero, 17 in Veracruz, 16 in the State of Mexico, 15 in Tamaulipas, 14 in the Federal District, 4 in Chihuahua, 3 in Morelos, 3 in Hidalgo, 3 in Tlaxcala, 2 in Coahuila, 2 in Nuevo León, 1 in Sinaloa, 1 in San Luis Potosí, 1 in Michoacán, 1 in Baja California, 1 in Guanajuato, 1 in Puebla, 1 in Tabasco, and 6 abroad.

181. The IACHR has addressed this serious problem in its work on Ciudad Juárez and cases like "Cotton Field" and Paloma Angélica Escobar Ledezma.<sup>232</sup> There are serious issues with the registering of disappeared women and girls, as well as the investigation, justice, and prevention of the disappearance of women. The IACHR expresses its profound concern over the lack of progress made in investigations into the disappearance of women and the deep divide between the laws and public policies adopted and the daily reality of women in Mexico.

182. In August 2012, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) recommended that the Mexican State develop an official systematic registry of forced disappearances, examine the criminal codes to classify forced disappearance as a crime, and simplify the existing procedures for activating the ALBA Protocol and Amber Alert Mexico to launch the search of disappeared women and girls without delay.<sup>233</sup> In March 2015, Mexico submitted a report to the CEDAW Committee, in which it presented the advances it had made in fulfilling the recommendations.<sup>234</sup> As regards the ALBA Protocol, the Mexican State informed the CEDAW Committee that [the protocol] "is an operational investigation mechanism for immediate coordination and reaction among federal, state, and municipal authorities in cases of missing women and girls."<sup>235</sup> The ALBA

<sup>230</sup> See: Secretariat of the Interior, Office of the Executive Secretary for the National Public Security System, *Nota Metodológica Fuero Federal* [Methodological Note on Federal Jurisdiction], Database of National Cases of Missing Persons.

<sup>231</sup> Secretariat of the Interior, Office of the Executive Secretary for the National Public Security System, *Registro Nacional de Datos de Personas Extraviadas o Desaparecidas* [National Registry of Missing or Disappeared Persons]

<sup>232</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma, et al., Mexico*, Merits (Publication).

<sup>233</sup> United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Mexico. Addendum. Information provided by Mexico on the follow-up to the concluding observations*, CEDAW/C/MEX/CO/7-8/Add.1, April 23, 2015.

<sup>234</sup> The State reported that the Law on the National Missing or Disappeared Persons Data Registry was published on April 17, 2012, and that since then, efforts had been made to ensure that the data received by the country's general attorney's and prosecutor's offices are updated and purged. Furthermore, it noted that, in 2013, the Missing Persons Search Unit was created inside the Attorney General's Office. United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Mexico. Addendum. Information provided by Mexico on the follow-up to the concluding observations*, CEDAW/C/MEX/CO/7-8/Add.1, April 23, 2015.

<sup>235</sup> The Special Prosecutor's Office for Women Victims of Crime (a body of the Chihuahua State Attorney General's Office) is charged with activating the ALBA Protocol. The Mexican State indicated that it had made adjustments to the ALBA Protocol to meet international standards on the matter, which have been

Protocol also has a Technical Coordination Group charged with strengthening the protocol.<sup>236</sup>

183. Regarding the forced disappearances of women, the United Nations Working Group on Enforced Disappearances lamented the lack of publicly available information on women victims of forced disappearances,<sup>237</sup> and therefore the importance of including a gender perspective in all measures taken by the State addressing the issue. The IACHR received information indicating that, even after the Cotton Field judgment, many aspects of investigations in cases of deaths and disappearances of women do not take into account a gender perspective. In particular, most cases in which public officials are implicated in possible criminal incidents are not investigated.<sup>238</sup>
184. The IACHR underscores that States must adopt measures to effectively protect individuals, groups, and communities at particular risk of disappearance, including women and girls.<sup>239</sup> The Inter-American Court ruled in *“Cotton Field” v. Mexico* that given the context of gender-based violence and the disappearance of women, the State has an “obligation of strict due diligence in regard to reports of missing women, with respect to search operations during the first hours and days.”<sup>240</sup> This requires exhaustive search activities and prompt immediate action by police authorities, prosecutors, and judicial officials by ordering, without delay, the necessary measures to determine the whereabouts of the victims or the place in

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implemented throughout the entire state of Chihuahua since 2013. United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Mexico. Addendum. Information provided by Mexico on the follow-up to the concluding observations*, CEDAW/C/MEX/CO/7-8/Add.1, April 23, 2015.

<sup>236</sup> United Nations Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined seventh and eighth periodic reports of Mexico. Addendum. Information provided by Mexico on the follow-up to the concluding observations*, CEDAW/C/MEX/CO/7-8/Add.1, April 23, 2015.

<sup>237</sup> United Nations, Press Release, Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico, March 31, 2011.

<sup>238</sup> In its observations to the draft of this report, the State refers to some advances in terms of sensibilization and visibilization of the gender perspective in the area of justice administration: the Supreme Court’s Acting Protocol to Judge with Gender Perspective, published in 2014, the purpose of which is to address the problems identified and the reparation measures ordered by the Inter-American Court in the cases of Cotton Field; Ines Fernandez Ortega and Valentina Rosendo Cantu, ralted to the practice of conventionality control by justice administrators. In addition, it stated that the Special Prosecutor’s Office for Crimes of Violence Against Women and Human Trafficking (FEVIMTRA), which is part of the PGR, published the Protocols for the Investigation of Femicide and Sexual Violence, which constitute guides and define guidelines with a gender perspective. The State also highlighted that the Inter-American Court of Human Rights, in the Cotton Field case, considered the creation of the “Alba Operation” and the “Alba Protocol” a positive step, as it was a way to provide greater attention to the disappearances of women in Ciudad Juarez and issued a series of parameters regarding the situations in which the protocol should be activated, which the Mexican State has taken into account. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Resolution of May 21, 2013, Supervision of Compliance with Judgment, paras. 89-91.

<sup>239</sup> IACHR, Press Release No. 98/15, *Forced Disappearances: Significant Progress and Major Challenges in the Region*, August, 28 2015.

<sup>240</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 283.

which they may have been retained.<sup>241</sup> Moreover, fulfilling this duty also requires officials in charge of receiving missing person reports to have “the capacity and sensitivity to understand the seriousness of the phenomenon of violence against women and the willingness to act immediately.”<sup>242</sup>

185. The Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women (Convention of Belém do Pará) establishes specific obligations in cases of gender-based violence and serves as an important source of obligations in cases of disappearances of women and girls. The IACHR has stated that the Convention of Belém do Pará establishes that the obligation to act with due diligence acquires a special connotation in cases of violence against women.<sup>243</sup> The IACHR has established among the most important principles, that the obligations of the States in cases of violence against women, includes the duty to investigate immediately. In addition, in order to conduct an investigation effectively, it should be directed at exploring all investigative lines, including indicia of gender-based violence, informing the family about the status and progress in the investigations. The IACHR has also found that the influence of discriminatory socio-cultural patterns can affect adversely the investigation of a case and the evaluation of the evidence gathered,<sup>244</sup> for which reason it is crucial not to apply and not to permit the application of stereotypes based on the character of the victim instead of the crime. Stereotypes in investigations are the result of the current situation of inequality and discrimination that many women face due to multiple factors interrelated to gender, such as race, age, ethnicity, socioeconomic conditions, among others.

186. The State has the duty to create adequate procedures for reporting disappearances, which should result in an immediate effective investigation within a few hours. The authorities should assume that the disappeared person has been deprived of liberty and is still alive until her fate is determined.<sup>245</sup> It bears noting that the Inter-American Court indicated in the Cotton Field case that the Mexican State must harmonize all its protocols, manuals, judicial investigation criteria, expert services, and delivery of justice used to investigate all crimes concerning the disappearance, sexual abuse, and murder of women, in keeping with the United Nations Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (known as the Istanbul Protocol), the United Nations Manual on the Effective Prevention and

<sup>241</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 283.

<sup>242</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 176.

<sup>243</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II. Doc. 68, January 20, 2007, para. 32.

<sup>244</sup> IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma, et al., Mexico*, Merits (Publication).

<sup>245</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 283.

Investigation of Extralegal, Arbitrary, and Summary Executions, and international standards on searching for disappeared people, based on a gender perspective.<sup>246</sup>

#### d. Disappearance of Children

187. The IACHR has received abundant information regarding the disproportionate effect that disappearances and forced disappearances have on children and adolescents. During its visit to Mexico in October 2014, the Rapporteurship on the Rights of Children received information that indicated an alarming increase in the number of children who have not been found.<sup>247</sup> According to information from the National Registry of Disappeared or Missing Persons, in Mexico there are more than 7,016 children and adolescents (between the ages of 0 and 17) who are disappeared, which represents 30% of the total number of disappearances.<sup>248</sup> According to information from the press, the State of Mexico registered, in 2014, 400 cases of disappeared adolescents, from the cities of Ecatepec, Tecamac, Chimalhuacan and Nezahualcoyotl.<sup>249</sup>

188. In its observations to the draft of this report, the State provided the following statistics: between January 1, 2012 and January 1, 2015, 15,668 persons were reported as missing, out of whom 3,677 were minors (2,365 girls and 1,312 boys), and the remaining 10,597 are adults (2,179 women and 8,148 men). The State indicated that in 1,394 there was no age given (321 females and 1,073 males).<sup>250</sup>

189. Another shortcoming observed is that when adults recruit children for organized crime, this is not classified as a crime in the criminal code. Furthermore, there are no effective prevention and protection policies for children in the most vulnerable situations.<sup>251</sup> Girls are also more heavily affected by disappearances, as evidenced

<sup>246</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 502.

<sup>247</sup> IACHR, *Rapporteurship on the Rights of Children Culminates Visit to Mexico*, October 20, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/125.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/125.asp)

<sup>248</sup> Of these, in 2012 there were 2,621 disappeared persons between the ages of 15 and 17, 1,712 of whom are women. This would indicate that 7 of every 10 disappeared adolescents between the ages of 15 and 17 are adolescent women.

<sup>249</sup> "Silent disappearance of 400 children-adolescents in Mexico State". Available in Spanish at: <http://www.etcetera.com.mx/articulo/recomendamos-silenciosa-desaparicion-de-400-ninas-adolescentes-en-edomex/32673/>; <http://www.insurgenteppress.com.mx/silenciosa-desaparicion-de-400-ni-nas-adolescentes-en-edomex/>

<sup>250</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>251</sup> CRC. *Concluding Observations on the State of Mexico*. 2015. Available at: [http://tbinternet.ohchr.org/\\_Treaties/CRC/Shared%20Documents/MEX/INT\\_CRC\\_COC\\_MEX\\_20804\\_E.pdf](http://tbinternet.ohchr.org/_Treaties/CRC/Shared%20Documents/MEX/INT_CRC_COC_MEX_20804_E.pdf); In its observations to the draft of this report, the State referred to the following: Title Seven of the Federal Penal Code, regarding crimes against health, provides that punishments applicable to the crimes contained in article 194 shall be increased by half in cases in which a minor is utilized to perpetrate any one of those crimes. In addition, Title Eight of the Federal Penal Code, regarding crimes against the free development of personality, provides that the crime of corruption constitute the act of forcing, inducing, facilitating, or procuring one or more persons under the age of 18 years to carry out any crime or be part of a criminal conspiracy. Said crime is also codified in the penal codes of the federal entities. In the framework of the National Program for the Social

by the fact that they account for approximately two-thirds of the total number of missing children.<sup>252</sup> The State must adopt specific measures to prevent these more frequent violations of girls' rights.

190. The IACHR recalls the duties of the State under the instruments of the Inter-American human rights system, particularly in the case of girls.<sup>253</sup> The Inter-American Court has indicated that children “have the same rights as all human beings [...] and also special rights derived from their condition, and these are accompanied by specific duties of the family, society, and the State.”<sup>254</sup> Furthermore, their condition demands special protection that should be understood as an additional right that complements all other rights that the Convention recognizes for each individual.<sup>255</sup> The State must, therefore, take special measures geared toward providing special protections for minors, with greater attention and responsibility, in keeping with the principle of the child's best interest.<sup>256</sup> The Court also noted that the prevalence of the best interest of the child must be understood as the need to satisfy the rights of children and adolescents, which obligates the State and affects the interpretations of all other rights of the Convention when a case concerns minors.<sup>257</sup> The State must pay special attention to the needs and rights of the alleged victims owing to their condition as girls who belong to a vulnerable group.<sup>258</sup>

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Prevention of Violence and Crime (PNPSVD), 2,500 formative actions have taken place in topics related to respect for girls and boys, prevention of bullying, culture and sport, de-naturalization of violence, prevention of mistreatment and abuse of children. In the same way, more than 270 cultural, sporting and academic events have taken place. The Program known as “Glories of Sport” has an integran focus on social prevention through football for at-risk youth between 13 and 15 years old. The Program was launched as pilot in 2013 with a total of 1,500 youth in 21 cities. In 2014, the Program grew considerably and included 8,560 young boys and girls in 54 cities in 29 states. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>252</sup> Available at: <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2014/Diciembre/13/4-823-En-seis-anos-500-mil-menores-desaparecidos-en-Mexico-ONG-s-PGR-solo-documenta-mil-385>

<sup>253</sup> See, e.g., IACHR, Report No. 51/13, Case 12.551, *Paloma Angélica Escobar Ledezma, et al.*, Mexico, Merits (Publication).

<sup>254</sup> I/A Court H.R., *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, para. 54.

<sup>255</sup> I/A Court H.R., *Case of González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Preliminary Exceptions, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 408.

<sup>256</sup> I/A Court H.R., *Case of the Gómez Paquiyauri Brothers*. Judgment July 8, 2004. Series C No. 110, paras. 124, 163-164, and 171; I/A Court H.R., *Bulacio Case*. Judgment September 18, 2003. Series C No. 100, paras. 126 and 134; and I/A Court H.R., *Case of the “Street Children” (Villagrán Morales et al.)*. Judgment November 19, 1999. Series C No. 63, paras. 146 and 191. Also, I/A Court H.R., *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, paras. 56 and 60.

<sup>257</sup> I/A Court H.R., *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 408. I/A Court H.R., *Juridical Status and Human Rights of the Child*. Advisory Opinion OC-17/02, August 28, 2002. Series A No. 17, paras. 56, 57, and 60. And I/A Court H.R., *Case of the Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005. Series C No. 130, para. 134.

<sup>258</sup> I/A Court H.R., *González et al. (“Cotton Field”) v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 408. CEDAW, General Recommendation 24: *Women and Health*, 20<sup>th</sup> period of sessions, A/54/38/Rev.1, 1999, para. 6, and I/A Court H.R., *Case of the*



191. This duty is reinforced by the unique vulnerability and exposure of girls to acts of violence, as recognized by the Convention of Belém do Pará. The Inter-American Court has indicated that in cases of violence against girls, the States must demonstrate that they have adopted effective measures to initiate a prompt search, activating all resources to mobilize the different institutions and deploy domestic mechanisms to obtain information to locate the girls rapidly and, once their bodies are found, to conduct the investigations and effectively and promptly prosecute and punish those responsible.<sup>259</sup>

## **B. Attacks on Life and Personal Integrity**

192. In this section, the IACHR analyzes situations in which life and personal integrity have been affected as a consequence of the violence, particularly extrajudicial executions, torture, and specific situations of concern. Extrajudicial executions, the generalized use of torture, and other cruel, inhuman and degrading treatments during the moments following the detention of a person and before they are taken before a justice authority, as well as the endemic character of impunity for these crimes, are of extreme concern to the IACHR.
193. The Commission also addresses the effects of violence on particular groups of the population, such as women, indigenous peoples and communities, LGBT persons, children and adolescents, migrants, and persons deprived of liberty.

### **1. Extrajudicial Executions**

194. During the current administration, the executive branch reports in its third Government Report issued September 1, 2015 on the total number of homicides (intentional and non-intentional) that there have been more than 94,000 murders since the current administration took office: 34,903 in 2013, 32,631 in 2014, and 27,047 through September 2015.<sup>260</sup> Regarding intentional homicides, according to official figures for December 2012 through July 2015, 48,000 such homicides were reported.<sup>261</sup> According to press reports, the Executive Secretariat of the National

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*Girls Yean and Bosico v. Dominican Republic*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 8, 2005. Series C No. 130, para. 134.

<sup>259</sup> I/A Court H.R., *González et al. ("Cotton Field") v. Mexico*. Preliminary Objections, Merits, Reparations, and Costs. Judgment November 16, 2009. Series C No. 205, para. 410.

<sup>260</sup> Statistics Annex to the Third Government Report. Available [in Spanish] at: [http://cdn.presidencia.gob.mx/~tercerinforme/3\\_IG\\_2015\\_ANEXO-ESTADISTICO.pdf](http://cdn.presidencia.gob.mx/~tercerinforme/3_IG_2015_ANEXO-ESTADISTICO.pdf). See also: Informe de víctimas de homicidio, secuestro y extorsión, al 20 de octubre de 2015. [Report on victims of homicide, kidnapping, and extortion as of October 20, 2015] Executive Secretariat of the National Public Security System.

<sup>261</sup> An investigative report from the "Zeta" weekly newspaper questioned this number and considers that the number could be as high as 57,400. *Diario Aristegui Noticias*, Investigative report from the "Zeta" weekly newspaper: *Van más de 57 mil asesinatos en los que va del sexenio; gobierno oculta 9mil* [More than 57,000 murders so far during this term; Government hides 9,000]; *Expresión Libre*, 32 months: 57,410 murders, August 30, 2015. Available in Spanish at: <http://www.expresionlibre.org/main/escogidas-de-proceso/32-meses-57410-asesinatos>. Entravision, *During the Peña Nieto administration, 57 thousand people have been murdered in Mexico*, August 31, 2015. Available in Spanish at: <http://noticias.entravision.com/washington->

System for Public Safety reported 33,347 preliminary investigations for intentional homicide between December 1, 2006 and July 31, 2009, and 47,988 preliminary investigations and victims of intentional homicide between December 1, 2012 and July 31, 2015.<sup>262</sup>

195. It bears noting that, according to the National Institute of Statistics and Geography (INEGI), the 2013 homicide rate was 19.5 per 100,000 inhabitants and the 2014 homicide rate fell to 16.43 per 100,000 inhabitants.<sup>263</sup> The IACHR welcomes this reduction and hopes to see the downward trend continue. The World Health Organization (WHO) believes that a rate equal to or higher than 10 homicides per 100,000 inhabitants constitutes epidemic levels of violence. The figures provided by the Executive Secretariat of the National System for Public Safety are, therefore, worrisome for the states with the highest homicide rates like Guerrero (41.59), Sinaloa (33.33), and Chihuahua (29.36), which are much higher than the national average,<sup>264</sup> and the vast majority of the cases remain in impunity.

196. In April 2014, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heynes, expressed concern in his report on Mexico that the country “continues to experience alarming levels of violence. Extremely violent incidents, particularly violations of the right to life, continue to take place at an intolerable level.”<sup>265</sup> According to information provided to the Special Rapporteur on extrajudicial, summary or arbitrary executions by the Mexican authorities, 102,696 intentional homicides were committed from December 2006 to November 2012.<sup>266</sup> Given the high homicide levels, the Special Rapporteur referred to a “systematic and endemic impunity.” According to the CNDH, only around 1 to 2 per cent of crimes, including homicides, currently lead to conviction.

197. In a press conference following his recent visit to Mexico in 2015, the UN High Commissioner stated that, “For a country not engaged in a conflict, the estimated

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[dc/2015/08/31/durante-sexenio-de-pena-nieto-57-mil-personas-han-sido-asesinadas-en-mexico/](http://www.proceso.com.mx/?p=414092); *Proceso, Peña's 32 months: 57,410 murders*, August 29, 2015. Available in Spanish at: <http://www.proceso.com.mx/?p=414092>. Sin embargo, *The deaths of Peña reach 57,899 in 20 months; 14,000 more than in the same period for Calderon: Zeta*, August 25, 2015. Available in Spanish at: <http://www.sinembargo.mx/25-08-20-14/1097265>; *El Siglo de Durango, 57,410 homicides so far in the Peña administration*, September 1, 2015. Available in Spanish at: <http://www.elsiglodedurango.com.mx/noticia/612419.van-57410-homicidios-en-el-sexenio-de-pena.html>

<sup>262</sup> *Diario Aristegui Noticias*, Investigative report from the “Zeta” weekly newspaper: *Van más de 57 mil asesinatos en los que va del sexenio; gobierno oculta 9mil* [More than 57,000 murders so far during this term; Government hides 9,000].

<sup>263</sup> National Institute of Statistics and Geography. Available in Spanish at: [http://www.inegi.org.mx/sala-deprensa/boletines/2015/especiales/especiales2015\\_07\\_4.pdf](http://www.inegi.org.mx/sala-deprensa/boletines/2015/especiales/especiales2015_07_4.pdf)

<sup>264</sup> Executive Secretariat of the National System for Public Safety, Rates per 100,000 inhabitants, through October 20, 2015. Available in Spanish at: <http://secretariadoejecutivo.gob.mx/docs/pdfs/tasas%20por%20cada%20100%20mil%20habitantes/Tasas092015.pdf>

<sup>265</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 8.

<sup>266</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, p. 5. Available at: [http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A\\_HRC\\_26\\_36\\_Add.1\\_ENG.DOC](http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC)

figures are simply staggering: 151,233 people killed between December 2006 and August 2015, including thousands of transiting migrants.”<sup>267</sup>

198. Certain recent statistics are not encouraging. According to the most recently available information, an average of 51 to 52 people have been violently killed per day in 2015. This is a 6% increase over 2014.<sup>268</sup> In the capital city, 642 preliminary investigations were recorded for intentional homicide (for 679 murders) in the first nine months of 2015 – a 20% increase over the first nine months in 2014.<sup>269</sup> As the Commission has mentioned on other occasions, in addition to the high homicide rate in Mexico and the lack of adequate, complete statistical information on the prevalence of extrajudicial executions in the country, another concern is that – regardless of upward or downward changes in trends – the vast majority of these crimes go unpunished.
199. In an October 2015 public hearing regarding reports of extrajudicial executions in Mexico, civil society organizations noted that the National Defense Ministry (SEDENA) had reported that between 2007 and 2012, during alleged acts of “aggression against military personnel,” 158 members of the military and 2,959 “alleged civilian attackers” died.<sup>270</sup> They indicated that for every member of the military killed, 18.7 civilians died. According to other official figures gathered by the organizations, between January 13, 2007 and April 5, 2014, 3,967 civilians were killed during alleged confrontations. They also reported that 209 members of the military died between January 13, 2007 and October 30, 2014 (meaning 19 or more civilians died for every military death).<sup>271</sup>
200. The organizations indicated that the Navy (SEMAR) reported a total of 140 confrontations in 2012, 2013, and 2014, during which there were 296 civilian and 14 navy deaths reported, in addition to 10 civilian and 60 Navy members wounded. According to the total figures cited by the SEMAR, there were 21.1 civilian deaths per Navy death. The organizations also indicated that, although members of the Navy were 4.3 times more likely to be injured than killed, civilians were 29.6 times more likely to die than survive an injury. According to civil society organizations, in its breakdown of these totals for specific confrontations, the

<sup>267</sup> Statement of the UN High Commissioner, Zeid Ra’ad Al Hussein, on his visit to Mexico, October 7, 2015.

<sup>268</sup> Executive Secretariat of the National System for Public Safety, *Rates for intentional homicide, kidnapping, extortion, and car theft, 1997-2015*. Available in Spanish at: [http://secretariadoejecutivo.gob.mx/docs/pdfs/-/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSEXTRV\\_092015.pdf](http://secretariadoejecutivo.gob.mx/docs/pdfs/-/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSEXTRV_092015.pdf); Press release published on *AnimalPolítico.com*, “Por primera vez en cuatro años, repuntan los homicidios en México” [For the First Time in 4 Years, Homicides Increase in Mexico], October 22, 2015. Available in Spanish at: <http://www.animalpolitico.com/2015/10/por-primera-vez-en-cuatro-anos-repuntan-los-homicidios-en-mexico/>

<sup>269</sup> Executive Secretariat of the National System for Public Safety, *Rates for intentional homicide, kidnapping, extortion, and car theft, 1997-2015*. Available in Spanish at: [http://secretariadoejecutivo.gob.mx/docs/-/pdfs/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSEXTRV\\_092015.pdf](http://secretariadoejecutivo.gob.mx/docs/-/pdfs/cifras%20de%20homicidio%20doloso%20secuestro%20etc/HDSEXTRV_092015.pdf); Press release published on *AnimalPolítico.com*, “Por primera vez en cuatro años, repuntan los homicidios en México” [For the First Time in 4 Years, Homicides Increase in Mexico], October 22, 2015. Available in Spanish at: <http://www.animalpolitico.com/2015/10/por-primera-vez-en-cuatro-anos-repuntan-los-homicidios-en-mexico/>

<sup>270</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015. See: [www.sede-na.gob.mx/derechos-humanos/agresiones-contra-personal-militar](http://www.sede-na.gob.mx/derechos-humanos/agresiones-contra-personal-militar)

<sup>271</sup> IACHR, *Public Hearing, Reports of Extrajudicial Executions in Mexico*, October 20, 2015. Annex 1, “Data on fatality rate,” request answered by SEDENA, Page 0000700003715, March 5, 2015.

SEMAR only accounted for 109 alleged confrontations that resulted in 193 civilian and three Navy deaths, i.e. 64.3 civilian deaths for every Navy death. In the last three months of 2014, the SEMAR reported 25 civilian deaths, with no information on any Navy casualties or civilian injuries.<sup>272</sup>

201. No figures are available from SEDENA for the remainder of 2014 or for 2015 to date. The National Defense Ministry reported that, “since April 6, 2014, such statistics have no longer been kept as this is no longer necessary for this federal executive agency, given that [...] the Ministry’s teams, after fending off an attack, merely preserve the scene until the competent authorities arrive and then dissociate themselves from the ensuing investigation processes.”<sup>273</sup> This would seem to contradict the stipulations of the *Manual del Uso de la Fuerza de Aplicación Común a la Tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force], which indicates that following an attack, a “detailed report of the event where force was employed is to be prepared pursuant to the provisions issued by both Ministries in this regard.”<sup>274</sup> For its part, SEMAR indicated that it removes the information from its archives after 1-3 years.<sup>275</sup> In addition to the possible non-compliance with the Mexican norms, the fact that the armed forces are not accountable regarding their fatal actions is extremely serious, since it could make it more likely that there will be excessive use of force, as well as contribute to impunity in human rights violations.
202. During a public hearing before the IACHR on Reports of extrajudicial executions in Mexico, civil society organizations indicated that SEDENA and SEMAR troops were involved in more than 3,500 armed clashes between December 1, 2006 and December 31, 2014.<sup>276</sup> According to data furnished by these two institutions, more than 4,000 civilians were killed by Mexico’s armed forces during that same period. The IACHR notes that between 2006 and April 2013, 39 of the 52 recommendations issued by the CNDH in connection with violations of the right to life were addressed to SEDENA and SEMAR. This means that three out of four CNDH recommendations having to do with the right to life were directed at the armed forces.<sup>277</sup> These figures heighten the concern expressed by the IACHR that the armed forces are involved in citizen-security tasks, which should be the competence of civil security forces.

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<sup>272</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015. Request answered by SEMAR, Page 0001300092314. December 18, 2014. Request answered by SEMAR, Page 0001300006415. February 24, 2015.

<sup>273</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad, Menos enfrentamientos, más opacidad* [Fatality Index, Fewer Clashes, Less Transparency], 2015. *Nexos Magazine*. The document in question was issued by the National Defense Secretariat, No. 4277, January 7, 2015.

<sup>274</sup> Article 15(c)(iii) of the *Manual del Uso de la Fuerza y Aplicación Común a las Tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force].

<sup>275</sup> Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutierrez, *Índice de Letalidad, Menos enfrentamientos, más opacidad* [Fatality Index, Fewer Clashes, Less Transparency], 2015. *Nexos Magazine*.

<sup>276</sup> Information furnished in the context of the Public Hearing on “*Reports of Extrajudicial Executions in Mexico*,” October 20, 2015.

<sup>277</sup> United Nations. *Report of the Special Rapporteur on extrajudicial, summary, or arbitrary executions, Christof Heyns, Mission to Mexico, A/HRC/26/36/Add.1*, April 28, 2014, para. 22.

203. In this connection, the IACHR expressed its concern over the fact that Mexico has no federal laws that speak specifically to the use of public force.<sup>278</sup> In 2014, a Joint Armed Forces Manual on the Use of Force was published; this Manual contains a number of provisions that raise concern.<sup>279</sup> Despite the fact that the armed forces' involvement in citizen-security undertakings should be temporary and strictly exceptional in nature, it would seem that the aforementioned Manual normalizes the presence of the military in such tasks, which runs counter to inter-American standards on this matter and is a cause of concern for the Commission.<sup>280</sup>
204. In a Public Hearing at the IACHR, the State informed that it has the obligation to create the conditions of security for its citizens. Part of this entails addressing the criminal phenomenon consisting of sophisticated, well-organized groups with significant resources with which they acquire specialized weaponry in almost any place along the border, and are capable of penetrating police corporations, primarily the local ones, and which are involved, in addition to drug trafficking, in extorsions, kidnappings, human trafficking, organ trafficking, trespassing, etc. As a result, the capacity of these groups makes it necessary to have federal institutions temporarily present in certain areas in support of the legitimately constituted governments.<sup>281</sup>
205. Thus, it stated that federal forces, in accordance with the legal framework that regulates them and the jurisprudence of the Supreme Court of Justice, act in support of civilian authorities in accordance with the General Law of the National Public Safety System, and the organic laws of the institutions mentioned above, always respecting human rights and abiding by international protocols regarding the legitimate use of force.<sup>282</sup>
206. Pursuant to the Joint Armed Forces Manual on the Use of Force, members of the military may use force to prevent the imminent commission of a crime and to protect against an attack, among other circumstances. Along these lines, the IACHR has been informed that the armed forces frequently attempt to tamper with crime scenes to make it appear that any incident involving civilians was the result of a confrontation. In such cases, the administration of justice process could be used to make a determination as to whether or not these deaths constituted extrajudicial executions or were the result of an excessive and disproportionate use of lethal force. Nevertheless, high rates of impunity for all crimes continue to exist with

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<sup>278</sup> Information provided by the Secretariat of the Interior in the context of the visit of Inter-American Commission on Human Rights, "*Information on Human Rights Requested from the Mexican State by the IACHR.*" Annex (Archives of the Commission).

<sup>279</sup> *Manual del Uso de la Fuerza, de aplicación común a las tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force], published in the Official Gazette of the Federation on May 30, 2014. Available in Spanish at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5346857&fecha=30/05/2014](http://dof.gob.mx/nota_detalle.php?codigo=5346857&fecha=30/05/2014)

<sup>280</sup> The Manual stipulates, for example, that "members of the armed forces may employ force to: A. Fulfill a duty by acting in support of civilian authorities; (...) C. Prevent the imminent or real commission of a crime; [and] D. Defend legally protected assets from an attack." *Manual del Uso de la Fuerza, de aplicación común a las tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force], published in the Official Gazette of the Federation on May 30, 2014, Article 9. Available in Spanish at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5346857&fecha=30/05/2014](http://dof.gob.mx/nota_detalle.php?codigo=5346857&fecha=30/05/2014)

<sup>281</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>282</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

respect to police and military operations, and it is thus impossible to obtain reliable figures and statistics these days in connection with how serious the problem of the illegal deprivation of life by State security forces really is.

207. During the visit, the State presented information on the different guidelines that exist in Mexico to regulate the use of law enforcement.<sup>283</sup> At the level of the individual states, in 2008, the Federal District [Mexico City] passed a law that regulates the use of force by the Federal District's law enforcement bodies;<sup>284</sup> in 2013 the state of Hidalgo passed a law to prevent, punish, and eliminate torture and the excessive use of force by officials in charge of enforcing the law; in 2013, the state of Morelos passed a law to regulate the use of force by members of police institutions in the public security system; in 2011, the state of Oaxaca passed a law, and the regulation therefor, that regulates the use of force by members of law enforcement agencies; in 2015, the state of Puebla passed a law to protect human rights and to regulate the legitimate use of force by members of police institutions; in 2015, the state of San Luis Potosí passed a law that establishes principles for the use of law enforcement by the State.<sup>285</sup> At the federal level, however, no general law exists on the legitimate use of force, specifically as it refers to detentions and protests.<sup>286</sup> In its observations to the draft of this report, the State stated that the

<sup>283</sup> General Guidelines for Regulating the Use of Law Enforcement by Police Institutions of the Public Security Secretariat's deconcentrated agencies; Guidelines on the legitimate use of force that are to be observed by Federal Police agents; Directive regulating the use of force by members of the Mexican army and air force in the exercise of their functions in support of civilian authorities and in enforcing the Federal Law on Firearms and Explosives which should govern the actions of the Federal Police; Secretarial Agreement 27, by which the Directive regulating the legitimate use of force by navy personnel in the exercise of their functions in support of upholding the rule of law was reformed and enhanced. Information provided by the Mexican State during the *in situ* visit to Mexico. The State likewise referenced the *Manual del Uso de la Fuerza de aplicación común a las tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force] and the National Human Rights Commission's (CNDH) General Recommendation No. 12/2006 on the illegal use of force and firearms by public officials or employees responsible for enforcing the law.

<sup>284</sup> Available at: <http://www.aldf.gob.mx/archivo-f9c89a9ff39e8126800e6180ee86e224.pdf>

<sup>285</sup> Information furnished by the Government of Mexico during the *in situ* visit. The Mexican government also provided the Regulation for the Law on the Civilian State Police Force of the State of Nuevo León, published in 2015, as well as the following agreements: Aguascalientes – Guidelines on the legitimate use of force to be followed by State Police agents in the state of Aguascalientes (2014); Federal District [Mexico City] – Agreement 16/2013 via which the Federal District's Public Security Secretariat Protocol on Police Action in the Case of Crowd Control (2013) was issued; Agreement 17/2013 via which the Federal District's Public Security Secretariat Protocol on Police Action when Detaining Offenders and Alleged Perpetrators (2013) was issued; Agreement 52/2013 via which the Federal District's Public Security Secretariat Protocol on Police Action when Detaining Adolescents in Trouble with the Law (2013) was issued; Official letter OC/002/2014 via which instructions were issued to police and secretariat officials with respect to detentions entailing the use of force (PGJE DF 2014); Guerrero – Agreement 002/2011 via which the Public Security and Civil Protection Secretariat's Guidelines for regulating the use of force by and official weapons of the State Police (2011) were issued. The Mexican government further provided the Regulations on the use of force by public law enforcement agencies for the municipalities of San Miguel de Allende, Jerécuaro, and San Luis de la Paz, Guanajuato.

<sup>286</sup> The State has made reference to the Cooperation Agreement in the Framework of Respect for Human Rights between SEGOB, SEDENA, SEMAR, the then Ministry of Public Security, and the PGR, which requires the authorities responsible for the use of force to promote, respect, and protect and guarantee human rights within the parameters of their jurisdiction, in keeping with the principles of universality, inter-dependence, indivisibility, and progressivity. The Agreement includes protocols on the legitimate use of force, on detaining and bringing individuals before the judicial authorities, and on the chain of custody. See, United

actions of the members of public forces in terms of use of force should be subject to the provisions of article 1, 21 (paragraph 9) of the Constitution; article 6 of the General Law of the National Public Safety System; article 3, 15 and 19 (section V) of the Law of the Federal Police; article 185, last paragraph, of the Regulations of the Law of the Federal Police; the Federal Law to Prevent and Punish Torture. In addition, it indicated that on April 23, 2012, it published on the Official Gazette of the Federation Agreement 04/2012 of the then-Secretary of Public Safety, which issued the general guidelines for the regulation of the use of force by Police Institutions and decentralized entities of the Secretariat of Public Safety. The objective of said agreement was to establish general norms for the use of public force by police institutions and the decentralized, administrative bodies of SEGOB.<sup>287</sup>

208. In addition, the State indicated that at the interior of the National Security Commission (CNS), the General Commissioner of the Federal Police has issued several circulars addressed to the Division Chiefs<sup>288</sup> regarding “instructions for the members of the Federal Police,” so that in the exercise of their functions they adjust their actions to the principles of legality, objectivity, efficiency, professionalism, honesty and respect for the individual guarantees and human rights recognized in the Constitution; and so that in the carrying out of their operations related to prevention and fight against crime, in cases in which they detain individuals, they are immediately turned over to the corresponding Public Prosecutor’s Office, abstaining from inflicting on them cruel, inhuman or degrading treatments, as well as instructing them not to use the facilities of the Federal Police as detention centers. According to the State, all of this is in accordance with “Agreement 05/2012, which establishes the general guidelines to turn over persons or goods to the competent authorities,” published on April 23, 2012. There is also the “Bill of Rights applicable to persons when they are detained,” which establishes all the rights of detained persons.<sup>289</sup>
209. The State also informed that, currently, the Federal Police is carrying out functions of a procedural police, in connection with the implementation of the new Criminal Justice System, for which it relies on the “Protocol for the Security of Courts,

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Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 30.

<sup>287</sup> The State informed the Commission that the Agreement 04/12 provides that the use of public force shall be strictly to the extent required by the exercise of the functions of the police institutions, and shall be aimed at neutralizing and controlling conduct that generates violence and that tend to cause damage to the integrity of other people or of members of the federal police corps. In addition, it provides that the legitimate use of force shall be used also to re-establish public order caused by collective disturbances and by tumultuous acts that generate violence or damages to third parties, property and the physical integrity of other people, as well as situations that create a serious alteration of public order and peace. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>288</sup> Nos. PF/OCG/0014/2013; PF/OCG/0015/2013; and PF/OCG/0016/2013. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>289</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

approved at the 38<sup>th</sup> Session of the National Council of Public Safety.” In addition, the Federal Police, through the Division of Federal Forces, which is in charge of maintaining and re-establishing public order and peace, has issued the “General Guidelines for the establishment of permanent actions to ensure the integrity and ethical behavior of public servants in the performance of their jobs, charges or commissions,” “Systematic Operation Procedures (Implementation of Reaction Operations and immediate alert)” and “Operations of Restoration of Public Order.” The State indicated that, in addition to the foregoing, the Federal Police is subject to the “Basic Principles related to the Employment of Force and Firearms by Public Servants in Charge of Enforcing the Law,” approved at the Eighth Conference of the United Nations on Crime Prevention and Treatment of Criminals, in Havana, Cuba, on September 7, 1990, as well as the Principles for the Protection of all persons subject to any form of detention or prison. Similarly, the authorities in charge of public safety in Mexico are obligated to comply with the provisions contained in international treaties to which the Mexican State is a party.<sup>290</sup>

210. The IACHR welcomes the fact that in February 2013, the Secretariat of the Interior signed a Cooperation Agreement with the International Committee of the Red Cross (ICRC) for technical assistance in developing a law on the legitimate use of law enforcement and for the development of studies, protocols, and technical advisory services in connection with the search for and locating of disappeared persons, as well as for providing psychosocial support and assistance to their families. As of the time this report was prepared, the IACHR had no knowledge of any draft law having to do with the legitimate use of force.
211. Regarding judgments related to extrajudicial executions, the IACHR was informed of one conviction for an extrajudicial execution in Nuevo León—though it was not definitive—in which the charge was “violence against individuals causing intentional homicide.”<sup>291</sup> The IACHR welcomes the fact that the Truth Commission of the State of Oaxaca managed to secure the first indictment for an extrajudicial execution in Mexico in September 2015.<sup>292</sup> The IACHR will follow this case, which is being prosecuted in the local courts, but which could be transferred to the federal court system.

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<sup>290</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also IACHR, Public Hearing, Reports of Extrajudicial Executions in Mexico, October 20, 2015.

<sup>291</sup> Public hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015. “Case of Anáhuac. Rocío Elías Garza and Juan Carlos Peña” in Annex 3, “EXTRAJUDICIAL EXECUTIONS. Recent or emblematic cases of extrajudicial executions documented by CADHAC.” The organizations indicated that in that same case, the judge decided to acquit two other members of the military, one of the crime of planting evidence, and the other of the crime of breach of the common duties required of all those who are compelled to serve in the army.

<sup>292</sup> Oaxaca Truth Commission, Press Release – *Indictment for the Extrajudicial Execution of Arcadio Hernández Santiago*, September 8, 2015. The indictment was handed down before the Trial Court for Civil and Criminal Matters of Ocotlán de Morelos, in the state of Oaxaca.



## 2. Torture

212. The prevalence of the practice of torture is also alarming in Mexico. The Mexican State reported that in April 2015, the PGR had 2,420 torture-related investigations underway and that there had only been 15 convictions for torture at the federal level.<sup>293</sup> According to information requests, the PGR reported a more than twofold increase in the number of reports of torture from 2013 to 2014: from 1,165 to 2,403.<sup>294</sup> Given the number of reports in 2014, the PGR reported that it had conducted 185 expert medical/psychological evaluations as part of its investigation of possible cases of torture.<sup>295</sup> For its part, the CNDH reported having received, between 2006 and 2015, more than 10,200 complaints of arbitrary detention, and more than 9,200 of torture or other cruel, inhuman, or degrading treatment. During his visit to Mexico in 2014, the UN Rapporteur on torture

<sup>293</sup> The Mexican State reported the following 15 convictions for torture at the federal level: (1) Case file 92/2003, Fourth District Court, state of Chiapas, April 19, 2014; (2) Case file 90/2004, Seventh District Court, state of Oaxaca, February 1, 2006; (3) Case file 90/2004, Seventh District Court, state of Oaxaca, January 19, 2007; (4) Case file 22/2006, Fourth District Court, state of San Luis Potosí, August 16, 2011; (5) Case file 35/1999, Second District Court, state of Morelos, October 26, 2006; (6) Case file 35/1999, Second District Court, state of Morelos, March 2, 2007; (7) Case file 35/1999, Second District Court, state of Morelos, April 20, 2007; (8) Case file 35/1999, Second District Court, state of Morelos, November 15, 2012; (9) Case file 35/1999, Second District Court, state of Morelos, May 21, 2013; (10) Case file 175/2012, Seventh District Court, state of Chihuahua, July 16, 2014; (11) Case file 34/2013, Fourth District Court, state of Chihuahua, March 13, 2014; (12) Case file 7/2013, Ninth District Court, state of Sonora, May 22, 2014; (13) Case file 27/2013, Fourth District Court, state of Michoacán, February 11, 2015; (14) Case file 27/2014, Fourth District Court, state of Michoacán, February 11, 2015; and (15) Case file 27/2014, Fourth District Court, state of Michoacán, February 11, 2015. The last three cases on the list furnished by the State list the same case number, same court, and the same date, prompting the IACHR to believe that these involve three individuals convicted in the same case. Information provided by the Mexican State in the context of the *in situ* visit to Mexico from September 28 to October 2, 2015, “Visit by the Inter-American Commission on Human Rights to Mexico: Information from the Mexican State,” Mexico City, September 25, 2015, Section 1.3, page 15. According to press reports, over the past 10 years there have allegedly been just five convictions for torture at the federal level and eight at the state level. News article published on *ElEconomista.com*: *En estados, sólo ocho condenas por tortura en 10 años* [In the states, just eight convictions for torture in 10 years], published on September 4, 2015, citing official figures obtained by the Miguel Agustín Pro Juárez Human Rights Center (PRODH). Available in Spanish at: <http://eleconomista.com.mx/sociedad/2015/09/04/estados-solo-ocho-condenas-tortura-10-anos>

<sup>294</sup> Data collected by Amnesty International via a request for information and included in the report entitled “Paper Promises, Daily Impunity: Mexico’s Torture Epidemic Continues,” October 2015, p. 5. Available at: <https://www.amnesty.org/es/documents/amr41/2676/2015/es/>; For its part, the National Commission of High Courts of Justice of the United Mexican States (CONATRI) provided information to the IACHR that indicates that between 2011 and 2015, nine trials were held and 14 judgments issued for the crime of torture in the states where torture is classified as a crime. The IACHR does not have enough information to determine why there might be more judgments than trials, with the understanding that a trial is the conclusion of a criminal prosecution. *In situ* visit of the Inter-American Commission on Human Rights, meeting with the National Commission of High Courts of Justice of the United Mexican States, Annex containing the Compendium of Statistics from the High Courts of Justice.

<sup>295</sup> Data collected by Amnesty International via a request for information and included in the report entitled “Paper Promises, Daily Impunity. Mexico’s Torture Epidemic Continues,” October 2015, p. 13. Available at: <https://www.amnesty.org/es/documents/amr41/2676/2015/es/>; The number of special examinations conducted is of the utmost importance since, according to this same report, an agent of the Public Prosecution Ministry indicated that if there is no special examination with positive results, they cannot move forward and file charges of torture, p. 15.

concluded, after visiting a series of detention facilities and collecting data on a national level, that torture and abuse are widespread in the country.<sup>296</sup> The Subcommittee for Prevention of Torture determined that during the first hours of detention, detainees “are at highest risk of torture or cruel, inhuman, or degrading treatment.”<sup>297</sup> The Commission was able to corroborate these conclusions during its *in situ* visit, during the visit of the Rapporteurship for Persons Deprived of Liberty in September 2015, and through the information received in the process of preparing this report. Furthermore, the Commission received information indicating that official records on torture and ill-treatment across the country are under-inclusive and are inaccurate, contradictory, and incomplete, which makes it impossible to get an accurate picture of the real magnitude of the problem.<sup>298</sup>

213. In its observations to the draft of this report, the State indicated that “the high number of open investigations related to the probable commission of the crime of torture is explained by the fact that the Supreme Court has issued criteria related to the obligation of ministerial authorities to investigate, as a matter of course, any possible act of torture, even when it has not been reported by the probable victim. The foregoing is based on the principle of exhaustion of investigations, established in article 94 of the Federal Code of Criminal Procedure. In that sense, the fact of having a high number of ministerial investigations open and a low number of convictions should not be used to infer that there is a problem of impunity.”<sup>299</sup>
214. The Commission concurs with other international organizations in noting that in Mexico, torture frequently occurs between the time someone is detained and before that individual is brought before a judge.<sup>300</sup> The types of torture consist of a combination of punches, kicks with boots, and beatings with sticks and the butts of weapons to different parts of the body; insults, threats, and humiliation; electric shocks, generally to the genitals; witnessing or hearing others being tortured; dry asphyxiation and waterboarding; and even forced nudity and sexual torture.<sup>301</sup> In

<sup>296</sup> UN, *Report of the Special Rapporteur on torture, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3*, December 29, 2014, paras. 25 and 76.

<sup>297</sup> Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment to Mexico, Doc. CAT/OP/MEX/1, May 31, 2010, para. 144.

<sup>298</sup> Amnesty International, “*Paper Promises, Daily Impunity: Mexico’s Torture Epidemic Continues*,” October 2015. Available at: <https://www.amnesty.org/es/documents/amr41/2676/2015/es/>

<sup>299</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. See also IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>300</sup> A study conducted by the Human Rights Center of the Free Law School of Monterrey examined the recommendations issued by the State Human Rights Commission of Nuevo León in 2013. Of the 149 recommendations issued, 110 correspond to some violation of personal integrity. Of these 110, 43 have to do with cases of torture. Report submitted to the IACHR during the *in situ* visit.

<sup>301</sup> For further information on methods of torture, see: UN, *Report of the Special Rapporteur on torture and other cruel, inhuman, or degrading treatment or punishment, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3*, December 29, 2014, paragraph 26; Amnesty International, “*Out of Control: Torture and other ill-treatment in Mexico*,” 2014; Human Rights Watch, “*Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico’s ‘War on Drugs’*,” 2011, p. 33; Human Rights Center of the Free Law School of Monterrey, *Informe sobre la Situación de la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes en Nuevo León* [Report on the Status of Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment in Nuevo León], Mexico, 2014.

addition, the lack of *ex officio* investigations of reports of torture is one of the reasons torture is able to continue. The Mexican State should adopt a Single National Registry of detained persons that provides details on the authority and individual responsible for a detention as well as on the chain of command for custody of the detainee, thereby enabling a comprehensive investigation and ensuring due diligence in cases of reports of torture.

### 3. Specific Situations of Concern

215. The events that transpired between 2014 and 2015 warrant particular attention; they have included reports of grave human rights violations perpetrated by the Federal Police, the armed forces, and the Navy. Below is a brief summary of several of these cases.

#### a. Tlatlaya, Mexico State

216. On June 30, 2014, 22 people allegedly tied to drug trafficking were killed in a warehouse in the community of “Cuadrilla Nueva,” in the municipality of Tlatlaya, in the south of Mexico State, following a clash with members of the Mexican Army. A number of these individuals had reportedly been detained and subsequently executed extrajudicially by the soldiers. In this respect, and despite what was later discovered about these events, the National Defense Secretariat initially indicated that the army soldiers had been forced to open fire because they were attacked.
217. The main witnesses to the operation and the events that occurred include a soldier who was wounded and three rescued women who were initially considered victims of kidnapping and were later released. On October 1, 2014, charges of homicide were reportedly brought against three of the eight soldiers being investigated in this case. On October 10, 2014, the Inter-American Commission granted precautionary measures to protect the life and integrity of Ms. Clara Gómez González and her family.<sup>302</sup> On October 21, 2014, the National Human Rights Commission (CNDH) issued Recommendation 51/2014, in which it determined the existence of evidence that would appear to indicate that members of the military had arbitrarily deprived 15 individuals—who had already surrendered in Tlatlaya—of their lives following a clash that lasted between 5 and 10 minutes. In addition, the surviving women had allegedly been victims of torture, mistreatment and sexual intimidation in an attempt to get them to admit they were members of the criminal organization and so they would not talk about what they had seen.<sup>303</sup>

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<sup>302</sup> IACHR, Resolution No. 30/2014, Precautionary Measure No. 423-14 of October 10, 2014, Clara Gómez González et al., Mexico.

<sup>303</sup> On November 6, 2014, SEDENA publicly reported that it had accepted the CNDH’s recommendation: despite “not agreeing with some of the indications contained in that recommendation, [SEDENA] has made the decision to accept it out of a special interest to help establish the facts, and should it be determined that any

218. The State informed the Commission that on October 29, 2014, investigation number PGR/SEIDO/UEITA/174/2014 was formalized, and through it formal charges were brought against seven members of the Mexican Army as alleged perpetrators of the crime of unlawful exercise of public office; against two members of the Mexican Army for their potential responsibility in the commission of the crimes of abuse of authority, aggravated homicide, and unlawful alteration of the crime scene and evidence related to the crime, and against one member of the Mexican Army for his potential responsibility in the commission of the crime of covering-up, under the hypothesis of not attempting to prevent the consummation of a crime. The matter was under the jurisdiction of the Fourth District Court for Federal Criminal Matters in Mexico State, based in the city of Toluca, under file number 81/2014. The State informed that on October 30, 2014, the court issued an arrest warrant, which was executed on October 31, 2014, against the seven potential perpetrators mentioned above.<sup>304</sup>
219. According to information provided by the State, on August 6, 2014, criminal charges were brought against two women for their potential responsibility in the commission of the crime of illegal possession of weapons and ammunition. In addition, investigation number PGR/SEIDO/UEITA/136/2014 was opened to continue with the investigation lines regarding other members of the criminal group self-described as “La Familia Michoacana,” who were mentioned in the ministerial declaration of the two women who were charged.<sup>305</sup>
220. In June 2015, the Miguel Agustín Pro Juárez Human Rights Center issued a report in which it revealed that the orders the soldiers had received, according to the official operations document, were to “operate en masse during the night and to ease activities during the day so they could take down criminals in hours of darkness.” The report in question further confirms that up until then, the PGR had initiated criminal prosecutions against seven members of the military for the murder of eight victims instead of the 22 individuals identified or even the 15 confirmed by the CNDH.<sup>306</sup>

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member of the military engaged in conduct that runs contrary to the law, to military virtues, and to our vocation of service, such individual will be punished in accordance with the law.”

<sup>304</sup> Information provided by the Mexican State in the contest of the in loco visit to Mexico between September 28 and October 2, 2015, “Visit of the Inter-American Commission on Human Rights to Mexico: Information of the Mexican State,” Mexico City, September 25, 2015; Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>305</sup> Information provided by the Mexican State in the contest of the in loco visit to Mexico between September 28 and October 2, 2015, “Visit of the Inter-American Commission on Human Rights to Mexico: Information of the Mexican State,” Mexico City, September 25, 2015; Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>306</sup> This has been corroborated publicly. See, for example, the final report on the activities of the Chamber of Deputies’ Plural Working Group to assist the competent authorities in investigating the events that transpired in the municipality of Tlatlaya, state of Mexico, on June 30, 2014, which states that: “The PGR asserted that only eight of the individuals who died could have been deprived of their lives arbitrarily.” A copy of the report can be found at: <http://gaceta.diputados.gob.mx/Black/Gaceta/Anteriores/62/2015-/abr/20150421-1/-ComunicacionOficial-3.html>

221. During a public hearing before the IACHR in October 2015, the petitioners indicated that four of the soldiers prosecuted in the civilian courts had been released because of violations of due process.<sup>307</sup> During that same hearing, the State indicated that the aforementioned orders to “take down criminals” must be considered in the context of the whole document, which, according to the State, contains other calls to respect human rights.<sup>308</sup> It specifically stated that “taking down criminals” means reducing the crime rates and not executing people.<sup>309</sup> The Commission believes that, despite the alleged calls for soldiers to respect human rights, the events that occurred in Tlatlaya reflect the fact that the so-called order to “take down criminals in hours of darkness” had concrete consequences.
222. The IACHR likewise profoundly laments the statement made by the Ministry of National Defense to a national media outlet in October 2015 in which he indicated that no human rights violations had been committed in Tlatlaya, even though the criminal prosecution is still underway. In an interview with a media outlet, the Minister of National Defense stated the following:
- “... The soldiers are in jail for military crimes and civilian crimes, there is still no decision by the authority, which is the judge, that says that we are guilty or that we are not, and I would suggest, I would ask that first, the trial be concluded to define whether there is any responsibility. And if there is, well then they should proceed according to the law. We will continue supporting our people. I believe what they have said, and we will wait for the corresponding judge to issue the final decision....<sup>310</sup>”
223. The Commission reminds the Mexican State that it is of the utmost importance that judicial authorities are able to conduct their investigations and conclude their criminal prosecutions independently and without external interference of any kind, especially when it comes to matters that might constitute serious human rights violations. The IACHR calls on the Mexican authorities to refrain from making statements that presuppose the outcome of an investigation.

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<sup>307</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015. See also, news article, *Juez Federal libera a 4 militares por caso Tlatlaya* [Federal Judge releases four members of the military in the Tlatlaya case], October 5, 2015. Available in Spanish at: [http://www.milenio.com/policia/-liberacion\\_militares\\_tlatlaya-militares\\_vinculados\\_tlatlaya-caso\\_tlatlaya\\_0\\_604139816.html](http://www.milenio.com/policia/-liberacion_militares_tlatlaya-militares_vinculados_tlatlaya-caso_tlatlaya_0_604139816.html)

<sup>308</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>309</sup> IACHR, Public Hearing, *Reports of Extrajudicial Executions in Mexico*, October 20, 2015.

<sup>310</sup> News article published by Televisa, *Cienfuegos: the Army reduced by 40% the number of human rights complaints* [*Cienfuegos: Ejército redujo 40% las quejas de derechos humanos*], October 7, 2015. Available at: <http://noticieros.televisa.com/mexico/1510/cienfuegos-ejercito-redujo-40-ciento-quejas-derechos-humanos/>; See also video of the interview available at: <https://www.youtube.com/watch?v=w6GjDkgDeKg>. News article published on *Vanguardia.com.mx*: “*En Tlatlaya, militares dispararon en defensa propia: Cienfuegos*” [In Tlatlaya, the military fired in self defense: Cienfuegos], published on October 8, 2015. Available in Spanish at: <http://www.vanguardia.com.mx/articulo/en-tlatlaya-militares-dispararon-en-defensa-propia-cienfuegos>

## b. Apatzingán, Michoacán

224. A report published on April 19, 2015<sup>311</sup> provides an account of the acts of violence that transpired between civilians and members of the Federal Police at two points on January 6, 2015 in Apatzingán, in the state of Michoacán. The journalistic investigation that reconstructs the events based on 39 recorded statements, photos, and videos, points to the alleged extrajudicial execution by federal agents of at least 16 unarmed civilians, most under the age of 20, who were holding a sit-in in front of the city hall in Apatzingán because they had allegedly been fired by the former federal security commissioner in Michoacán, Alfredo Castillo Cervantes, without compensation or pay.
225. In the framework of the attributes ascribed to it under Article 41 of the American Convention, the IACHR requested information from the State about the events in question. The State indicated that the protesters had used firearms.<sup>312</sup> Specifically, the State indicated that the reason the Federal Police had shown up in the early morning of January 6 was because they had received an anonymous phone call reporting an armed group engaged in a protest. In this regard the Mexican government assured the Commission that when the Federal Police arrived at the scene, they were surprised with gunfire and two police agents were wounded.<sup>313</sup>
226. In its observations to the draft of this report, the State indicated that because of the events that took place in the morning hours of January 6, 2015, the PGR initiated investigation number AP/PGR/MICH/M-III/008/2015, which took over the investigation started by the Attorney General's Office of the State of Michoacan. During the events, 44 people were arrested. Criminal charges were brought against

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<sup>311</sup> See, e.g., Federal pólice, authors of massacre in Apatzingán, [Policías federales, autores de masacre en Apatzingán], published in *El Economista* on April 19, 2015, available in Spanish at: <http://eleconomista.com.mx/sociedad/2015/04/19/policias-federales-autores-masacre-apatzingan-proceso>; The report also appeared in news outlets such as *El Seminario*, *Aristegui Noticias*, *Proceso* and *Univisión*.

<sup>312</sup> Communication of the Mexican State, Note OEA01742, Request of Information based on Article 41 of the American Convention on Human Rights. Reports of alleged massacre in Apatzingan, May 21, 2015.

<sup>313</sup> The State indicated that the presence of Federal Police personnel in the municipality of Apatzingan was due to the Agreement for Federal Support in Security for the State of Michoacan, entered into on January 13, 2014, and is part of the Michoacan Plan, which is under the charge of the Commission for the Security and Integral Development of Michoacan, created by presidential decree on January 15, 2014, and which has as its objective the implementation of necessary actions to strengthen security and integral development of the state, as well as to foster social cohesion and harmonious living among its citizens. As a result, federal forces carry out actions in this sense in 27 municipalities in the state. As a result of those actions, the State pointed to results that have benefited the community, such as: direct communication between citizens and authorities to deal with matters of security, the recovery of public spaces, the development of social programs to address citizens' demands, the development of a strategy to promote confidence between society and the authorities, the deactivation of criminal groups in the region, decrease in the number of high-impact crimes, the passing of armed civilian groups, through a recruitment program, to a new rural force. According to the State, the "G250 Group" was created, which had been made up of civilians who had as their objective participating in security roles in the municipality. When federal authorities dismantled the criminal targets, the dissolution of this group was initiated through a disarmament process. The State indicated this decision lead to opposing views by different members of the group. Some people agreed to be part of the disarmament process, while others were against it. Communication of the Mexican State, Note OEA01742, Request of Information based on Article 41 of the American Convention on Human Rights. Reports of alleged massacre in Apatzingan, May 21, 2015.

six for the possible commission of the crimes of attempted homicide, assault and possession of a weapon for the exclusive use of the Army. The State informed the Commission that five of the accused are facing the process outside of jail, and only one of them is facing the process in pre-trial detention. Regarding the other 37 people who were detained, the Judge from Fifth District ordered their release.<sup>314</sup>

227. The State likewise indicated that the respective tests of use of weapons by those killed and wounded had been conducted and the results were positive. The State likewise submitted a list of 34 weapons and rounds seized that morning. Based on the information received, it can be noted that the ruling issued by District Judge Five determined there was no key proof to indicate who had been carrying the weapons confiscated during the detention and that the number of people was not consistent with the number of weapons seized.<sup>315</sup>
228. Regarding the events that took place in the morning of January 6, 2015, the State informed the Commission of a number of proceedings undertaken, including the application of the sodium rhodizonate chemical test, taking of statements, ministerial inspections, and various forensic reports. Nine people who were killed and three people who were injured tested positive for the presence of lead. The State also indicated that it applied the sodium rhodizonate test to 43 members of the Federal Police, 12 of whom tested positive. Consequently, the Internal Affairs Unit of the Federal Police is currently investigating the events occurred on January 6, 2015.<sup>316</sup>
229. For several civil society organizations, the events in Apatzingán represent one more case of undue use of lethal force as well as a cover up by the authorities to prevent anyone from learning the truth about the facts; for this reason they continue to denounce deficiencies in the investigation. As of the date of adoption of this report, the events that transpired in Apatzingán are still being investigated.

### **c. Tanhuato, Michoacán**

230. On May 22, 2015, following a clash between federal forces and an alleged criminal group, 43 people (42 civilians and one Federal Police agent) died at the Rancho del Sol, at the border between the municipalities of Tanhuato and Ecuandureo, Michoacán.<sup>317</sup> According to the State's version, this was a confrontation. However, according to media reports, there is some debate about the facts. For example, photographs and statements from locals appear to indicate possible acts of torture,

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<sup>314</sup> Communication of the Mexican State, Note OEA01742, Request of Information based on Article 41 of the American Convention on Human Rights. Reports of alleged massacre in Apatzingan, May 21, 2015.

<sup>315</sup> Communication of the Mexican State, Note OEA01742, Request of Information based on Article 41 of the American Convention on Human Rights. Reports of alleged massacre in Apatzingan, May 21, 2015.

<sup>316</sup> Communication of the Mexican State, Note OEA01742, Request of Information based on Article 41 of the American Convention on Human Rights. Reports of alleged massacre in Apatzingan, May 21, 2015.

<sup>317</sup> "42 presuntos criminales y un policía mueren en enfrentamiento en Tanhuato" [Forty-two alleged criminals and a police officer die in a clash in Tanhuato], *CNN*, May 2015. Additional information available at: <http://mexico.cnn.com/nacional/2015/05/22/se-registra-enfrentamiento-en-tanhuato-michoacan>

extrajudicial executions, crime scene tampering, and the planting of weapons. There was reportedly confirmation that more than 70% of the victims had been shot in the back of the neck at point-blank range, and also that one of the victims had not died from a bullet wound, but rather had been beaten to death.<sup>318</sup> The bodies were also said to have been moved and the weapons that were allegedly found on them had magazines of different models and thus could not have been used in combat.<sup>319</sup> In addition, according to press reports, 11 of the men killed had two things in common: They hailed from a poor neighborhood called Infonavit 5 in Ocotlán, Jalisco and their bodies showed signs of torture.<sup>320</sup> According to media reports, the relatives of one of those killed—an alleged member of the Jalisco Nueva Generación Cartel—indicated that after examining the photographs of the bodies, they saw visible burns and broken limbs. Local community members likewise assert that the bodies of their children came back castrated, with marks on their fingers, and in some cases they were missing teeth and an eye.<sup>321</sup> The PGR has taken over the investigation.<sup>322</sup>

231. In the three cases described, the authorities' first version—without an investigation having been done—was that the deaths of civilians were the result of clashes. However, statements and evidence point to the alleged involvement of federal authorities and members of the armed forces in events that would appear to constitute cases of extrajudicial executions, tampering with crime scenes in order to present the situations as if they had been a clashes, and irregularities in the investigations.

232. Human Rights Watch (HRW) documented this type of situation in 2011. Out of a sample of 24 documented extrajudicial executions, HRW determined that in the majority of the cases, there was overwhelming evidence that members of security forces—specifically, the Army—had tampered with the crime scenes following the crime in order to manipulate or destroy evidence. According to HRW:

[...] Rather than question official reports—many of which are marred by inconsistencies and challenged by witness accounts—prosecutors accept security forces' reports as fact ...The lack of reliable evidence is particularly

<sup>318</sup> “Massacre in Ecuandureo: They tortured them, they mutilated them...” *El Proceso*. More information available at: <http://www.proceso.com.mx/?p=405841>

<sup>319</sup> “PGR expert reports confirm an extrajudicial execution in Ecuandureo.” *El Proceso*. More information available at: <http://www.proceso.com.mx/?p=412265>

<sup>320</sup> *Animal Político*, “11 de los 43 muertos en Tanhuato presentaban signos de tortura, dicen familiares al *Washington Post*” [Relatives tell the *Washington Post* that 11 of the 43 dead in Tanhuato showed signs of torture], May 3, 2015. Available in Spanish at: <http://www.animalpolitico.com/2015/05/11-de-los-43-muertos-en-tanhuato-presentaban-signos-de-tortura-dicen-familiares-al-washington-post/>; *Washington Post*, “Residents in a Mexican neighborhood miss the cartel that protected them,” May 30, 2015. Available at: [https://www.washingtonpost.com/world/the\\_americas/residents-in-a-mexican-neighborhood-miss-the-cartel-that-protected-them/2015/05/29/049537de-032f-11e5-93f4-f24d4af7f97d\\_story.html](https://www.washingtonpost.com/world/the_americas/residents-in-a-mexican-neighborhood-miss-the-cartel-that-protected-them/2015/05/29/049537de-032f-11e5-93f4-f24d4af7f97d_story.html)

<sup>321</sup> *Animal Político*, “11 de los 43 muertos en Tanhuato presentaban signos de tortura, dicen familiares al *Washington Post*” [Relatives tell the *Washington Post* that 11 of the 43 dead in Tanhuato showed signs of torture], May 3, 2015. Available in Spanish at: <http://www.animalpolitico.com/2015/05/11-de-los-43-muertos-en-tanhuato-presentaban-signos-de-tortura-dicen-familiares-al-washington-post/>

<sup>322</sup> PGR Preliminary Investigation No. PGR/SEIDO/UEIDCS/255/2015.



troubling given the evidence, that the cases we examined are not isolated ones but examples of a more pervasive practice.<sup>323</sup>

233. The IACHR reminds the Mexican State that the standards of the Inter-American System have established that when considering actions to be taken in cases where the use of force is essential, such force should be applied in a manner consistent with the principles of legality, absolute need, and proportionality. In all cases where civilians are wounded or killed by the police or the military, the Mexican State must urgently conduct diligent and impartial investigations in order to establish the facts and determine the applicable criminal responsibility. In the interest of transparency, the Commission calls on the State to reinstate the statistics on the number of civilian deaths, per civilian wounded.

234. The IACHR urges the Mexican State to implement the measures necessary to ensure that all police authorities and law enforcement authorities in general are subject to effective accountability structures that include internal and external oversight systems.

## 4. Impact on Particular Groups

### a. Women

235. The Commission has received information indicating that women in Mexico, as in other countries, continue to be the victims of certain crimes at rates higher than men. Data from INEGI indicate a higher percentage of female victims compared with male victims in the crimes of simple rape (82%), human trafficking (81%), sexual abuse (79%), domestic violence (79%), offenses equivalent to rape (71%), other crimes against the family (56%), and other crimes against sexual freedom and security (83%).<sup>324</sup> It has also received information indicating that incidents of gender-based violence continue to be reported in a large number of the country's regions. The violence and attacks against the life and physical integrity against women are some of the reasons why civil society has requested the declaration of an Alert of Gender Violence Against Women (AVGM) on different occasions.<sup>325</sup> The Commission also notes with concern the allegations of sexual violence, especially against women in detention and the reports of assaults, killings and acts of harassment against female human rights defenders and journalists.<sup>326</sup>

<sup>323</sup> Human Rights Watch, *Neither Security nor Rights: Killings, Torture, and Disappearances in Mexico's 'War on Drugs'*, November 2011, pp. 174-75.

<sup>324</sup> National Institute of Statistics, Geography, Public Security and Justice, Registered Victims, accused and sentences, *Víctimas registradas en averiguaciones previas iniciadas and carpetas de investigación abiertas, por tipo de delito según sexo 2012 (Porcentaje)*

<sup>325</sup> Amnesty International (Mexico), *Organismos de la sociedad civil exigen al Estado frenar la violencia feminicida*, April 29, 2015.

<sup>326</sup> National Network of Human Rights Defenders in Mexico, *Agresiones contra defensoras de derechos humanos and mujeres periodistas en México*, Information for the UN Human Rights Committee on the situation of

236. To address gender-based violence in the country, the Mexican State, spurred on by civil society organizations and recommendations of international bodies, has enacted a series of laws, regulations, institutions and mechanisms.<sup>327</sup> One such mechanism is the "alert on gender violence" set out in Article 22 of the General Law on Women's Access to a Life Free from Violence, which is defined as "a set of emergency governmental measures to confront and eradicate violence against women in a given territory, whether perpetrated by individuals or by the community itself", and its main objective is to ensure the safety of women, the cessation of violence against them, and to eliminate inequalities produced by a legislation that breaches human rights.<sup>328</sup> In order to achieve that, the State should (i) establish an inter-institutional and multidisciplinary group with gender perspective to appropriately follow-up; (ii) implement preventive actions of security and justice, to confront and defeat femicide violence; (iii) create special reports about the areas and the patterns of indices of violence against women; (iv) assign all necessary budgetary resources to react to the contingencies of gender violence alerts; and (v) publicize the reason for the gender violence alert, and the geographic area encompassed by the measures to be implemented.<sup>329</sup>
237. The issuance of gender violence alerts is the competence of the federal government through the Ministry of the Interior, and is notified to the Executive branch of the state where it is issued.<sup>330</sup>
238. According to the General Law on Women's Access to a Life Free from Violence, a declaratory Alert on Gender Violence against Women (AVGM) must be issued

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human rights defenders and women journalists in Mexico - 111th session (July 7-25, 2014), April 25, 2014; Miguel Agustín Pro Juárez Human Rights Center, Mexican Commission for the Defense and Promotion of Human Rights, Human Rights Center of the Mountain "Tlachinollan" and Associates for Justice, *Rompiendo el Silencio: La obligación de erradicar la tortura sexual a mujeres en México*, November 24, 2014.

<sup>327</sup> In its observations to the draft of this report, the State indicated that the General Law on Women's Access to a Life Free from Violence was published in February 2007 with the objective of establishing the legal and administrative guidelines through which the State coordinates, at the three levels of government, in terms of prevention, attention, sanction and eradication of violence against women. The State informed that this law was amended on January 15, 2013, with the following amendments: (i) in the chapter on Femicide Violence, it added a specific reference to the sanctions established in article 325 of the Federal Penal Code; (ii) it reduced the term to issue protective orders from 24 to 8 hours, and it established the immediate implementation and execution of emergency protective orders; and (iii) it incorporated the Ministry of Labor and Social Prevision as a member of the National System. The State also informed the Commission that each of the 32 states in the country has its own state Law on Women's Access to a Life Free of Violence. In addition, 29 of those states already have the corresponding regulation. The states of Campeche, Michoacán and Tamaulipas are in the process of adopting it. According to the provisions of the respective laws on Women's Access, each federal state has the obligation to install a local system to Prevent, Punish and Eradicate Gender Violence against Women. To date, all 32 states have their own state system. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>328</sup> The legislation establish that in order to comply with the objective of a gender alert declaration, it shall: i) establish an interagency, multidisciplinary group with a gender perspective to follow-up; ii) implement security and justice preventive measures, to confront and put an end to femicide violence; iii) prepare special reports on the area and the behavior of indicators of violence against women; iv) allocate budget resources necessary to address the contingency warning of gender violence against women, and v) make public the grounds for the gender violence alert, as well as the territorial scope covered by the measures to be implemented. Article 23 of the General Law on Women's Access to a Life Free from Violence.

<sup>329</sup> Article 23 of the General Law on Women's Access to a Life Free from Violence.

<sup>330</sup> Article 25 of the General Law on Women's Access to a Life Free from Violence.

when the following conditions are met: i) common crimes against women's lives, liberty, integrity and security, breaching the social peace in a given territory and the request by society; ii) a similar grievance impeding the full exercise of women's human rights; and iii) at the request of human rights organizations at the national level or of the federal entities, civil society or international organizations.<sup>331</sup> In its observations to the draft of this report, incated that it has made important improvements to the process to issue the Alert on Gender Violence against Women (AVGM), the administrative scrutiny mechanism that is designed to identify context of extreme violence against women in certain areas and, consequently, determine the emergency government actions (prevention, security and justice) that need to be taken to address the problem.<sup>332</sup>

239. It is important to note that it was only in 2015 that the only two existing AVGM's to date were issued in the country. On July 31, 2015, it was declared in eleven municipalities of Mexico State (Chalco, Chimalhuacán, Cuautitlán Izcalli, Ecatepec de Morelos, Ixtapaluca, Naucalpan de Juárez, Nezahualcóyotl, Tlalnepantla de Baz, Toluca, Tultitlán and Valle de Chalco Solidaridad). The Commission notes the difficulties in issuing the first AVGM in Mexico, and welcomes its adoption.<sup>333</sup> Also, on August 10, 2015, an AVGM was declared in eight municipalities in the state of Morelos (Cuautla, Cuernavaca, Emiliano Zapata, Jiutepec, Puente de Ixtla, Temixco, Xochitepec and Yautepec).<sup>334</sup> According to information provided to the Commission, there are reports of a refusal to make use of AVGMs, even though civil society organizations requested the activation of the Mechanism for Gender Alert eleven times.<sup>335</sup>
240. The State informed the Commission that of the 9 requests for an alert that have been processed under this new regulation: one was declared approved 15 months after the request (Morelos); another one was declared denied due to the response of the state government to address the recommendations and proposals made by

<sup>331</sup> Article 24 of the General Law on Women's Access to a Life Free from Violence

<sup>332</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>333</sup> According to information received by the IACHR in December 2010, civil society organizations filed a request for gender-based alert for the state of Mexico, which was denied. Given the refusal of the National System for Prevention, Care, Punishment and Eradication of Violence, they filed an amparo with the result that the district judge determined that the resolution not to declare the alert was to be left without effect and a new alert issued. However, it was not until April 28, 2014, that the request was acknowledge and an investigation phase was initiated. Finally, on July 31, 2015, the Ministry of the Interior issued a gender alert declaration in eleven municipalities in Mexico. CimacNoticias, *Juez admite amparo para que se decrete ya AVG en Edomex*, February 20, 2015; Mexican Commission for the Defense and Promotion of Human Rights, *Gobierno Federal se niega a proteger a las mujeres de violencia feminicida en el Estado de Mexico*, February 19, 2015. The AVGM states that the government of the State of Mexico should take the actions necessary to implement the measures of safety, prevention and justice required to ensure the right of women and girls to live a life free from violence by, for example, designing and executing a strategy to regain public spaces and to prevent violence, integrate and upgrade the State of Mexico's database on violence against women, among others. Interior Ministry *Declaratoria de Procedencia respecto a la Solicitud de Alerta de Violencia de Género contra las Mujeres para el Estado de Mexico*, July 31, 2015.

<sup>334</sup> Press Article published on August 10, 2015 on CNN Mexico, *Gobernación emite alerta de violencia de género en 8 municipios de Morelos*

<sup>335</sup> Amnesty International (Mexico), *Organismos de la sociedad civil exigen al Estado frenar la violencia feminicida*, April 29, 2015.

the working group (Guanajuato); and the remaining 7 requests are still pending within the allowable timeframes.<sup>336</sup>

241. The Inter-American Court and Commission have pointed out that States must adopt comprehensive measures to comply with due diligence in cases of violence against women. Specifically, the Court has noted that States should have adequate legal protection and effective implementation thereof, as well as prevention policies and practices to effectively respond to complaints.<sup>337</sup> A comprehensive prevention strategy involves the prevention of risk factors and a strengthening of institutions to provide an effective response to cases of violence against women.<sup>338</sup> It should also be noted that in cases of violence against women, the Mexican State, in addition to the general obligations contained in the American Convention, has an obligation reinforced by the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women ("Convention of Belém do Pará").<sup>339</sup>

### i. Murders

242. According to INEGI, between 2013 and 2014 seven women were murdered daily in Mexico.<sup>340</sup> In 2012, the homicide rate for women was 4.6 women for every 100,000.<sup>341</sup> In addition, between 2011 and 2013, the states with the highest rates of homicides against women were Guerrero, Chihuahua, Tamaulipas, Coahuila, Durango, Colima, Nuevo León, Morelos, Zacatecas, Sinaloa, Baja California and Mexico State.<sup>342</sup> According to INEGI, the trend of homicides of women shows a different pattern than that of men. In the case of men there is a trend that shows a gradual decline between 2000 and 2004, and starting in 2008, this trend changes, reaching its highest level in 2011. In the case of homicides against women, there is a trend that shows "little variations, staying within a constant range between two and three homicides for every one hundred thousand women and with an important increase between 2008 and 2012." Similarly, INEGI reports to another

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<sup>336</sup> Among the improvements in the workings of the request for an AVGM, the State stated that it can be made by international, national or local human rights bodies, as well as by civil society organizations that are legally constituted. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>337</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>338</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>339</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

<sup>340</sup> INEGI, Statistics related to International Day to Eliminate Violence against Women, November 23, 2015. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/violencia0.pdf>

<sup>341</sup> Study prepared by the Centro de Estudios para el Adelanto de las Mujeres y la Equidad de Género for the Chamber of Deputies.

<sup>342</sup> INEGI, Statistics related to International Day to Eliminate Violence against Women, November 23, 2015. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/violencia0.pdf>

difference: the rate of homicide against men decreases starting in 2011, while in the case of women the decrease starts in 2013.<sup>343</sup>

243. According to the National Citizens' Femicide Watch (OCNF), 1,235 women were victims of murder by virtue of their gender between January 2010 and June 2011, with the greatest number in Mexico State (320), Tamaulipas (169) and Sinaloa (168).<sup>344</sup> The study indicates that 41% (500 cases) of the victims were between the ages of eleven and thirty, 35% (440 cases) between 31 to 50 years of age, and 13% (163 cases) over 50 years old.<sup>345</sup> The OCNF documented that between January 2012 and December 2013, 3,892 women were murdered in Mexico, and only 15.75% (613 cases) were investigated as cases of gender-based violence or femicide.<sup>346</sup> Most of these cases remain unpunished. The IACHR does not have more recent figures regarding gender-based homicides of women in the country.
244. Also, in cases of serial or mass murders of women, sometimes investigations are conducted in isolation without considering the possible connection between the victims and the facts. According to information available to the Commission, approximately 90% of women victims of violence in the state of Chihuahua are under 18.<sup>347</sup> These deficiencies mainly impact victims in poverty, which further hinders their families' access to justice, leading to impunity for these crimes.
245. In Mexico, the General Law on Women's Access to a Life Free from Violence includes the term "femicide violence", which is defined as "an extreme form of gender-based violence against women, resulting from the violation of their human rights, in the public and private spheres, consisting of misogynistic conduct that can lead to social and state impunity and may culminate in homicide and other forms of violent death of women".<sup>348</sup>
246. The Commission reiterates that States must adopt comprehensive measures to comply with due diligence in cases of violence against women by implementing preventive measures and work towards the investigation, prosecution and punishment of those responsible.<sup>349</sup> It should also be noted that the Inter-American Commission and Court have held that the duty to investigate effectively

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<sup>343</sup> INEGI, Statistics related to International Day to Eliminate Violence against Women, November 23, 2015. Available at: <http://www.inegi.org.mx/saladeprensa/aproposito/2015/violencia0.pdf>

<sup>344</sup> National Citizens' Observatory on Femicide, *Una Mirada al femicidio en Mexico. Enero de 2010 a junio de 2011*, p. 15.

<sup>345</sup> National Citizens' Observatory on Femicide, *Una Mirada al femicidio en Mexico. Enero de 2010 a junio de 2011*, p. 16.

<sup>346</sup> National Citizens' Observatory on Femicide, *Implementación del tipo penal de femicidio en Mexico: Causas and consecuencias 2012 and 2013*, November 2014, p. 53.

<sup>347</sup> Information received in a meeting with civil society organizations in Monterrey, Nuevo León, on September 29, 2015.

<sup>348</sup> Article 21 of the Law.

<sup>349</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 258.

has a wider scope when it involves a woman's death, abuse or attack on her personal liberty in the context of violence against women.<sup>350</sup>

## ii. Torture

247. The Commission notes with concern information regarding the use of sexual torture and gender-based torture by State agents. In November 2014, various organizations of Mexican civil society published a report denouncing the existence of a practice of physical and psychological violence, specifically sexual torture against women who are attacked and/or arrested by members of the police, military or navy, usually in the context of government security policies.<sup>351</sup> Examples are the cases of Inés Fernández Ortega, Valentina Rosendo Cantú, which have been decided by the Commission and the Court.<sup>352</sup> The case of sisters Ana, Beatriz and Celia González Pérez, decided by the IACHR, is also relevant.<sup>353</sup> On March 20, 2015, at the 154th Ordinary Period of Sessions, this situation was examined in detail in the hearing on Complaints of sexual torture and gender-based torture against women in Mexico.<sup>354</sup> The Special UN Rapporteur on torture and other cruel, inhuman or degrading punishment, Juan Méndez, also noted in his report in his 2014 visit to Mexico, that he was concerned about the use of sexual violence as a form of torture, especially regarding female detainees.<sup>355</sup>
248. In its observations to the draft of this report, the State referred to the creation of the Mechanism for Addressing Cases of Sexual Torture committed against women, which is the result of an agreement between the Mexican State and the petitioners of the thematic hearing regarding sexual violence, in the context of the 154<sup>th</sup> Period of Sessions of the Inter-American Commission on Human Rights. The State notified that, as a result of that, on September 9, 2015, the Mechanism was formally installed, and its objective is to review the cases of women who have reported sexual torture contemplated in the campaign titled "Breaking the silence: all together against sexual torture," prioritizing the cases of women who are imprisoned. In addition to the participation of civil society organizations, the

<sup>350</sup> I/A Court H.R., *Case of González et al. ("Cotton Field") v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205, para. 293.

<sup>351</sup> Miguel Agustín Pro Juárez Human Rights Center, Mexican Commission for the Defense and Promotion of Human Rights, Montaña "Tlachinollan" Human Rights Center and Associates for Justice, *Rompiendo el Silencio: La obligación de erradicar la tortura sexual a mujeres en México*, November 24, 2014.

<sup>352</sup> I/A Court H.R., *Case of Fernández Ortega et al. v. Mexico*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 30, 2010, Series C, No. 215. I/A Court H.R., *Case of Valentina Rosendo Cantú et al. v. México*. Preliminary Objections, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C, No. 216. Report No. 53/01, Case No. 11.565, *Ana, Beatriz and Celia Gonzalez Perez (Mexico)*, April 4, 2001.

<sup>353</sup> Report No. 53/01, Caso 11.565, *Ana, Beatriz and Celia González Pérez (Mexico)*, April 4, 2001.

<sup>354</sup> IACHR, *Hearing on Sexual Torture against Women in Mexico*, 154th Period of Ordinary Sessions, March 20, 2015.

<sup>355</sup> UN, Human Rights Council, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment, Juan E. Méndez. Addendum. Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 28.

Mechanism is also made up of SEGOB, PGR, CNDH and the Ministry of Foreign Relations. The primary objectives of the Mechanism are:<sup>356</sup>

- a. Reviewing priority cases of women who have reported sexual torture and who are part of the campaign;
  - b. Issuing a joint report with recommendations regarding the cases reviewed, which shall contain recommendations to the competent authorities, with the purpose of them acting in strict compliance with the protection and respect for the human rights of women.
  - c. Monitor and follow on the cases of women who report sexual torture, with a special emphasis on the cases of women who are imprisoned, with the objective of safeguarding their physical and psychological integrity.
  - d. Develop public policies geared towards the prevention and the fight against sexual torture.
249. In this regard, the IACHR supports the creation of this mechanism and will follow its functioning closely.
250. The Commission takes the opportunity to reiterate the point made by the Inter-American Court in the *Case of Castro Castro v. Peru*, that "the sexual rape of a detainee by a State agent is an especially gross and reprehensible act, taking into account the victim's vulnerability and the abuse of power displayed by the agent."<sup>357</sup> Importantly, rape is considered an extremely traumatic experience that can have severe consequences, causing great physical and psychological damage that is difficult to overcome with the passage of time.<sup>358</sup>
251. It should be noted that the Inter-American Court has stated that "the State is responsible, in its condition of guarantor of the rights enshrined in the Convention, of the observance of the right to humane treatment of any under its custody."<sup>359</sup> The State can be held responsible for torture, cruel, inhuman or degrading treatment suffered by a individual who has been under the custody of state agents, where the authorities have not conducted a serious investigation of the facts and then for not prosecuting those allegedly responsible for them.<sup>360</sup>

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<sup>356</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>357</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 311.

<sup>358</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 311.

<sup>359</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 273.

<sup>360</sup> I/A Court H.R., *Case of the Miguel Castro Castro Prison v. Peru*. Merits, Reparations and Costs. Judgment of November 25, 2006. Series C No. 160, para. 273.

## b. Indigenous Peoples and Communities

252. Serious human rights violations against indigenous peoples and communities in Mexico occur in two main areas: violence in the context of mega-projects on ancestral lands and territories authorized without the due process of free, prior and informed consultation and consent; or in the context of title claims affecting their land, and the lack of due process in criminal matters. They have repeatedly denounced the granting of State concessions to private companies in violation of the right to prior consultation. As a result of the struggle for their lands, information has also been received about the criminalization of human rights defenders of indigenous peoples.

### i. Murders, Executions, Harassment and Threats

253. Up to December 2013, there were an estimated 2,600 mining concessions in Mexico, many of which were located on the ancestral territories of indigenous peoples without their consent.<sup>361</sup> At a public hearing at the IACHR, the petitioners stated that 35% of the national territory has been concessioned through more than 29,000 concessions—mining, hydroelectric, and wind power. 17% of them are inside some indigenous territories. According to the petitioners, some concessions are very significant because they encompass almost the totality of small towns.<sup>362</sup> The State indicated that in compliance with the national and international legal framework, and pursuant to the obligations assumed in relation to indigenous peoples, in February 2013 it approved the Protocol for the implementation of consultations with indigenous peoples in accordance with ILO Convention No. 169 regarding Indigenous and Tribal Peoples in Independent Countries, which contains the international standards on the subject and sets forth the methodology to carry out a consultation process.<sup>363</sup> In addition, the State indicated that the Judicial

<sup>361</sup> CNN Expansion, *Energy Law, threatened by land*. January 24, 2014. <http://www.cnnexpansion.com/negocios/2014/01/23/energetica-traera-conflictos-por-tierra>. In its observations to the draft of this report, the State indicated that the Ministry of Energy initiated a process of harmonization of legislation, which concluded in August 2014 with the adoption of the laws on Hydrocarbons and on the Electrical Industry. The State reported that these laws included chapters titled “Social Impact,” which established the obligation to respect, protect, promote and guarantee the human rights of all persons in the development of projects in the energy sector, with a special emphasis on indigenous peoples and communities. The regulations of these laws establish that the prior consultation shall be carried out with adequate proceedings through the representative institutions of each indigenous people and community, observing the principles of good faith, liberty, accommodation and reasonableness, among others. The State also stated that the Ministry of Energy has undertaken the following consultation processes: Consultation process for the Rarámuri People regarding the construction and organization of the El Encino-Topolobampo Gas Pipeline, Consultation Process for the Zapotec Communities of El Espinal and Juchitan de Zaragoza, in the state of Oaxaca, and Consultation process for the Yaqui Tribe regarding the project of the Sonora Gas Pipeline. In its response, the State did not inform regarding the results of these consultations. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>362</sup> IACHR, Public Hearing, *Impact of development “mega-projects,”* October 30, 2014.

<sup>363</sup> IACHR, Public Hearing, *Impact of development “mega-projects,”* October 30, 2014.



Branch has issued judgments that constitute a reference point for the protection of the human right to prior consultation and the participation of indigenous peoples.

254. Violence in the context of mega-projects has resulted in murders, executions, harassment and threats against indigenous people in many states of the country. The Commission was aware of the arrests of indigenous leaders in Guerrero, Oaxaca, Chiapas, Quintana Roo, Sonora, Chihuahua and Puebla, among others, in connection with their activities in opposition to various megaprojects.<sup>364</sup> When it comes to violence in indigenous territories or communities where large projects are located, the common denominator is the granting of permits or concessions without consultation and without free, prior and informed consent. This often triggers social unrest and eventually leads to violence, and even costs individuals their lives.<sup>365</sup>
255. Information has also been received regarding violence by Mexican State agents in the indigenous community of Ostula, Michoacan, in July 2015, when a child was killed by a gunshot allegedly from the Army, and others were injured.<sup>366</sup> The community leader and alleged member of a self-defense group in Ostula was arrested after these violent events. At the date of approval of this Report, the authorities were still investigating the case without having clarified what happened.
256. When members of an indigenous people are involved in legal proceedings as victims, accused or witnesses, the entrenched discrimination interferes with the respect for judicial guarantees to ensure full respect for their due process rights, such as the lack of interpreters and of intercultural training for justice operators. After a visit to Mexico, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions found that in Mexico it is common to set traps to incriminate innocent individuals, and this produces discriminatory effects for indigenous people and people in poverty.<sup>367</sup>
257. In its observations to the draft of this report, the State indicated that on March 5, 2014, it incorporated a special process for indigenous peoples and communities under Title X of the National Code of Criminal Procedure. In addition, both the Uniform Protocol for the Investigation of the Crime of Torture and the Uniform Protocol for the Search of Disappeared Persons and Investigation of the Crime of Forced Disappearance include specific proceedings for persons who are members of indigenous peoples and communities. Also, in 2003, the Specialized Unit for Attention to Indigenous Matters was created, and is under the Deputy Attorney

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<sup>364</sup> Front-line Defenders. Joint letter: Mexico, Detention of Human Rights and Environment Defender Marco Antonio Suástegui Muños, June 25, 2014. Revista Proceso, "López Obrador exige la liberación de 16 comuneros en Holbox", August 18, 2014.

<sup>365</sup> Information received during the *in loco* visit in meetings with civil society organizations in Mexico City, September 28, 2014. "Barriers to access to justice to violation of human rights in Mexico", Report presented to the IACHR during the *in loco* Mission to Mexico from September 28 to October 2, 2015, p. 32.

<sup>366</sup> Request for a thematic hearing on extrajudicial executions in Mexico, 2014-2015 for the 156th Period of Sessions, received by the IACHR on July 28, 2015.

<sup>367</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 51.

General's Office for Human Rights, Crime Prevention and Community Service, part of the PGR, as well as a national roster of interpreters and translators of indigenous languages administered by the National Institute of Indigenous Languages.<sup>368</sup>

258. In the same vein, the Commission has recently received information about the alleged misuse of the criminal law against indigenous defenders, environmentalists and peasant leaders.<sup>369</sup> Factors like discrimination and exclusion also contribute to indigenous people being more likely to be victims of torture and other cruel, inhuman or degrading treatment when arrested.
259. In states with large indigenous and rural populations, such as Guerrero, the absence of legal assistance is serious, due to the lack of bilingual public defenders. There is also a lack of translation services and suitable infrastructure. In addition to the scarcity of forensic doctors in these areas, they are not sensitive to the cultural and social situation of the population.<sup>370</sup> This poses additional barriers to access to justice for indigenous peoples and communities.
260. In this regard, the Commission recalls that the States have the obligation to investigate all crimes with due diligence, and when indigenous people are involved, that obligation calls for the inclusion of the appropriate cultural perspective.<sup>371</sup> In practice, this means that the authorities must take into account the context giving rise to the violence, take procedural steps with the victim and the families in a way sensitive to the surrounding social and cultural situation, take into account possible discrimination due to their status as members of indigenous peoples, consider not just the individual but also the collective aspect produced by the offense or offenses, ensure that access to justice for the victim(s) and their families is effective and timely, and to consider the support of interpreters, translators, as well as other tools to ensure the full participation of all parties according to the needs of the case.<sup>372</sup>

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<sup>368</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>369</sup> IACHR, Public Hearing, *Complaints of the destruction of the bio cultural heritage of Mexico by the construction of megaprojects*, 153th Period of Sessions, October 30, 2014.

<sup>370</sup> UN, Follow-up to the recommendations of the Working Group on Forced Disappearances in its Report on its Mission to Mexico from March 18-31, 2011, (A/HRC/19/58/Add.2, paras. 80-113), Addendum, p. 88. *Open Society Justice Initiative, Justicia Fallida en el Estado de Guerrero*, 2015, p. 30, available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexicos-guerrero-state/es>.

<sup>371</sup> IACHR, *Indigenous Women disappeared and Murdered in British Columbia, Canada*, OEA/Ser.L/V/II, Doc. 30/14, December 21, 2014, paras. 179-185.

<sup>372</sup> IACHR, *Indigenous Women disappeared and Murdered in British Columbia, Canada*, OEA/Ser.L/V/II, Doc. 30/14, December 21, 2014, paras. 153-178.

## c. LGBTI Persons

### i. Murders and Attacks

261. The Commission's Special Rapporteur on the rights of LGBTI persons received information that in a period of 15 months (between January 2013 and March 2014),<sup>373</sup> there were a total of 42 murders and 2 attacks on physical integrity in Mexico (both knife attacks) against transgender people (or perceived as such); 4 attacks on the physical integrity of lesbians (or perceived as such), 3 of which were beatings and one death threat; and 37 murders of gay men (or perceived as such) and two attacks on the physical integrity, including a case of mutilation where the victim's eyes were torn out, and another related case of sexual violence and beatings from Police agents.
262. Between 1995 and 2014 there were 1,218 murders in Mexico motivated by prejudice against individuals because of their real or perceived sexual orientation and/or gender identity, according to the report by the Citizens Commission Against Homophobic Hate Crimes (CCCOH) of the civil society organization Letra S, AIDS, Culture and Everyday Life AC. The report indicates that the largest number of such murders involved men (976), followed by transgender community members with 226 cases reported, and women (16). It also indicated that over 80% of the records show that the victims suffered various forms of aggression before being killed.<sup>374</sup> The Commission notes that there have been some improvements in Mexico City in terms of discrimination against LGBTI persons, but as stated by one civil society representative, "Mexico City is not Mexico," in reference to the deep-rooted stereotypes and prejudices that persist in many parts of the country.<sup>375</sup>
263. Currently, according to an organization of transgender persons based in Europe, Mexico occupies the second place in the world, behind Brazil, as the country with the largest number of murders on account of gender identity or expression of gender.<sup>376</sup> In its observations to the draft of this report, the State indicated that "at the federal level the PGR has clarified that it lacks specific statistics broken down regarding the LGBTTTI population, since the bulk of incidents of violence against this sector of the population take place by means crimes contemplated under the local jurisdictions."<sup>377</sup> The State also indicated that the lines of action contemplated in the 2014-2018 National Program for Equality and Non-Discrimination regarding the fight against homophobia includes the creation of a

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<sup>373</sup> IACHR, *Registry Documenting Acts of Violence against LGBTI Persons in the Americas on Attacks on their Life and Integrity*, December 17, 2014. The registry was compiled based on information obtained in the media and provided by civil society organizations.

<sup>374</sup> Notiese, *Registran 1218 homicidios por homofobia en Mexico*, May 12, 2015.

<sup>375</sup> Meeting with civil society organizations, Mexico City, Monday, September 28, 2015.

<sup>376</sup> [http://www.milenio.com/blogs/qrr/homofobia\\_7\\_300639934.html](http://www.milenio.com/blogs/qrr/homofobia_7_300639934.html)

<sup>377</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

national registry of crimes motivated by sexual orientation, gender identity or ethnic-national origin.<sup>378</sup>

264. In its observations to the draft of this report, the State stated that the Pew Research Center ranked Mexico, in June 2013, among the countries with a broad acceptance of homosexuality, recognizing that 61% of the people surveyed opined that homosexuality should be accepted by society. In addition, it stated that the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) ranked Mexico, in May 2014, “as a country with a normative framework that protects and guarantees the rights of the LGBTTI population.”
265. A global monitoring showed that in Mexico between January 1, 2008, and December 31, 2014, there were 194 murders of transgender persons.<sup>379</sup> It is necessary to note that this organization indicates that among the six regions of the world, “the largest absolute numbers are in countries with strong trans or trans LGBT movements and organizations who undertake professional monitoring.”<sup>380</sup> The Commission also received information where the particular situations of exclusion and widespread discrimination in the lives of transgender women in Mexico (child violence in their families for expressing their identity, lack of access to education triggering high dropout rates, harassment and ridicule in public, working in informal economies, etc.) make them more vulnerable to attempts on their lives and physical integrity.<sup>381</sup> Organizations denounced this year the murder on January 3, 2015, of Anahi, a transgender woman in Puebla.<sup>382</sup>

## ii. Arbitrary Detentions, Torture and Cruel, Inhuman and Degrading Treatment

266. The Commission also received troubling information about groups who are particularly vulnerable to arbitrary detention, torture and other cruel, inhuman and degrading treatment by official State agents.<sup>383</sup> Particularly, transgender women sex workers in Chihuahua are constantly harassed by police officers, on account of a legal requirement for sex workers to be registered by the Department of Health Regulation. Civil society organizations reported the arrest of six transgender sex workers who were forced to go to a detention center for an HIV test. When they refused, they were threatened publicly by judges, police agents and doctors; they were kept under observation; they were insulted on account of

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<sup>378</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>379</sup> *Trans-Respect v Trans-Phobia in the World*, Transgender Europe: IDAHOT Nota de Prensa: May 8, 2015.

<sup>380</sup> *Trans-Respect v Trans-Phobia in the World*, Transgender Europe: IDAHOT Nota de Prensa: May 8, 2015.

<sup>381</sup> Frente Ciudadano Pro Derechos de Transexuales y Transgénero. *Las mujeres trans: visibles para la violencia invisibles para el Estado Mexicano* (undated).

<sup>382</sup> Notiese, *Pronunciamento sobre crimen de odio por transfobia and acciones homófobas en contra del matrimonio entre personas del mismo sexo*, January 13, 2015.

<sup>383</sup> Indignation; Center for Women’s Human Rights; Letra S; Notiese; ACOMEDIS, A.C.; Diverse Families’ Mutual Support; VIHAS DE VIDA; SERES and Vaqueros Chihuahua. *Report on Human Rights Breaches of Transgender Women Sex Workers in Chihuahua*, Mexico, April 2014.

their sexual orientation and diverse gender identities.<sup>384</sup> During the 156th Period of Sessions, the IACHR held a hearing on LGBTI persons deprived of liberty and for the prevention of torture. The Commission received specific information from an organization of Mexican civil society.<sup>385</sup>

267. The Commission also received alarming information regarding impunity for attacks on the lives and physical integrity of LGBTI people in Mexico.<sup>386</sup> Civil society organizations reported that classifying these investigations as ‘crimes of passion’ is a frequent practice. It was also reported that although some cases go to trial, they commonly remain unresolved and no one is accused.<sup>387</sup> In its observations to the draft of this report, the State indicated that the lines of action contemplated in the 2014-2018 National Program for Equality and Non-Discrimination regarding the fight against homophobia include the generation of statistical information about crimes committed by security forces motivated by homophobia or racism and that, in June 2015, “the PGR adopted and published the Acting Protocol for the personnel of the PGR for cases that involve persons of the LGBTTTI community.”<sup>388</sup>

#### d. Children and Adolescents

268. Mexico has no official systematic data on the total number of children and adolescents who are the victims of violent deaths, nor about the victims of extrajudicial executions.<sup>389</sup> On the other hand, many civil society actors allege that approximately 2,000 murders of children and adolescents occurred between 2006 and 2014,<sup>390</sup> half of which took place in the course of alleged clashes involving the security forces.<sup>391</sup> In a context of insecurity in Mexico and the so-called “war on drugs” against the drug cartels, it is common for children and adolescents to become victims of violence by organized crime, in clashes between organized crime gangs. Similarly, the high number of orphans resulting from the loss of one

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<sup>384</sup> Indignation; Center for Women’s Human Rights; Letra S; Notiese; ACOMEDIS, A.C.; Diverse Families’ Mutual Support; VIHAS DE VIDA; SERES and Vaqueros Chihuahua. *Report on Human Rights Breaches of Transgender Women Sex Workers in Chihuahua*, Mexico, April 2014.

<sup>385</sup> Information presented by the organization Almas Cautivas.

<sup>386</sup> Letra S, Aids, Cultura and Vida Cotidiana, A.C. *Violations of Human Rights of Lesbians, Gays, Bisexuals and Transgender and Intersex Persons (LGBTI) in Mexico: Alternate Report*, presented to the UN Human Rights Committee during the 111th Session, July 2014.

<sup>387</sup> Letra S, Aids, Cultura and Vida Cotidiana, A.C. *Violations of Human Rights of Lesbians, Gays, Bisexuals and Transgender and Intersex Persons (LGBTI) in Mexico: Alternate Report*, presented to the UN Human Rights Committee during the 111th Session, July 2014.

<sup>388</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>389</sup> IACHR, *Rapporteurship on the Rights of Children Culminates Visit to Mexico*, October 20, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/125.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/125.asp)

<sup>390</sup> IACHR, *Rapporteurship on the Rights of Children Culminates Visit to Mexico*, October 20, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/125.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/125.asp)

<sup>391</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 79. Available at: <http://www.ohchr.org/SP/Issues/Executions/Pages/CountryVisits.aspx>

- or both parents is cause for concern.<sup>392</sup> In its observations to the draft of this report, the State indicated that according to the General Law on the Rights of Children and Adolescents, the National System of Integral Protection will include a System of National Information, which will have as its objective the compilation of broken down data to allow the monitoring of advances achieved in the fulfillment of the rights of children and adolescents in the country, including qualitative and quantitative indicators.<sup>393</sup>
269. According to media, in 2012 372 children were murdered in Mexico State, which constituted “the highest number in the last 10 years.”<sup>394</sup> In addition, a 270% increase in cases of rape perpetrated against children and adolescents was reported in that state, increasing from 213 to 789 reports per year.<sup>395</sup>
270. In 2011, the Committee on the Rights of the Child urged the State to establish recruitment severance programs, and to adopt a system of information to ascertain precisely the impact on the victims. Progress was made on three protocols on organized crime scenarios as a guide for the authorities to undertake a differentiated approach when dealing with teenagers. However, according to civil society organizations, the State has not been using these protocols. For its part, the State reported to the Commission that, between January 1, 2014 and September 1, 2015, the Special Prosecutor for Crimes of Violence against Women and People Trafficking (FEVIMTRA) of the PGR recorded 387 preliminary investigations in which the victim was a minor, accounting for a total of 483 child victims.<sup>396</sup>
271. According to the UN Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, when children or adolescents are “recruited by organized criminal groups, they (...) become potential targets of the inter-cartel violence and the ‘war on drugs’.”<sup>397</sup> In such circumstances, “the authorities feel less compelled to conduct investigations and to hold accountable those responsible.”<sup>398</sup> Impunity for these crimes is a central issue, as well as the problems of access to justice and the right

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<sup>392</sup> IACHR, *Rapporteurship on the Rights of Children Culminates Visit to Mexico*, October 20, 2014. Available at: [http://www.oas.org/en/iachr/media\\_center/PReleases/2014/125.asp](http://www.oas.org/en/iachr/media_center/PReleases/2014/125.asp)

<sup>393</sup> Communication of the Mexican State, *Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico*, Note No. OEA-03636, December 15, 2015.

<sup>394</sup> Proceso, *Feminicidios alcanzan niveles alarmantes; Redim exige alerta de género para Edomex*. Available at: <http://www.proceso.com.mx/?p=390364>; El Economista, *Niñas, principales víctimas de la violencia en México*, December 10, 2014. Available at: <http://eleconomista.com.mx/sociedad/2014/12/10/ninas-principales-victimas-violencia-mexico>

<sup>395</sup> Proceso, *Feminicidios alcanzan niveles alarmantes; Redim exige alerta de género para Edomex*. Disponible en: <http://www.proceso.com.mx/?p=390364>; El Economista, *Niñas, principales víctimas de la violencia en México*, December 10, 2014. Available at: <http://eleconomista.com.mx/sociedad/2014/12/10/ninas-principales-victimas-violencia-mexico>

<sup>396</sup> Information presented by the Secretariat of the Interior during the IACHR’s visit, “Datos Solicitados por la IACHR al Estado mexicano en materia de derechos humanos”, p. 11 (on file with the IACHR).

<sup>397</sup> UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 81. Available at: <http://www.ohchr.org/SP/Issues/Executions/Pages/CountryVisits.aspx>

<sup>398</sup> UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 81. Available at: <http://www.ohchr.org/SP/Issues/Executions/Pages/CountryVisits.aspx>

to reparations for the victims and their families. The escalation of violence, drug trafficking and repressive policies of the State have led to the deaths of a large number of children and adolescents. In this context, girls and adolescents are particularly affected by the gender-based violence, due to the number of cases of sexual violence, abductions and gender-based killings with adolescents as victims.<sup>399</sup>

272. In addition, information received by the Rapporteurship on the Rights of Children indicates that in cases of children and adolescents in some type of detention or deprivation of liberty, disciplinary measures include bodily punishment and prolonged isolation.<sup>400</sup> Similarly, there is no adequate regulation or supervision of institutions that provide alternative care to children, coupled with the lack of official figures regarding the number of institutionalized children, which exposes them to situations of violence, negligence, abuse and exploitation, as evidenced in the well-known cases known as “Casitas del Sur” and “La Gran Familia.”
273. In its observations to the draft of this report, the Mexican State indicated that during the installation of the National System for the Protection of Children and Adolescents, carried out on December 2, 2015, President Enrique Peña Nieto included among the priorities of the federal government, the state governments and the other branches of government, as of 2016, the formulation of a National Program for the Protection of Children and Adolescents, as well as forming a system of information at the national level, for the purpose of compiling broken-down data that allow the monitoring of advances achieved in the fulfillment of the rights of children and adolescents in the country. The State also stated that the Regulation of the General Law on the Rights of Children and Adolescents was published and that all 32 federal states have adopted uniform local legislation in accordance with the General Law.<sup>401</sup>

## e. Migrants and Internal Forced Displacement

274. In recent years, the Commission has monitored the serious situation and multiple human rights violations of migrant victims and other individuals in the context of human mobility in Mexico.<sup>402</sup> This is reflected in the abuses and human rights violations suffered by migrants in transit through Mexico, such as assaults,

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<sup>399</sup> CRC. *Final observations of the State of Mexico. 2015*. Available at: [http://tbinternet.ohchr.org/Treaties/-CRC/Shared%20Documents/MEX/INT\\_CRC\\_COC\\_MEX\\_20804\\_E.pdf](http://tbinternet.ohchr.org/Treaties/-CRC/Shared%20Documents/MEX/INT_CRC_COC_MEX_20804_E.pdf)

<sup>400</sup> In its observations to the draft of this report, the Mexican State indicated that article 150 of the General Law on the Rights of Children and Adolescents provides that federal laws and the laws of the states shall include measures so that those who deal with children and adolescents abstain from exercising any type of violence against them, particularly corporal punishment. In addition, article 57 and 58 list different measures to prevent mistreatment, prejudices, damage, aggression, abuse or any other form of violence against children and adolescents. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>401</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>402</sup> IACHR, *Human Rights of Migrants and other persons in the context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013.

- abductions, sexual violence, various forms of people trafficking, murders and disappearances. Most of these crimes are allegedly perpetrated by organized crime gangs, but there is also information on many cases involving the active participation of members of the National Migration Institute and of the police at the municipal, state and federal level.
275. Since its visit to the country in 2011, the Rapporteurship on Migrants was able to confirm, with concern, the seriousness of the human rights situation of migrants in Mexico<sup>403</sup>. In April 2014, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns stated that "The undocumented migrants who pass through Mexico put their lives in extreme danger, although it is difficult to obtain reliable figures on the number of migrants killed.<sup>404</sup> A recent report by the Migrant Defender Organizations Network of Documentation (REDODEM), based on information collected in 2014, includes 31,894 persons registered and more than 40,000 incidents in its database, and indicates that the over 15 year-old irregular migrant population was the group which suffered more crimes on its way through Mexico (96%).<sup>405</sup> The main crime committed against Central American migrants was robbery, followed by extortion and assaults. According to information collected by the REDODEM, organized crime was the main perpetrator of crimes at 54.27%, followed by individuals at 25.56% and government officials at 20.16%. Also, according to the information gathered, the main crime committed by Mexican authorities against migrants in transit was robbery, followed by extortion, illegal imprisonment and assaults.<sup>406</sup>
276. The IACHR highlighted recently some of the challenges facing children and adolescents, most of them Mexican or Central American, who travel through Mexico in their journey to the United States.<sup>407</sup> In particular, the Commission expressed its concern resulting from the reports of alleged practices by Mexican authorities along Mexico's northern border of intercepting migrants and refugees, including children, before they reach the United States, followed by deportations by Mexican authorities of those migrants who are not Mexican.<sup>408</sup>
277. According to information provided by the National Institute of Migration during the visit, "[as] from August 2014 initiatives of prevention, protection and prosecution of crimes affecting migrants were strengthened throughout the

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<sup>403</sup> IACHR, *Human Rights of Migrants and other persons in the context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, 30 de diciembre de 2013, December 30, 2013.

<sup>404</sup> UN, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014.

<sup>405</sup> Redodem, *Migrantes invisibles, violencia tangible*, 2014.

<sup>406</sup> Redodem, *Migrantes invisibles, violencia tangible*, 2014.

<sup>407</sup> CIDH, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*, OAS/Ser.L./V/II.155, Doc. 16, July, 24, 2015.

<sup>408</sup> CIDH, *Human Rights Situation of Refugee and Migrant Families and Unaccompanied Children in the United States of America*, OAS/Ser.L./V/II.155, Doc. 16, July, 24, 2015, para. 170; Jesuit Conference of the United States y WOLA, *U.S. Support and Assistance for Interdictions, Interceptions, and Border Security Measures in Mexico, Honduras, and Guatemala Undermine Access to International Protection*, (octubre de 2014) pág. 1 (archivo de la CIDH); Hilo Directo, "Deportan cinco mil niños a Honduras" (19 de junio de 2014). Available at: <http://hilodirecto.com.mx/deportan-a-5-mil-ninos-a-honduras/>



country and are now permanent. [...] The Ministry of the Navy and National Defense, the Federal Police, the National Migration Institute and State Police conducted permanent security operations along migrant routes, to deter and combat criminal acts against migrants in transit."<sup>409</sup>

278. The Commission notes that the implementation of the Southern Border Program has emphasized an approach to migration from the perspective of national security and control of migration flows, which has been reflected in increased operations detecting the situation of irregular migrants for subsequent deportation. According to information received by the Commission during the visit, as from the implementation of the Southern Border Program, some key measures adopted at the southern border of Mexico and along migratory routes across the country were: further militarization of the southern border by the armed forces, the redeployment of over 300 additional agents to southern Mexico, establishing more mobile checkpoints along the roads and railway tracks, as well as immigration checks in hotels and other dwellings accommodating migrants. Steps were also

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<sup>409</sup> Government of Mexico, National Institute of Migration, *Avances sobre la situación de los derechos humanos de los migrantes en México: Informe de la SEGOB and el INM en seguimiento al informe de la IACHR "Derechos humanos de los migrantes and otras personas en el contexto de la movilidad humana en México"*. September 30, 2015, p. 2. [Document on file with the Commission]. In its observations to the draft of this report, the State referred to a series of measures to ensure the human rights of migrants in transit, such as: the creation of a Single National Data System for the Search and Identification of Disappeared Migrants in the country; continuous professionalization of immigration agents; creation of a Guide of good practices for assistance and protection of migrants who are victims of kidnapping in Mexico; an institutional coordination perspective; recognition of the rights acquired by foreigners in their regularization process; Circular 1/2013, issued by the Supreme Court of Justice and the Federal Council of the Judiciary on July 3, 2013, which contains the minimum standards in terms of judicial processes that involve migrants, with the aim of strengthening the right to consular assistance to foreign nationals who are facing criminal proceedings in Mexico so that the requirements for an adequate defense and due process are addressed; and the execution of programs for the strengthening of migrants in transit.

In addition, among the actions that have been undertaken to protect the rights of migrants in transit, the State has highlighted the following: the Migration Law, which lists for the first time the rights and services to which migrants have access; the Ministry of Health, through the Commission for Healthcare Attention to Migrants in the Southern Border, has carried out, among other activities, a Survey of Healthcare Attention Units belonging to the Ministry of Health of the state of Chiapas (applied in the 11 municipalities that make up the routes through which the migrant population travels), with the purpose of identifying the health service needs for the migrant population in transit and, in this way, design strategies that allow to address the problems of access to medical attention; the Attention Protocol for Unaccompanied or Separated Migrant Children and Adolescents that are in Shelters, which has as its objective strengthening the proceedings at the modules and shelters so that they permanently conduct superior-interest-of-the-child evaluations for migrant children and adolescents and guarantee their rights; the Protocol for the Detection of Unaccompanied or Separated Migrant Children and Adolescents in Migratory Detention and who are in Need of International Protection; access to healthcare by migrants in accordance with article 42 of the Regulations of the General Health Law. Regarding the illegal trafficking in migrants, the State indicated that since April 2013, cooperation efforts were initiated between Central American countries and Mexico to prevent and fight against this crime. These efforts resulted in the International Conference on Illegal Trafficking of Migrants: Challenges and advances in the implementation of the Protocol against Illegal Trafficking of Migrants by Land, Sea and Air, which allowed the countries of the region to reflect on the challenges they face to prevent and fight against this crime. In February 2015, the Inter-Institutional Guidelines among government authorities, autonomous entities for the promotion and defense of human rights, and civil society organizations to address the crime of illegal trafficking of migrants and the detention of migrants for purposes of trafficking. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

taken to prohibit migrants from boarding trains (through the physical presence of agents around train stations, increasing the speed of the trains and increasing the physical barriers preventing migrants from climbing onto trains).<sup>410</sup> The tightening of immigration verification operations by INM agents has also been evident at the official points of entry such as at Mexico City or Quintana Roo airports.<sup>411</sup>

279. In addition to the above, the Commission has received information indicating that since the launch of the Southern Border Program, some authorities have tightened their policies against migrants and their defenders, such as: the alleged assaults on migrants and human rights defenders working in the "Home-Refuge for migrants The 72" in Tenosique, Tabasco,<sup>412</sup> who have been the beneficiaries of precautionary measures requested by the Commission since 2013.<sup>413</sup> The IACHR has also been informed that due to the increase in actions by Mexican migratory authorities under the Southern Border Program, some immigration operations take place near areas of humanitarian assistance to migrants, which does not reduce the flow of migrants but deters them from attending such centers.<sup>414</sup> The Commission reiterates that an immigration policy that is based on a human rights approach and not one of national security must be comprehensive in scope, and "be specifically directed to prevent, protect and punish crimes and violations of human rights of migrant victims."<sup>415</sup>

280. In general, the responses have focused on the tightening of immigration policies; applying generalized and automatic detention, especially for individuals with irregular migrant status; the use of accelerated procedures for deportation; reduced access to international protection; and increased security at the southern border and on migration routes.<sup>416</sup>

<sup>410</sup> See, various authors, *Informe de actualización del estado que guarda el respeto and la promoción de los derechos humanos de las personas migrantes and refugiadas en Mexico: Visita in loco de la Comisión Interamericana de Derechos Humanos*. September 2015, p. 15. This report was prepared by Sin Fronteras IAP, Colectivo Ustedes somos Nosotros, Servicio Jesuita a Migrantes Mexico, Casa del Migrante de Saltillo, Albergue de la 72, Centro de Derechos Humanos Fray Matías de Córdova, Grupo de Trabajo sobre Política Migratoria, Colectivo de Defensores/as de Migrantes and Refugiados (CODEMIRE), Colectivo de Migraciones para las Américas (COMPA). [Document on file with the Commission]. See also, IACHR, *Hearing on human rights and interception eligible for international protection*, October 22, 2015. Available at: <https://www.-youtube.com/watch?v=aoe3qH-oHd8>

<sup>411</sup> The Mexican Travel Agents Association (AMAV) calls the National Institute of Migration (INM) to improve the treatment with tourism in Cancún airport. <http://www.delcamponoticias.com/benito-juarez-2/piden-mejor-trato-para-el-turismo-en-el-aeropuerto-de-cancun/>

<sup>412</sup> Press Communique No. 65/2015 - *IACHR expresses concern about the Southern Border Program in Mexico*. Washington, D.C., June 10, 2015.

<sup>413</sup> MC 273/11, Fray Tomás González Castillo, Rubén Figueroa, and staff of the Hogar-Refugio for migrants 'La 72' and others, Mexico, April 19, 2013.

<sup>414</sup> Members of the Migrant Defenders Organizations Documentation Network ("REDODEM"), *Migrantes invisibles, violencia tangible*: Report 2014, p. 22.

<sup>415</sup> IACHR, *Human Rights of Migrants and other persons in the context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13, December 30, 2013, para. 409.1.

<sup>416</sup> In this sense, the IACHR has also criticized the policy and immigration control measures being promoted by the United States since mid 2014. The IACHR criticized the measures that the United States has been promoting outsourcing aimed at controlling its borders into other countries in the region, through actions

281. The figures on the number of incidents of immigration detention and deportation show that the Southern Border Program has caused migrants to seek alternate routes – with more danger and vulnerability - but has proved ineffective at containing migration flows and protecting the human rights of migrants. The Commission expresses its deep concern that the actions implemented by the Mexican State under the Southern Border Program does not correspond with the State's international obligations on human rights nor with the protection challenges posed by this protracted crisis affecting hundreds of thousands of migrants, asylum-seekers and refugees, originating mostly from the Northern Triangle countries.
282. Moreover, during the visit, civil society organizations showed that despite the need for international protection for asylum seekers and refugees, lack of offices of the Mexican Commission for Aid to Refugees has a negative impact on due process and access to procedural mechanisms, both at the border and in other parts of the country. They also noted that in the context of access to a proceeding to determine their condition of refugees, immigration authorities did not always respect the principle of *non-refoulement* and they dissuade potential asylum seekers from seeking it. They also reported that cases of unjust unfair treatment and extortion by the INM and security authorities.<sup>417</sup>
283. Regarding human trafficking, the Commissioner of the INM, Ardelio Vargas, in a meeting with the IACHR said that the Special Prosecutor for Crimes Against Immigrants in Chiapas constituted a good practice in the fight against impunity, by obtaining 59 convictions for the crime of human trafficking, as well as labor and sexual exploitation.<sup>418</sup> The Commission is pleased to see the creation of the Special Prosecutor for Crimes of Violence against Women and Trafficking in Persons of the

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such as interdictions. In the second half of 2014, the main countries of origin and transit of these people started programs, supported by the United States to intercept them in their own territories before trying to migrate to the United States. In Honduras, these programs are known as Operation Rescue of Angeles and Coyote smugglers; in Guatemala, it was called the Safe Passage program; and in Mexico the Southern Border Program. In all three states, these programs have led to an increase in the securitization and militarization of border control operations with a significant participation of the joint military and police forces. See, IACHR, Refugees and Migrants in the US: Families and unaccompanied children. July 24, 2015, para. 113, quoting Jesuit Conference of the United States and Washington Office on Latin America (WOLA). US support and assistance for interdictions, interceptions, and border security measures in Mexico, Honduras and Guatemala undermine access to international protection, (October 2014), pp. 3-6.

<sup>417</sup> The Commission also received information that upon entry into Mexico, once applicants are detected by the INM they are often put into immigration detention. They noted that the manner in which INM agents conduct the detention ignores the right to request and be granted asylum or to receive information. As a consequence, migrants desist from initiating the procedure for determining refugee status, given that, among others reasons, they are told they have little chance of being recognized as refugees or that they will have to remain in immigration detention for the entire duration of the process. Regarding the situation of Central American children and adolescents, they expressed concern that many are placed in immigration detention, in inhumane conditions. In many cases they lack in a number of cases legal representatives and guardians to ensure their rights. As a consequence, most of these children end up being promptly deported to their countries of origin despite their need for international protection. Asylum Access information supplied by Mexico to the delegation of the IACHR in Tenosique, Tabasco. September 29, 2015. See also, various authors *Informe de actualización del estado que guarda el respeto and la promoción de los derechos humanos de las personas migrantes and refugiadas en Mexico: Visita in loco de la Comisión Interamericana de Derechos Humanos*. September 2015, p. 19.

<sup>418</sup> Intervention of INM Commissioner, Ardelio Vargas, in a meeting with the IACHR delegation in Tenosique, Tabasco. September 29, 2015.

PGR, whose existence is based on the need to address the crime of trafficking in Mexico in a timely manner. However, the Commission can only express its concern at information indicating that Central American migrants, especially women, are subjected to a pattern of discrimination and criminalization by the authorities of the Public Ministry of Chiapas when investigating the commission of crimes of people trafficking, taking advantage of the extreme vulnerability in which these individuals often find themselves.<sup>419</sup>

284. The Commission recalls the obligation of States in the region, according to Inter-American standards, to investigate promptly impartially and thoroughly allegations of violence against all persons under their jurisdiction and prosecute, try, and punish, as appropriate, perpetrators respecting their right to due process and judicial guarantees.<sup>420</sup>

### i. Internal Forced Displacement

285. Another of the serious human rights violations caused by the various forms of violence taking place in Mexico in recent years concerns forced internal displacement. The Inter-American Commission found *in situ* that the state of insecurity and violence affecting the country has a severe and disproportionate impact on internally displaced persons. As the Commission noted in its Report "Human rights of migrants and others in the context of human mobility in Mexico" in 2013, violence linked to organized crime has also led to thousands of people being forced to move internally within Mexico in recent years.<sup>421</sup> Information provided to the Commission indicates that the displacements "happen silently, furtively, without requests for support from the authorities due to the mistrust and fear the authorities themselves might identify the victims to their aggressors."<sup>422</sup>

286. The witness evidence and abundant information received by the Commission during its visit, showed how violence has had a particularly severe impact in causing the forced displacement of groups such as indigenous peoples, human rights defenders and journalists.<sup>423</sup> Additionally, the mega development projects are leading to the forced displacement of indigenous peoples and other communities in various parts of the country. The IDP Monitoring Centre (IDMC, in

<sup>419</sup> Universidad Iberoamericana, *Reflexión breve sobre la realidad social de Mexico and la situación de derechos humanos*. September 28, 2015, p. 7; and Centro de Dignificación Humana A.C., Luis Rey García Villagrán, Denia Elizabeth Santos, Santamaria Rosales, Elizabeth Jiménez Albores, *Situación de la trata de personas en el estado de Chiapas*. October 2015. [Document on file with the IACHR].

<sup>420</sup> I/A Court H.R., *Case of Gelman v. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 252.

<sup>421</sup> See, IACHR, *Human Rights of Migrants and other persons in the context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, para. 71.

<sup>422</sup> Information received in the State of Guerrero by the Comité de Familiares and Amigos de Secuestrados, Desaparecidos and Asesinados en Guerrero, September 29, 2015.

<sup>423</sup> BBC Mundo (Alberto Nájjar), *Rubén Espinosa: el drama de los periodistas mexicanos autoexiliados por la violencia*. August 5, 2015. Available at: [http://www.bbc.com/mundo/noticias/2015/08/150804\\_periodistas-exiliados\\_mexico\\_violencia\\_an](http://www.bbc.com/mundo/noticias/2015/08/150804_periodistas-exiliados_mexico_violencia_an)

English) has argued that the upsurge in criminal violence, in particular the activities of criminal groups and large-scale military operations to combat them, have been the main causes of displacement in Mexico.<sup>424</sup> Other causes that are generating internal displacement in the countries of the region are linked to large scale development projects, commonly known as megaprojects, which are mainly affecting indigenous peoples, Afro-descendent communities and peasant/rural communities, as well as the displacement linked to the effects of climate change and natural disasters.<sup>425</sup>

287. In the absence of official figures, IDMC statistics indicate that by the end of 2014, Mexico recorded levels of at least 281,400 internally displaced persons.<sup>426</sup> Civil society organizations indicated that this figure could be much higher. The fact that the authorities do not recognize the existence of internal displacement, and that their numbers remained unquantified, has favored its invisibility.<sup>427</sup>
288. Civil society told the Commission that internal displacement disproportionately affects the elderly, women, children and indigenous people particularly those with limited resources, who are in conditions of extreme vulnerability due to the lack of protection by State institutions, at all three levels of government. The organizations revealed the specific problems of displaced persons in access to housing, education and property rights, access to comprehensive health care, difficulties in obtaining employment, and to an overall involvement in economic, social and cultural rights experienced by displaced individuals and families.
289. The State has informed the Commission that it has implemented measures to address these victimized groups, in the context of its Program for the Prevention of Violence; it has also confirmed the need to guarantee the basic right to housing as a priority for children. However, the State has not provided the Commission with specific data regarding the situation of children and adolescents as a group that is specially affected within the victims of internal displacement, and about the concretion of actions and measures to be taken to guarantee their rights.<sup>428</sup>
290. The Commission has also learned of situations of forced internal displacement in Mexico through the adoption of precautionary measures urging the protection of groups of individuals who were forced to displace internally.<sup>429</sup> The Commission

<sup>424</sup> Internal Displacement Monitoring Centre (IDMC). *Global Overview 2015: people internally displaced by conflict and violence*. May 2015.

<sup>425</sup> Internal Displacement Monitoring Centre (IDMC). *Global Overview 2015: people internally displaced by conflict and violence*. May 2015.

<sup>426</sup> Internal Displacement Monitoring Centre (IDMC). *Global Overview 2015: people internally displaced by conflict and violence*. May 2015. Available at: <http://www.internal-displacement.org/assets/library/Media/-201505-Global-Overview-2015/20150506-global-overview-2015-en.pdf>

<sup>427</sup> See, IACHR, Public Hearing, *The Situation of the Internally Displaced in Mexico*, November 1, 2013; and IACHR, Public Hearing, *Citizen Security and Human Rights in Mexico*, October 27, 2011.

<sup>428</sup> "Situation of Internally Displaced Persons in Mexico." Report of the Mexican State in response to a request for information made by the IACHR on March 12, 2014, pursuant to Article 41 of the American Convention on Human Rights.

<sup>429</sup> See, IACHR, Precautionary Measure No. 60/12, Members of the Triqui de Valle del Río San Pedro, San Juan Cópala, Putla de Guerrero, Oaxaca Indigenous Communities, Mexico. May 29, 2012; Precautionary Measure No. 197/10, 135 Members of the Triqui de San Juan Copala, Oaxaca Indigenous People, Mexico. October 7,

notes that at the date of approval of this Report, the internal forced displacement has not been documented and analyzed comprehensively by the State, which is the main obstacle facing the comprehensive response that Mexico should give this phenomenon.

291. During its visit, the Commission received information from the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH), an organization that reported finding evidence of internal displacement in 14 of Mexico's 32 states, with 141 events of mass displacement of 10 or more families, particularly in the period between January 2009 and February 2015. This massive displacement was concentrated in the states of Baja California, Chiapas, Chihuahua, Coahuila, Durango, Mexico State, Guerrero, Michoacán, Morelos, Nuevo León, Oaxaca, Sinaloa, Tamaulipas and Veracruz. Entities where the majority of cases were identified were Guerrero with 29 movements, Michoacán and Oaxaca with 20, Sinaloa with 17 and Tamaulipas and Chiapas with 14 episodes. In its observations on internal displacement, the CMDPDH has registered 5,908 new internal displacements as of October 2015.<sup>430</sup>
292. The Commission notes that there are a number of state responses that have dealt with internal displacement in a fragmented manner. The Commission was also informed about the Project for Action for Indigenous Displaced Persons (PAID) of the National Commission for the Development of Indigenous Peoples (CDI), which aims to: "combine efforts with federal, state and municipal authorities in order to contribute to the relocation or return of the indigenous population displaced by violence, armed conflicts, violation of human rights, or religious, political, cultural or ethnic intolerance, by fully respecting their cultural diversity."<sup>431</sup> Project guidelines point to the lack of specific legislation to recognize and characterize the population displaced by violence in Mexico, while acknowledging the existence of an indigenous population displaced as a result of the violence generated by armed conflicts, by problems of religious, political or cultural intolerance in Chiapas, Oaxaca, Guerrero, Jalisco and Hidalgo.<sup>432</sup>
293. The Commission stresses the importance of enacting the Law for the Prevention and Monitoring of Internal Displacement in Chiapas, the Law on Preventing and Addressing Internal Displacement in the State of Guerrero, and the provisions of the General Victims Act which refers directly or indirectly to the phenomenon of

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2010; Precautionary Measure No. 151/05, Andrés Quintana Roo Community, Municipio Sabanillas, Chiapas, Mexico.

<sup>430</sup> For events of Las Margaritas (Chiapas), Urique (Chihuahua), Las Negras (Durango), Sonoyta (Sonora), San Miguel Totolapan (Guerrero), Xalapa (Veracruz) and Tamazula (Durango), it is estimated that the total number displaced persons is 1,048. As for the displacement the Chínipas, the Juarez Valley, Urique (Chihuahua) and Iguala families, there is no number of family members per family available, and therefore the displacement of Tamazula, in which an average of 5 members per family is estimated with be taken as a reference. (Northwest, "*Desplazan operativos a pobladores de Durango*," October 11, 2015 Available at: <http://www.noroeste.com.mx/publicaciones.php?id=1060396>.) which produces a total number of 4,860 individuals.

<sup>431</sup> Project for the Attention of Displaced Indigenous Peoples (*Indígenas urbanos and migrantes desplazados*). Available at: [http://www.omi.gob.mx/en/OMI/Proyecto para la atencion a indigenas desplazados Indigenas urbanos y migrantes desplazados](http://www.omi.gob.mx/en/OMI/Proyecto_para_la_atencion_a_indigenas_desplazados_Indigenas_urbanos_y_migrantes_desplazados)

<sup>432</sup> Specific guidelines of the Project for the Attention of Displaced Indigenous Peoples. Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=4911544&fecha=15/06/2006](http://www.dof.gob.mx/nota_detalle.php?codigo=4911544&fecha=15/06/2006)

internal displacement. The latter Act creates the Executive Committee for Addressing Victims (CEAV) as the operational organ of the National System for Victims. The Commission notes that in July 2014, the CEAV approved, "[t] he Agreement acknowledges that the situation of focused internal displacement should be considered as an autonomous victimizing event that needs to be treated with a differential and specialized approach."<sup>433</sup> Under this agreement, victims in this condition should be registered as direct victims of human rights violations (violation of the right of movement and residence, among others) in the National Register of Victims (RENAVI)

294. Despite this, the Commission received information that the denial of such recognition as victims of human rights violations in the CEAV constitutes the main obstacle to the attention of the victims of forced displacement. This is because RENAVI registration requires that victims have previously made complaints to federal ministerial agencies about the events leading to their displacement. Equally, the Commission notes with concern that faced with various situations compelling the internal displacement of persons, Mexico has not to date passed a law on internal displacement to incorporate the Guiding Principles on Internal Displacement within its legal system<sup>434</sup> or to provide a federal level institution or focal point responsible for protecting IDPs.
295. The Inter-American Commission considers it important to note that, in accordance with the Guiding Principles on Internal Displacement, States have four main duties: (i) the obligation to prevent displacement; (ii) the obligation to protect IDPs during displacement; (iii) the obligation to provide and facilitate humanitarian assistance; and (iv) the obligation to facilitate return, resettlement and relocation of displaced persons.<sup>435</sup>
296. The Commission reiterates its particular concern about the lack of meaningful official information on the extent reached by internal displacement in Mexico, as evidenced by the invisibility of the problem.<sup>436</sup> Consequently, beyond the figures mentioned above, it is almost impossible to obtain a global figure on internal displacement generated by drug cartel violence and other causes in Mexico. The lack of data on the size and characteristics of internal displacement in Mexico requires that the State conduct a nationwide analysis to characterize displacement and to adopt the measures necessary to provide an effective response to this phenomenon.

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<sup>433</sup> Record of the 43rd Ordinary Session of the Plenary, Executive Commission for the Attention of Victims. Available at: <http://www.ceav.gob.mx/wp-content/uploads/2014/04/AO-43.pdf>

<sup>434</sup> In Mexico there was an initiative to adopt a law on internal displacement in 1998, but it failed in the Senate.

<sup>435</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights Situation in Colombia*, OEA/Ser.L/V/II., Doc. 49/13, December 31, 2013, para. 537. Available at: <http://www.oas.org/en/iachr/pdfs/Colombia-Truth-Justice-Reparation.pdf>

<sup>436</sup> See, IACHR, *Human Rights of Migrants and other persons in the context of Human Mobility in Mexico*, OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013.

## 5. Situation of Individuals Deprived of their Liberty

297. Based on the information received by the Commission through its various mechanisms, and from information gathered during an *in loco* visit, the Commission notes that another serious problem in Mexico is the arbitrary deprivation of liberty and the widespread use of torture and cruel, inhuman and degrading treatment of individuals just after their arrest and before being brought before the courts.

### a. Torture and Mistreatment in the Context of Detentions

298. Several civil society organizations point out that in the period 2004-2014, a total of 58,381 complaints of arbitrary detention were filed with the CNDH; of which about 17,000 also included allegations regarding torture and ill treatment. According to estimates of the Miguel Agustín Pro Juárez Human Rights Center (Centro Prodh), approximately 10,000 people are tortured in Mexico annually in the criminal justice system.<sup>437</sup> This statistic was calculated by using as a starting point the figure of 2,000 people, which was announced by the Attorney General's Office (PGR), for the federal criminal justice system, and then extrapolating that figure proportionately to the criminal justice system at the state level, in which five times as many people are processed. It was also indicated that this is a conservative estimate, since the number of complaints reflect that there is a greater proportion of torture cases at the state level than at the federal level.<sup>438</sup>

299. For its part, the Commission notes that the UN Special Rapporteur on torture concluded in his report issued on December 19, 2014, after a visit to Mexico, that torture and ill-treatment are "widespread"<sup>439</sup> and that the Subcommittee on Prevention of Torture found that during the first hours of detention, the detainees "are at high risk of torture and cruel, inhuman and degrading treatment."<sup>440</sup>

300. Torture and ill treatment usually have the aim of extracting confessions, gaining incriminating information, and to punish the victim. In particular, during its *in loco* visit, the Commission received troubling information that arbitrary arrests are used as a tool across the country to silence dissenting voices, social and student

<sup>437</sup> Centro Prodh, *Report regarding patterns of human rights violation in the context of public safety policies and the Criminal Justice System in Mexico*, June 2015, p. 32.

<sup>438</sup> Centro Prodh, *Report regarding patterns of human rights violation in the context of public safety policies and the Criminal Justice System in Mexico*, June 2015, p. 32.

<sup>439</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, paras. 25 and 76.

<sup>440</sup> UN, *Report on the Mission to Mexico of the Subcommittee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment*, Doc. CAT/OP/MEX/1, May 31, 2010, para. 144.



movements.<sup>441</sup> In relation to methods of torture, the Commission has received information indicating that the most common are fist beatings, kicking with boots, batons and gun butt blows on various parts of the body; insults, threats and humiliation; electric shocks mainly to the genitals; forcing others to witness and/or listen to the torture; wet and dry choking; forced nudity, and sexual torture.<sup>442</sup>

301. The Commission has also received information about many cases of Central American migrants detained in prison, who are incriminated through confessions obtained under torture by military and police authorities. In the case of the detention of women, the Commission learned that incidents of gender-based violence are widespread, such as sexual violence as torture, humiliation, inappropriate monitoring when bathing or undressing, forced nudity and rape. Specifically, various civil society organizations have pointed out that even after denouncing these problems themselves, and the issue being addressed by international organs, State prosecutors do not have differentiated data revealing the number of complaints of torture against women, or have no records of such complaints.<sup>443</sup>
302. On this issue, the UN Rapporteur on Torture noted that most cases on the use of sexual violence as a form of torture have not been investigated or punished, or have been classified as less serious behavior; in addition, that victims are often re-victimized after presenting their complaints or when undergoing medical examinations".<sup>444</sup> Considering the above, the Commission urges the State to adopt measures to precisely address these issues, with differentiated and updated information; and that the State implement gender-sensitive policies aimed at the prevention, punishment and eradication of this practice.

## i. Codification

303. In recent years, both UN agencies and various civil society organizations have expressed concern about the Mexican legislation's lack of alignment with international standards in the criminalization of torture. In particular, the UN

<sup>441</sup> In this sense, for example, the IACHR on September 28, 2015, the IACHR was informed that the government would use to torture "as leverage against human rights defenders." Also during the *in loco* visit and in different federated states, the Commission received testimony from relatives or political detainees who would have been subject to torture and ill-treatment at the time of their arrest

<sup>442</sup> For more information on the methods of torture, see: UN, *Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3, December 29, 2014, para. 26; Amnesty International (Mexico), *Fuera de control. Tortura and otros malos tratos en Mexico*, 2014; Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, 2011, p. 33; Centro de Derechos Humanos de la Facultad Libre de Derecho de Monterrey, *Informe sobre la Situación de la Tortura and otros Tratos o Penas Cruels, Inhumanos o Degradantes en Nuevo León*, Mexico, 2014.

<sup>443</sup> Information presented by the participants of the hearing into *Allegations of sexual torture against women in Mexico*, March 20, 2015.

<sup>444</sup> UN, Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3, December 29, 2014, para. 28.

Special Rapporteur on Torture noted that the definition of this crime at the federal level is incompatible with the Convention against torture and other cruel, inhuman or degrading punishment. Specifically, the Federal Law to Prevent and Punish Torture does not refer to torture committed with discriminatory purposes or "with any other purpose", and when an individual commits the crime, the law requires that the tortured person be in detention.<sup>445</sup> As for classification among the federated states, the Rapporteur noted that most of the definitions do not meet international standards either, and thus "should also be amended to reflect the definition, penalties and guarantees required by international standards."<sup>446</sup>

304. According to information provided by the State, in 17 federated states, torture is criminalized in the state penal codes,<sup>447</sup> and another 15 have a special law on the subject.<sup>448</sup> According to the Mexican State, the executive branch is currently working in an interagency group on a preliminary draft General Law on Torture and other Cruel, Inhuman and Degrading Treatment in order to harmonize the criminal offenses of torture at the national level.<sup>449</sup> In this sense, the Commission urges the Mexican government to formulate, as soon as possible with civil society and experts in the subject, a general legislation meeting international standards in this area.

## ii. Investigation and Punishment of Torture and Mistreatment

305. As mentioned above, according to official figures, the Attorney General's Office has more than 2,400 pending investigations on torture, representing complaints filed in the period from 2010 to 2015 at the federal level.<sup>450</sup> However, in contrast to the number of complaints, in Mexico there have only been 15 convictions for torture at the federal level from cases initiated between 2003 and 2013.<sup>451</sup> Of these 15, nine were issued between 2012 and 2015.<sup>452</sup> The Commission has no information to indicate whether these sentences have been upheld, nor about the penalties imposed or reparations given. Moreover, the NCHR has a record of complaints of torture and ill treatment between January 2012 and January 2015 amounting to 2,904 acts denounced as torture and 6,811 acts denounced as cruel, inhuman and degrading punishment.<sup>453</sup> In response, the National Human Rights Commission has

<sup>445</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3*, December 29, 2014, para. 14.

<sup>446</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3*, December 29, 2014, para. 15.

<sup>447</sup> The federated states criminalizing torture in their Criminal Codes are the following: Baja California, Baja California Sur, Campeche, Distrito Federal, Durango, Guanajuato, Hidalgo, Jalisco, Michoacán, Nuevo León, Puebla, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Tamaulipas, Zacatecas. Information of the State of Mexico, Visit to the IACHR, September 25, 2015, pp. 30-31.

<sup>448</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, pp. 30-31.

<sup>449</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, p. 28.

<sup>450</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, p. 13.

<sup>451</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, pp. 15-17

<sup>452</sup> State of Mexico. Information presented during the *in loco* visit, September 25, 2015.

<sup>453</sup> National Human Rights Commission, Information received during the *in loco* visit.

issued 256 recommendations regarding torture and 442 recommendations for cruel, inhuman or degrading treatment.

306. From information received by the Commission, it is evident that allegations of torture and ill treatment usually go unpunished, and the State's willingness to investigate and punish the authorities responsible for committing these acts is not apparent. This is clearly reflected in the mismatch between the number of investigations and (mainly) the sentences in relation to the widespread situation faced by the Mexican state. The Commission also notes that UN agencies and civil society organizations, both national and international, have expressed concern about the lack of investigation of these crimes.<sup>454</sup>
307. Moreover, although the number of reported cases of torture and ill treatment is a concern, the Commission acknowledges that it does not reflect the real problems. This is mainly due to the lack of complaints for fear of reprisals or mistrust of the authorities, to the tendency to classify these acts as less serious offenses, and to the difficulty in obtaining data principally due to the absence of a national registry of cases of torture. In this regard, the Commission is concerned about the classification of cases of torture or ill treatment as minor offenses such as "assault" or "minor injuries", a question on which UN bodies have commented. In particular, the UN Special Rapporteur on Torture has referred to the existence of "a tendency to describe acts of torture or ill-treatment as less serious offenses"<sup>455</sup>; and the Committee against Torture has expressed concern over the dismissal of allegations of torture or classification of the facts as lesser crimes, by Public Prosecutors and by judges themselves.<sup>456</sup>
308. One of the irregularities often mentioned that has a direct impact on the investigation was the inadequate implementation of the Istanbul Protocol in Mexico. This implementation is mainly based on a procedure established in the Agreement A/057/2003 of the PGR, that according to the State "establishes institutional guidelines to be [...] followed by [the] staff of the Attorney General's Office, for the application of the Medical/Psychological Evaluation for Cases of Possible Torture and/or Mistreatment [...] and broadly corresponds to

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<sup>454</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, paras. 32 and 78; UN, *Committee against Torture, Final Observations on the Fifth and Sixth Periodic Reports of Mexico*, 49th Period of Sessions, October 29, to November 23, 2012, para. 16. See also: CMDPDH, *Violaciones graves a derechos humanos en la Guerra contra las Drogas en Mexico*, 2015; Amnesty International (Mexico), *Fuera de control. Tortura and otros malos tratos en Mexico*, 2014; ASILEGAL, *Report on the Situation of Persons Deprived of their Liberty, Visit to Mexico of the UN Special Rapporteur on Torture*, 2014; Human Rights Center of the Free Law Faculty of Monterrey, *Informe sobre la Situación de la Tortura and otros Tratos o Penas Cruelles, Inhumanos o Degradantes en Nuevo León*, Mexico, 2014; Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, 2011,

<sup>455</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 24; Committee against Torture, *Final Observations on the Fifth and Sixth Periodic Reports of Mexico*, 49th Period of Sessions, October 29, to November 23, 2012, para. 16.

<sup>456</sup> UN, *Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 24; Committee against Torture, *Final Observations on the Fifth and Sixth Periodic Reports of Mexico*, 49th Period of Sessions, October 29, to November 23, 2012, para. 16.

- international standards." <sup>457</sup> Regarding the application of this protocol, the Commission has received information indicating that the application is inadequate, incomplete, late and performed by untrained personnel.
309. According to information referred to the Commission by civil society organizations, the following issues are present: a) most expert reports carried out by forensic experts have a negative result; b) the PGR does not believe that independent opinions or even those of human rights commissions have the validity of the opinions favored by this entity, and c) the authorities obstructing the entry of human rights experts applying the Istanbul Protocol. This, coupled with the lack of follow-up *ex officio* on the allegations of torture in initial statements prevents the Public Prosecutors from having the elements necessary to assess allegations of torture and initiate the appropriate investigations. For its part, the UN Special Rapporteur on Torture has also referred to "significant deficiencies" in the implementation of the Protocol, both regarding the practice of medical examinations, and in the interpretation and use of their results, leading to a legitimizing of inadequate investigations relating to abuse and torture. <sup>458</sup>
310. In this regard, the State indicated that Agreement A/057/2003 is currently being reviewed in order to "bring it into line with the norms on *amparo*, human rights and the adversarial criminal justice system."<sup>459</sup> In particular, the State highlighted the participation of the Deputy Attorney General's Office of Human Rights, Crime Prevention and Community Services in the draft update of the Agreement, "in order to strengthen the current legal framework, to ensure the investigation of such conduct, including issuing expert opinions of independent institutions following the guidelines established in the Istanbul Protocol and that these are part of the evidence in the investigation of possible torture cases."<sup>460</sup> In this regard, the Commission considers that this review process provides an opportunity for the State to ensure that evaluations meet the standards referred to in the Istanbul Protocol regarding the independence and impartiality with which an investigation should be conducted, and an opportunity to remove the obstacles preventing qualified independent experts from implementing the Protocol, and that their opinions are considered with due evidentiary value to avoid revictimization.
311. The Commission welcomes recent jurisprudential advances in this field. In 2013, the Supreme Court of Justice established the inadmissibility of evidence obtained on the basis of an illegal arrest in violation of the fundamental rights such as due process.<sup>461</sup> A year later, the court established the obligation of judges to open two separate investigations for a complaint of torture, in order to investigate these allegations and to determine the need to exclude evidence, in order to avoid

<sup>457</sup> Information of the Mexican State, Visit of the IACHR, September 25, 2015, p. 14.

<sup>458</sup> UN, Report of the Special Rapporteur on Torture, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3, December 29, 2014, para. 39.

<sup>459</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, p. 14.

<sup>460</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, p. 16.

<sup>461</sup> SCJN, *Amparo* in revision 703/2012. Judgment of November 6, 2013. Judge Rapporteur: Minister Jorge Mario Pardo Rebolledo.

delaying admissibility until sentence and separating the exclusion of evidence from the results of the investigation.<sup>462</sup> This decision also highlights that the Supreme Court has referred to the State's duty to "ensure the independence of medical and health staff charged with examining and assisting detainees, so that they can freely perform the necessary medical evaluations."<sup>463</sup>

312. The Commission also notes the recent establishment of a Special Torture Crime Unit of the PGR.<sup>464</sup> According to the agreement establishing this unit, it is to have the competence to direct, coordinate and supervise investigations regarding the crime of torture in the case of acts attributable to public servants who are members of other departments of the Federal Government, or of other Federation Powers, or even of any other autonomous body in accordance with the provisions of the Federal Law to Prevent and Punish Torture and other provisions applicable in this area.

### **b. Arbitrary Deprivation of Liberty: Restriction Orders, Excessive use of Preventive Detention and *Quasi Flagrante Delicto***

313. In accordance with the 2008 constitutional reform in the area of criminal justice and security, the practice of detention without a judicial order, known as "*arraigo*," was elevated to constitutional level. Under the Mexican Constitution, the judicial authorities may issue a restriction order against a individual for offenses of organized crime, for a period of 40 days, extendable up to 80 days, "whenever necessary for a successful investigation, the protection of persons or legal rights, or when there is a well-founded risk that the accused may escape from the administration of justice."<sup>465</sup> In its observations to the draft of this report, the State maintained that article 20 of the Mexican Constitution prohibits all kinds of incommunication, intimidation or torture, and establishes the obligation to notify the accused the fact attributed to them and the rights that protect them, guaranteeing the right to an adequate defense, among other guarantees. Additionally, it indicated that the Constitution contemplates the "control judge" as an independent and specialized federal judicial authority in charge of resolving immediately the requests for an *arraigo*. Among the functions of "control judges" are ensuring that there is not violation to the rights of the accused, the victims, or

<sup>462</sup> SCJN, *Amparo Directo* in revision 90/2014. Judgment of April 2, 2014. Judge Rapporteur: Minister Jorge Mario Pardo Rebolledo.

<sup>463</sup> SCJN, *Amparo Directo* in revision 90/2014. Judgment of April 2, 2014. Judge Rapporteur: Minister Jorge Mario Pardo Rebolledo. Also, the IACHR appreciates that in April 2015, in the case Alfonso Martin del Campo Dodd, the Supreme Court ordered the immediate release of Mr. del Campo Dodd, charged with the murder of his sister and brother in 1992 and sentenced to 50 years imprisonment. The Supreme Court found that Mr. Alfonso Martin del Campo Dodd was tortured to extract a confession of murder, which violated his rights, as the IACHR established in its report in 2009. IACHR, Report No. 117/09, case 12.228, Merits, *Alfonso Martin del Campo Dodd*, Mexico, November 12, 2009.

<sup>464</sup> SEGOB, Official Gazette of the Federation. Agreement A/101/15 creating the Specialized Unit on the Investigation of Torture, and establishing its powers. DOF, October 27, 2015.

<sup>465</sup> Article 16 of the Mexican Constitution.

any other aggrieved party in the proceeding, as well as verifying the legality of the actions of all parties that intervene in the proceeding.<sup>466</sup>

314. The Commission has previously expressed concern about the existence of the *arraigo*, and has urged the State to abolish it from its domestic legal framework.<sup>467</sup> In recent years, the Commission has received numerous complaints regarding the use of restriction orders to detain suspects in private homes, hotels and military installations, without respect for due process rights, and making it more likely that persons deprived of their liberty face the risk of being subjected to ill-treatment and even torture.<sup>468</sup> The Commission also notes that various United Nations bodies and civil society organizations, both national and international, have pointed out that a restriction order encourages the use of detention as a means of investigation which violates rights such as personal liberty and personal guarantees, as well as creating a climate in which the detainees are at risk of being subjected to ill-treatment and torture. Consequently, the UN Special Rapporteur on Torture, the Committee against Torture, the Working Group on Enforced or Involuntary Disappearances and the Special Rapporteur on the independence of judges and lawyers have asked the Mexican state to abolish it.<sup>469</sup>
315. The Commission welcomes the fact that the federated states of Chiapas, Oaxaca and Yucatan have abolished the *arraigo*.

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<sup>466</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>467</sup> IACHR, Press Communiqué No. 105/11, *IACHR concludes a visit to Mexico*, September 30, 2015.

<sup>468</sup> The international organs that have spoken out against the restriction order (*arraigo*) are: UN, *Report of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment and punishment*, Juan E. Méndez, *Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 49; UN, *Committee against Torture, Final Observations on the Fifth and Sixth Periodic Reports of Mexico*, 49th Period of Sessions. Report of the Working Group on enforced or involuntary disappearances, Human Rights Council, 19th Session, A/HRC/19/58/Add.2, December 20, 2011, paras. 30 and 88; UN, *Report of the Special Rapporteur on the independence of judges and lawyers*, A/HRC/17/30/Add.3., April 18, 2011, paras. 60-64. For their part, the UN Committee against Torture and the Working Group on Arbitrary Detention, spoke out against this measure, even before elevated to constitutional status. UN, *Committee against Torture. Consideration of reports submitted by States parties under article 19 of the Convention*, CAT/C/MEX/CO/4, February 6, 2007 para. 1G; UN *Report of the Working Group on Arbitrary Detention on its Mission to Mexico, October 27 to November 10, 2002*. E/CN.4/2003/8/Add.3, December 17, 2002, para. 50. Likewise, various civil society organizations have also spoken about: Observatorio Ciudadano Justice System, *El uso del arraigo a nivel federal, en el estado de Nuevo León and el Distrito Federal: Análisis de constitucionalidad, legislación and práctica*, 2015; Fundar, Center for Analysis and Research, *El uso e impactos del arraigo en México*, 2014; ASILEGAL, *Report on the Situation of Persons Deprived of their Liberty, Mission to Mexico of UN Special Rapporteur on Torture, 2014*; CMDPDH and OMCT, *El arraigo hecho en México: violación a los derechos humanos*. Report to the Committee against Torture in connection with the review of the 5th and 6th periodic reports of Mexico, 2012; Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, 2011.

<sup>469</sup> UN, *Report of the Special Rapporteur on Torture and other cruel, inhuman and degrading treatment*, Juan E. Méndez, *Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 49; UN Committee against Torture, *Final Observations on the Fifth and Sixth Periodic Reports of Mexico*, 49th Period of Sessions, October 29, to November 23, 2012; Report of the Working Group on Forced Disappearances, Human Rights Council, 19th Period of Sessions, A/HRC/19/58/Add.2, December 20, 2011, para. 88; UN, *Report of the Special Rapporteur on the Independence of Judges and Lawyers*, A/HRC/17/30/Add.3., April 18, 2011, para. 64.

316. The Mexican State has reported a significant reduction in the application of restriction orders in practice.<sup>470</sup> According to figures from the Attorney General's Office, in 2012 there were 1,287 individuals under restriction orders at the federal level; in 2013 that number was 630; in 2014, 286 were recorded to be subject to restriction orders, and between January and August 2015, that number was 81 individuals.<sup>471</sup> The Commission also notes judgments of the Supreme Court indicating that the federated states have no constitutional powers to legislate or implement restriction orders, since following the 2008 constitutional reform, this measure is only applicable in cases of organized crime and that this matter is exclusively reserved to the competence of the Federation.<sup>472</sup> In its observations to the draft of this report, the State stated that with the entry into force of the National Code of Criminal Procedure in the states where the new criminal justice system is already in place, the figure of arraigo will no longer be applicable at the state level.<sup>473</sup>
317. In this regard, the Commission welcomes the reduction in the use of this measure and the jurisprudence limiting it. However, it expresses concern about the existence of the restriction order at the constitutional level, whose existing validity in itself is contrary to the American Convention, because it has severe consequences for the enjoyment of the rights of persons subject to this form of detention. Notwithstanding the progress towards reducing the application of restriction orders, the Commission reiterates its call on the Mexican State to abolish the restriction order completely from its legal system.
318. The application of pretrial detention is based on Article 19 of the Constitution. This provides that such detention may be requested by the Public Ministry, whenever other precautionary measures are insufficient to ensure the appearance of the accused at trial, the development of the investigation, the protection of victims, witnesses or the community, and when the accused is being tried or has previously been convicted of intentionally committing an offense. This provision also establishes offenses that warrant preventive detention *ex officio*, during the course of the trial.<sup>474</sup> Pretrial detention "may not exceed the maximum time penalty

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<sup>470</sup> In public hearing before the IACHR, held in March 2014, the State highlighted its willingness to ensure that the arraigo becomes an exceptional measure. At the hearing, the State provided the following statistics: in 2011 2,550 people were under *arraigo* and in 2013 that number was 630, that is, there was a reduction of 75% in the number of people under *arraigo*. As of March 2014, the State indicated that at the federal arraigo center there were 35 people under arraigo for exceptional cases related to organized crime. IACHR, Public Hearing, *Challenges in implementing the criminal justice system in Mexico*, March 27, 2014. Available at: [www.iachr.org](http://www.iachr.org). Also during the visit of the IACHR Rapporteur on Persons Deprived of Liberty in September 2014, various state authorities indicated that they have significantly reduced the application of restriction orders.

<sup>471</sup> Information of the State of Mexico, Visit to the IACHR, September 25, 2015, pp. 81 and 82. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>472</sup> Supreme Court of Justice of the Nation, Unconstitutionality Motion 29/2012, February 25, 2014, Minister Rapporteur: Alberto Pérez Dayán; and *Amparos* in revision 164/2013 and 38/2014, April 30, 2014, Minister Rapporteur: José Ramón Cossío Díaz.

<sup>473</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>474</sup> These offenses are: organized crime, intentional homicide, rape, kidnapping, people trafficking, crimes committed with violent means such as firearms and explosives, and serious crimes defined by law against

prescribed by law for the crime under trial, and in no case should it exceed two years, unless the extension is due to the exercise of the accused's right of defense".<sup>475</sup>

319. According to figures from the Ministry of the Interior, for August 2015, of the 254,469 people detained in Mexican detention centers,<sup>476</sup> 107,441 remain in pretrial detention, i.e. 42% of the country's prison population.<sup>477</sup> In particular, of the 13,498 women prisoners, 52.94% are subject to this procedure, i.e. 7,146. Meanwhile, 100,295 male detainees are in pretrial detention, which represents 41.61% of the total population.<sup>478</sup>
320. The Commission notes that the excessive use of pretrial detention in Mexico is reflected in the number of detainees who are being tried. The Commission has also received information from civil society organizations that indicates a failure to implement alternative measures to detention, associated both with judicial practices and the regulatory framework. As the Commission noted above, the widespread use of pretrial detention involves real consequences not only for individuals, but represents a significant financial burden for the State, and causes other problems such as overcrowding and a lack of segregation between prosecuted and convicted inmates.<sup>479</sup>
321. In addition, during the *in loco* visit and during the visit made by the Rapporteurship on the Rights of persons Deprived of Liberty in September 2015, the Commission received information about cases where people remain in prison without trial, for longer than the time referred to in the Constitution. In particular, during a September 2015 visit to centers conducted by the Rapporteur on the Rights of Persons Deprived of Liberty, statements were received from individuals whose cases have far exceeded the constitutional limit of two years for the application of pretrial detention. The Rapporteur also observed in the detention centers visited,<sup>480</sup> that prosecuted and convicted inmates share the same cells and mix together in the same communal areas.<sup>481</sup>

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national security, the free development of personality and health. Constitution of the United Mexican States, Article 19 second paragraph.

<sup>475</sup> CPEUM, Art. 20.B.IX.

<sup>476</sup> In particular, according to official figures, the female population corresponds to 13,498 inmates; while the male population amounts to 241,021 inmates. National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>477</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015. See also IACHR, Public Hearing, Challenges in the implementation of the criminal justice system in Mexico, March 27, 2014.

<sup>478</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>479</sup> IACHR, *Report on the Use of Preventive Detention in the Americas*, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, paras. 1 and 124.

<sup>480</sup> The centers where those observations were made: The Federal Center of Social Readaptation No.1 "El Altiplano" (CEFERESO No. 1), The Santa Martha Women's Center for Social Readaptation, and the Men's Preventive Detention Center 'Oriente'.

<sup>481</sup> IACHR, Press Communiqué 116/15, *Rapporteurship on Persons Deprived of their Liberty conducted visit to Mexico*, October 15, 2015



322. According to the Mexican Constitution, an individual may be arrested without a prior judicial order if the individual is apprehended at the time of the commission of an offense or "immediately after having committed it". This latter assumption is known as "quasi flagrante delicto (*flagrancia equiparada*)."<sup>482</sup> The Commission has expressed its concern over the application of the concept of quasi flagrante delicto, particularly as reported by the UN Subcommittee on Prevention of Torture about its use to justify mass arrests of individuals, who in reality were not arrested *in flagrante* and had no connection or objects relating to the events at stake.<sup>483</sup> The Commission considers that the concept of *quasi flagrante delicto* grants excessive leeway to the State regarding detention of suspects of potential suspects, and jeopardizes respect for due process in criminal matters contrary to international human rights standards on the subject.

323. For their part, both civil society organizations and UN agencies have spoken out about the "excessive" interpretation given to this provision in practice.<sup>484</sup> In relation to the use of this measure, the UN Subcommittee on Prevention of Torture said it is "excessive in terms of duration and is incompatible with the principle of the presumption of innocence and the legal requirement of lawful arrest by court order."<sup>485</sup> For its part, the UN Special Rapporteur observed a "loose and undue use" of the concept of flagrancy, and determined that the existence of this measure encourages "a tendency to detain to investigate, rather than to investigate to detain."<sup>486</sup> Therefore, the Commission urges the Mexican government to correct the excessive use of preventive detention, limiting it to exceptional circumstances, by making use of other precautionary measures not involving the deprivation of liberty. In this context, it recommends that the State guarantee that detainees are immediately brought before a judge, to restrict the use of warrantless detentions in cases of alleged quasi flagrante delicto.

<sup>482</sup> Political Constitution of the United Mexican States, Article 16 ("Any person may detain the accused at the moment in which he is committing a crime or immediately after having committed it, presenting him without delay before the closest authority, and this authority shall present him with the same celerity before a Public Prosecutor. There shall be an immediate registration of the detention.").

<sup>483</sup> IACHR, *Report on the Use of Preventive Detention in the Americas*, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, para. 234. See UN Subcommittee on the Prevention of Torture, *Report on the visit to Mexico*, CAT/OP/MEX/1, May 27, 2009, para. 208.

<sup>484</sup> UN, *Report of the Special Rapporteur on Torture*, Juan E. Méndez, *Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 47; Subcommittee for the Prevention of Torture, *Report on the Visit to Mexico*, CAT/OP/MEX/1, para. 133. See also: Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's "War on Drugs"*, 2011.

<sup>485</sup> UN, *Subcommittee for the Prevention of Torture, Report on the Visit to Mexico*, CAT/OP/MEX/1, para. 133.

<sup>486</sup> UN, *Report of the Special Rapporteur on Torture*, Juan E. Méndez, *Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 47.

## c. Detention Conditions

### i. General Considerations

324. The Commission, through its Rapporteur on the Rights of Persons Deprived of Liberty visited Mexico from September 17 to 19, 2014 and between September 22 and 24, 2015, with the aim of obtaining information on the status of the Mexican prison system and of identifying the major deficiencies facing it. During his last visit, the Special Rapporteur visited the Federal Social Rehabilitation Center No. 1 "Altiplano" (CEFERESO No. 1) and the Santa Martha Women's Center for Social Rehabilitation, the Men's Preventive Detention Center "Oriente" and the Men's Criminal Sanctions Enforcement Center "Oriente". Meetings with civil society were also held. In September 2014, the Rapporteur met with various authorities, and also with civil society. The Commission thanks the Mexican Government for the cooperation provided to allow these visits and appreciates the commitment of the authorities to receive the Special Rapporteur for continued monitoring of the conditions of detention for persons deprived of liberty in other regions of Mexico.
325. Mexico has a total of 388 detention centers: 17 federal centers; 12 in the Federal District; 285 dependent on state governments; and 74 municipal ones.<sup>487</sup> According to official figures, Mexico has a total prison population of 254,469 persons deprived of their liberty, of which 205,644 are subject to local (state) jurisdiction (80.81%) and 48,825 to the federal jurisdiction (19.19%).<sup>488</sup> The female prison population is 5.20% of the total number of detainees.<sup>489</sup> As noted above, approximately 42.22% of persons deprived of their liberty are held in pretrial detention.<sup>490</sup> The administration of the penitentiary system depends on the National Security Commission through the Decentralized Administrative Organ for Prevention and Rehabilitation. The Secretariats for Public Security are in charge of prison administration at the state level.
326. In its observations to the draft of this report, the State referred to the creation of the National Conference of the Penitentiary System, which has as its objective to facilitate cooperation among penitentiary systems, with other public and private institutions, and serves as an entity of analysis, dissemination and instrumentation of public policy in penitentiary matters. Among the various technical committees of the National Conference, the State highlighted the committee to "Fight Against Corruption," "Penitentiary Overcrowding and Rescivism," "Respect for the Human Rights of Inmates," "Gender Equality and Women Inmates," among others. The State also reported that between 2012 and 2015, it increased the installed

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<sup>487</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>488</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>489</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>490</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

capacity of federal penitentiaries by more than 22%, and nine Federal Centers of Social Readaptation are under construction.<sup>491</sup>

327. The Commission notes that in addition to the implications that led to the 2008 constitutional reform in the area of security and justice, analyzed in Chapter III of this report, the reform also meant a transformation of the Mexican prison system, with respect for human rights and social reintegration of persons deprived of their liberty as guiding principles. In this regard, in accordance with Article 18 of the Mexican Constitution, the prison system is organized "on the basis of respect for human rights, labor [,] education, health and sport as a means to achieve the reintegration of the inmate back into society."<sup>492</sup> In order to introduce an approach of social reintegration, through the 2008 amendment of Article 21 of the Constitution, the judicial imposition of penalties was contemplated by establishing that "the imposition of penalties, their modification and duration depend exclusively on the judicial authority."<sup>493</sup>
328. In this context, on October 8, 2013, Article 73 was amended in order to establish the power of Congress to issue legislation governing the enforcement of penalties in the Republic at the federal level and in the ordinary jurisdiction, and its entry into force would override state legislation on the subject.<sup>494</sup> After two years of discussion, the draft National Criminal Enforcement Act is currently in its last revision stage in the Justice Committee of the Senate. Concerning the draft in question, civil society organizations have identified some shortcomings such as: the lack of protection for persons held in preventive detention in view of the fact that the proposed legislation only protects sentenced individuals; the tightening of conditions for the benefit of early release; the provision of security measures for people with mental and intellectual disabilities;<sup>495</sup> and subjecting civil society independent monitoring to the discretion of the prison authorities. In this regard, the IACHR urges the State to adapt this draft legislation to international standards in the area to ensure the rights of persons deprived of their liberty, both during trial and after sentencing, with emphasis on criminal due process and social reintegration.

## ii. Main Areas of Concern

329. According to the information collected and received by the Commission in recent years through its various mechanisms, the resolution of issues present at Mexican detention centers depend in important part on the different levels of government

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<sup>491</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>492</sup> Political Constitution of the United Mexican States, Article 18.

<sup>493</sup> Political Constitution of the United Mexican States, Article 21.

<sup>494</sup> Political Constitution of the United Mexican States, Article 71, section XXI, indent c).

<sup>495</sup> On this point, during the meeting with civil society on September 22, 2015, the *Documenta* organization reported that the implementation of security measures for people with disabilities involves the restriction of the rights and guarantees of due process, since it subjects individuals to indefinite forced medical treatment. This implies that the person is convicted of his disability and not for criminal behavior.

to which they belong. However, the Commission notes that federal and state detention centers suffer from common structural patterns such as overcrowding, corruption and uncontrolled self-government in aspects such as security and access to basic services, violence between inmates, lack of medical attention, a lack of real opportunities for social reintegration, a lack of differentiated attention for groups of special concern, abuse by prison staff, and lack of effective grievance mechanisms.

330. Regarding the State detention centers, the information available to the Commission indicates that, in addition to the main problem of overcrowding, they also suffer from more serious and precarious conditions due to the federated states' lack of financial resources. According to information gathered by this Commission, federal detention centers could have better physical condition and control, but also an environment of extreme repression. In this sense, they are characterized by the use of prolonged isolation regimes (up to 22 and sometimes 23 hours a day), restrictions of communication between inmates and serious difficulties with outside contact.
331. Moreover, a recurrent concern informed by civil society is the excessive use of penalties involving privation of liberty.<sup>496</sup> In this regard, the NCHR has stated that precisely the "disproportionate" use of penalties involving the privation of liberty is a major cause of overcrowding in detention centers in Mexico,<sup>497</sup> and that despite efforts by the authorities to provide more facilities for the penitentiary system, the results have not matched expectations "which shows that overcoming this phenomenon requires comprehensive programs beyond building more prisons."<sup>498</sup>

### *Overcrowding*

332. The Commission has been informed that overcrowding is one of the major problems encountered in most Mexican detention centers. According to information received by the Commission, overcrowding has resulted in the increase of uncontrolled self-government due to the lack of supervision by the penitentiary authorities, corruption and violence in recent years.<sup>499</sup> For its part, the NCHR stated in its 2015 report on "Overcrowding in Mexico's Detention Centers"<sup>500</sup> that overcrowding is one of the major human rights violations in detention centers in Mexico. The CDHDF has also presented information to the Commission on this issue.<sup>501</sup>

<sup>496</sup> CNDH, *La Sobrepoblación en los Centros Penitenciarios de la República Mexicana*, 2015, p. 75.

<sup>497</sup> CNDH, *La Sobrepoblación en los Centros Penitenciarios de la República Mexicana*, 2015, p. 3.

<sup>498</sup> CNDH, *La Sobrepoblación en los Centros Penitenciarios de la República Mexicana*, 2015, p. 3.

<sup>499</sup> Information referred to the Commission during the hearing before the IACHR "Challenges on the Implementation of the Criminal Justice System in Mexico", 150th Period of Ordinary Sessions, March 27, 2014.

<sup>500</sup> CNDH, *La Sobrepoblación en los Centros Penitenciarios de la República Mexicana*, 2015, p. 3.

<sup>501</sup> Information of the CDHDF for the IACHR, during its *in loco* Mission to Mexico, received on October 1, 2015, p. 7.

333. According to official figures, the total accommodation capacity of the Mexican prison system is 203,096 places.<sup>502</sup> Whereas currently the total prison population amounts to 254,469 persons deprived of their liberty,<sup>503</sup> there is a deficit of 51,353 places; that is, and there is a general level of overcrowding of 25.5% over its accommodation capacity. Of the country's 388 prisons, 200 are overcrowded<sup>504</sup> which shows that the actual distribution of overcrowding is not uniform, and therefore, various centers face a more serious problem. This is reflected, for example, in the Men's Preventive Detention Center "Oriente" with a population of 12,883 inmates as at September 22, 2015, despite the fact that it only had capacity for 5,604 inmates, thus exceeding its capacity by 229%. On this issue, the UN Rapporteur on Torture stated that these figures, while a matter of concern, do not reflect the "real overcrowding" given that "capacity is measured in terms of available beds and not in terms of the space of about 18 m [...] which each detainee must be provided with in accordance with accepted standards."<sup>505</sup>

### *Corruption and Uncontrolled Self-Government*

334. The Commission has been informed that there are strong regimes of corruption in the Mexican prison system. In particular, civil society organizations and inmate's relatives have indicated that the persons deprived of their liberty are subject to improper payments by prison staff so that they are provided with services and basic goods, such as food, water and health. They are also required to pay a regular fee in order to avoid being beaten and abused in detention centers. For its part, the CDHDF reported that the main source of complaints received are connected with persons deprived of their liberty,<sup>506</sup> in particular, the "arbitrary" fee collection by the authorities, so that persons deprived of their liberty can receive health care.<sup>507</sup> According to a 2014 study by the Center for Economic Research and Teaching (CIDE), in the Federal District prisons the collection of improper fees doubled over the decade 2002 to 2013.<sup>508</sup>
335. According to experts in the field, these high levels of corruption largely occur because of a lack of sufficient prison staff, the very precarious working conditions, and the lack of basic equipment to perform their functions. Civil society organizations, for their part, informed the Commission that although they publicly denounced serious acts of corruption by prison officials, the corresponding

<sup>502</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>503</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>504</sup> SEGOB, National Security Commission Administrative Body Prevention and Social Rehabilitation, *Monthly Booklet on Statistical Detention Information*, August 2015.

<sup>505</sup> UN, *Report of the Special Rapporteur against Torture, Juan E. Méndez, Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 61.

<sup>506</sup> Information received during the visit of the Special Rapporteur on the Rights of Persons Deprived of their Liberty, September 2014.

<sup>507</sup> Information of the CDHDF for the IACHR, during its *in loco* Mission to Mexico, received on October 1, 2015, p. 4.

<sup>508</sup> Centro de Investigación and Docencia Económicas (CIDE), *Delito and Cárcel en México, deterioro social and desempeño institucional*. Mexico, August 2014.

criminal investigations have not been carried out with due diligence, and impunity still prevails.

336. Another aspect that the Commission has learned about is the absolute control exercised by the inmates themselves in some detention centers. According to civil society organizations, this is the case in the North of the country where there is a strong presence of organized crime. In particular, they have highlighted the complexity of the situation in detention centers such as Topo Chico, in the state of Nuevo Leon, where the inmates themselves have allegedly beaten and even killed those refusing pay for extortions. They also prevent family members from providing basic necessities to inmates since, allegedly, a private firm sells these kinds of articles inside the facility at exorbitant prices.<sup>509</sup>

### *Imposition of Disciplinary Sanctions*

337. Considering its observations during the 2015 *in loco* visit and the information received more recently, the Commission notes that the application of disciplinary sanctions is disproportionate to the violation being sanctioned, and frequently imposed according to discretionary criteria by the prison staff. Also, the sanctioned inmates lack independent and effective mechanisms to challenge the sanctions. The Commission notes that one of the most common punishments is the imposition of solitary confinement in small cells and in deplorable conditions, for excessively long periods –even months— and restrictions on family visits and phone calls.
338. In particular, in the Santa Martha Women's Center for Social Readaptation, the Commission noted the deplorable conditions of the punishment cells, and verified the prolonged application of such sanctions. In this regard, one of the inmates revealed that she had been held for three months in punishment cells for discussing with a security chief; the length of the punishment was confirmed by the authorities, who stated that it was the result of repeated infractions committed by the person being punished. The inmate stated "they took me for arguing with a security chief, for demanding my rights. They left me without calls. The guards hurt my hands. They have not provided attention for my hand. I do not trust the authorities."
339. In one of the cells where three inmates were subjected to solitary confinement, the Commission observed deplorable conditions in terms of cleanliness: in particular, the toilet was dirty, the cell was littered with garbage, rotten food, paper, and even a used sanitary pad was observed. One of these inmates, who allegedly had been punished for four days, stated: "since we arrived on Saturday, they have not let us take the trash out. They have not allowed access to our things; we have no toothbrushes. I have been menstruating since Saturday and they have only provided two sanitary pads." Another inmate stated that during the first days of

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In this regard, the UN Special Rapporteur for Torture stated that he received generalized complaints regarding the scarcity and poor quality of food, which is a situation that is exacerbated by the prohibition on receiving food from family members.

the three months in solitary confinement she had been denied elements for personal hygiene.

340. The Commission has also learned that another type of sanction imposed is the transfer to other detention centers in order to restrict contact with persons outside the prison. The information received indicates that there is no official notification of the transfer to the inmate, her relatives or legal guardians; and during the course of the transfer, the inmates are allegedly subjected to ill treatment and torture.

### *Privatization and Certification of Prisons*

341. The Commission has been informed that since 2006, several contracts to provide services for the administration and management of detention centers have reportedly been concluded, in order to reduce the financial burden on the State. In particular, high-ranking prison authorities have indicated to the Commission that "service contracts are the future of the prison system in Mexico". Specifically, through these contracts, companies would undertake to provide a "panoptic" security approach, food, cleaning, repairs, gardening, and technology. Meanwhile, according to civil society organizations, in order to comply with the terms of their contracts with private companies, each detention center must keep a number of inmates in accordance with basic installed capacity, which would encourage the use of detention as the only means to fight crime. According to civil society, privatization models have been reported mainly in prisons administered by the federal government, in particular: CEFERESO No. 1; CEFERESO # 11 in Sonora, CEFERESO No. 12 in Guanajuato, Oaxaca CEFERESO No.13, and CEFERESO # 14 in Durango.
342. In this regard, the Commission states its concern over the lack of available information on the contracts concluded by the State and the respective companies, as indicated by civil society organizations. The Commission notes that by means of an access to public information request, this data has been denied by the Decentralized Administrative Office for Prevention and Rehabilitation on the ground that is considered "reserved."<sup>510</sup>
343. Moreover, the Commission was also informed by both federal and state authorities, as well as civil society, that in order to count on the support of the Merida Initiative, a wide-reaching process to import the United States' prison model through the international certification of the American Correctional Association ("ACA") began in 2008. The Commissioner of the Decentralized Administrative Organ informed the Commission that once the centers are certified –through the support of the Merida Initiative— in-kind support will be received, such as medical equipment and technology. According to the report by the authority in question, and other federal and state authorities, the centers with this type of certification include the following: the Federal Social Rehabilitation Center No. 9 North, in

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<sup>510</sup> Committee on Information of the Public Security Secretariat, Request for Information 3670000001012, Resolution / OADPRS/CDI/003-12, July 11, 2012. Available at: <http://www.cns.gob.mx/portalWebApp/Show-Binary?nodeId=/BEA%20Repository/1222084//archivo>

Chihuahua; Men's Prison Security Centers (Cevasep) vertical 1 and 2, built alongside the Men's Preventive Detention Center North; and two centers for juveniles in the Federal District. They also reported that this certification is currently being sought for ten detention centers.

344. The Commission states its concern regarding the information received that, at least in some cases, the privatized center regime and the search for international certification, are planned and carried out in light of the US maximum-security structure, which involves standards incompatible with human rights. These schemes have involved in practice excessive restrictions on visits by family members and counsel; extremely limited access to the outdoors and to recreational activities; excessive physical inspections, even the intimate body parts of visitors.
345. Additionally, the Commission is concerned regarding the fact that the model seeking to increase security by hiring services in search of international certification, is usually a very expensive model, as indicated by state authorities and civil society organizations.<sup>511</sup> In this regard, the Commission highlights the remarks of the NCHR in its Recommendation 35/2013 regarding the privatization of CEFERESO No. 11 of Sonora, indicating that despite the "high" daily cost under the model of "contract for the provision of services", this center "has similar or even more serious shortcomings than the centers currently dependent on the federal government."<sup>512</sup> The Commission is concerned that the allocation of resources is being primarily directed to the support of repressive models, contrary to international standards, instead of being directed to the humanization of prisons and the implementation of measures to ensure the social reintegration of persons deprived of their liberty.

### *Lack of Differentiated Attention for Special Concern Groups*

346. The Commission has received troubling information on the situation of populations most at risk of human rights violations in the context of the deprivation of liberty. Based on the information received, the Commission notes in general terms, the absence of institutions and public policies addressing their

<sup>511</sup> In this regard, civil society organizations and experts in the subject informed the Commission that behind these privatization schemes politically and economically powerful groups operate in accordance with the specific purpose of financial gain

<sup>512</sup> Specifically, the CNDH indicates that the cost of CEFERESO NO. 11 in Sonora amounts to \$1,670.00 (one thousand six hundred and seventy pesos 00/100 M.N.) per inmate daily, under the "CPS" model (Contract for the Supply of Services). NCHR, Recommendation No. 35/2013: *On the case of inmates of the Federal Center of Social Readaptation No. 11 "CPS Sonora", in Hermosillo, Sonora, September 25, 2013, para. 71.* Available at: [http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2013/REC\\_2013\\_035.pdf](http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2013/REC_2013_035.pdf); Moreover, regarding the conditions of detention, NCHR recommendation 9/2015 issued in March 2015, indicates that among the main human rights violations faced in this center are: a) "irregularities" in the realization of recreational activities; b) lock-down in their cells for most of the day, where they eat and perform their bodily functions, in insanitary conditions; c) inadequate medical care, and d) interference with visits and correspondence, as well as with calls. NCHR Recommendation No. 9/2015, on the case of violations of humane treatment and social reintegration of inmates of Federal Social Rehabilitation Center No. 11 "CPS Sonora" in Hermosillo, Sonora, March 30, 2015. Available at: [http://www.cndh.org.mx/sites/all/-doc/Recomendaciones/2015/Rec\\_2015\\_009.pdf](http://www.cndh.org.mx/sites/all/-doc/Recomendaciones/2015/Rec_2015_009.pdf)



particular situation, in light of the specialty principle allowing the Mexican state to meet its special duty to provide protection.

347. With regard to women deprived of their liberty, the information received indicates that from the time of their arrest, they face serious abuses and situations unsuited to their condition. This is due to the absence of a gender perspective in public policies and local regulations. In particular, the Commission has been informed, as was noted earlier in this report, that women deprived of their liberty are subjected to various types of violence, including sexual abuse and torture. They also face serious barriers impeding access to adequate medical care, which particularly affect pregnant women and infants.
348. Likewise, civil society organizations reported that approximately 60% of the female prison population is housed in male detention centers, located in areas that put them at greater risk of abuse from other inmates and staff. Additionally, these prisons are not suitable to meet their needs, especially in the case of indigenous women, women with different sexual orientations and identities, pregnant women, nursing mothers, as well as the child population residing with them.<sup>513</sup>
349. Regarding persons with disabilities in the prison system, the UN Special Rapporteur on Torture noted that most of them are held in detention centers that are inappropriate for their treatment, and they are housed in reduced areas subject to unsanitary and overcrowded conditions, exacerbated by their health needs.<sup>514</sup> In addition, with regard to women with disabilities held in detention centers, in 2014 the CDHDF –based on information received through its complaints mechanism, as well as documentation from women's detention centers—identified the common problems faced by this population: overmedication, failure to ensure informed consent, and the imposition of solitary confinement.<sup>515</sup>
350. Moreover, the Commission wishes to highlight the situation faced by persons with disabilities deprived of their liberty in long stay non-penal institutions. In this respect, pursuant to information available to the Commission, violations of the right to life and physical integrity, segregation for life, prolonged use of physical restraints and solitary confinement, isolation rooms and cages and overmedication, have been documented. The alarming situation of people with disabilities in long-stay institutions such as the Centers for Assistance and Social Integration ("CASI") in Mexico City has been referred to by the UN Special

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<sup>513</sup> On this last point, the National Commission on Human Rights in its special report on women inmates in detention centers in Mexico in 2015, determined that there is a lack of normative criteria regarding the period of time that minors born to detainee mothers, can remain with them, recording periods ranging from the first six months of life to twelve years old. CNDH, *Informe Especial de la Comisión Nacional de Derechos Humanos sobre las Mujeres Internas en los Centros de Reclusión de la República Mexicana*, 2015, p. 17.

<sup>514</sup> UN, *Report of the Special Rapporteur on Torture and cruel, inhuman or degrading treatment*, Juan E. Méndez, *Mission to Mexico*, A/HRC/28/68/Add.3, December 29, 2014, para. 74.

<sup>515</sup> Human Rights Commission of the Federal District, *Derechos Humanos, mujeres and reclusión. Informe sobre la situación de los derechos humanos de las mujeres privadas de libertad en centros de reclusión del Distrito Federal*, Annual Report 2014, 2015.

Rapporteur on Torture, and by the Human Rights Commission of the Federal District (CDHDF).<sup>516</sup>

351. Also, information received by the Commission indicates that girls and women with disabilities are forcibly sterilized in several Mexican institutions. In this regard, the Commission has held that in cases where doctors perform surgeries and medical treatments, such as forced sterilization treatments, on women without their consent,<sup>517</sup> it may constitute a violation of the right to personal integrity.<sup>518</sup> In such cases, the provisions of the Convention of Belém do Pará –as a specific instrument for the special protection of women’s human rights— should be used to clarify the State’s obligations under Article 5 of the American Convention.<sup>519</sup> The Commission notes in the same sense that the United Nations Committee on the Rights of Persons with Disabilities has determined that forced sterilization constitutes a violation of the right to personal integrity<sup>520</sup> and it has expressed its concern regarding the practice of forced sterilization in the institution ‘Casa Esperanza’ in Mexico City.<sup>521</sup>
352. With regard to migrants, as already indicated in its 2013 report, the Commission notes with great concern that the detention of migrants and persons under international protection continues to be the rule rather than the exception in Mexico.<sup>522</sup> Between July 2014 and June 2015, arrests of undocumented Central American migrants increased by 70% compared to the same period in the previous year.<sup>523</sup> Another example is the deportation of migrant children from Mexico, which increased from 4,015 during 2011 to 12,511 between January and June, 2015, which is equivalent to an average of 2,085 deported children per month. It is worth noting that the deportation of migrants, particularly of children and

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<sup>516</sup> UN, *Report of the Special Rapporteur on Torture*, Juan E. Méndez, Mission to Mexico, A/HRC/28/68/Add.3, December 29, 2014, para. 75; Human Rights Commission of the Federal District, Recommendation 2/2012, Absence of Specialized, Comprehensive, Adequate, Opportune and Timely Medical Attention, in a dignified context, to persons with mental or psychological disabilities using the Centers of Assistance and Social Integration of the Federal District, Case File, CDHDF/IV/122/COY/09/D7280, 2012. Available at: [http://cdh-dfbeta.cdhd.org.mx/wp-content/uploads/2014/03/reco\\_1202.pdf](http://cdh-dfbeta.cdhd.org.mx/wp-content/uploads/2014/03/reco_1202.pdf)

<sup>517</sup> See Disability Rights International (DRI), *Sin Justicia: tortura, trata and segregación en México* (2015) p. 17.

<sup>518</sup> IACHR, *Access to Maternal Health Services with a Human Rights Perspective*, OEA/ser.L/V/II, Doc. 69, 7 de junio de 2010, para. 39.

<sup>519</sup> IACHR, *Access to Maternal Health Services with a Human Rights Perspective*, OEA/ser.L/V/II, Doc. 69, 7 de junio de 2010, para. 39.

<sup>520</sup> This right is enshrined in Article 17 of the Convention on the Rights of Persons with Disabilities (CRPD). See Committee on the Rights of Persons with Disabilities (CRPD Committee), Concluding Observations to Mexico (October 2014), paras. 37 and 38.

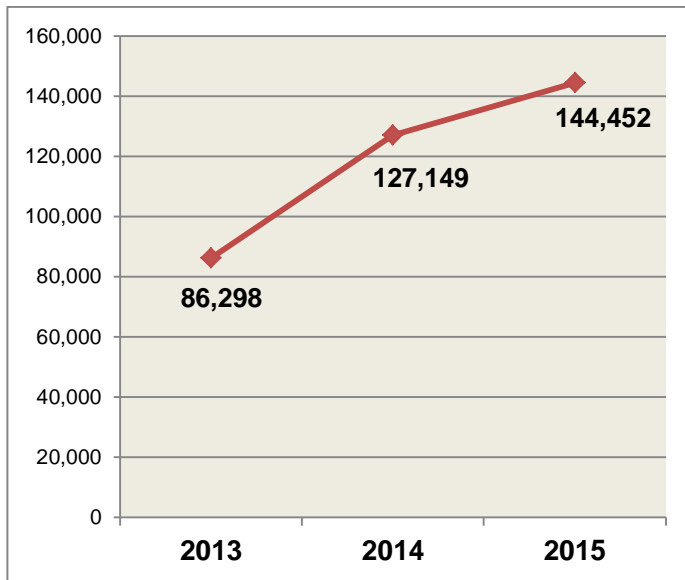
<sup>521</sup> UN Committee on the Rights of Persons with Disabilities (CRPD Committee), *Concluding Observations to Mexico*, CRPD/C/MEX/CO/1, 27 October 2014, paras. 37 and 38. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMEX%2fCO%2f1&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fMEX%2fCO%2f1&Lang=en)

<sup>522</sup> See also, various authors, *Derechos Cautivos: La situación de las personas migrantes and sujetas a protección internacional en los centros de detención migratoria: siete experiencias de monitoreo desde la sociedad civil*. 2015, p. 27. Report prepared by Human Rights Center Fray Matias de Cordova, CA Dignity and Justice on the Road, A.C. (FM4 Paso Libre) Border Justice, A.C. (Casa del Migrante in Saltillo) Human Rights Institute Ignacio Ellacuría, SJ University Iberoamericana Puebla. Without Borders I.A.P. Available at: [http://derechoscautivos.sinfronteras.org.mx/recursos/DerechosCautivos\\_2015.pdf](http://derechoscautivos.sinfronteras.org.mx/recursos/DerechosCautivos_2015.pdf)

<sup>523</sup> Government of Mexico, Migration Policy Unit of the Ministry of the Interior, Statistical Bulletin 2013, Statistical Bulletin 2014, Statistical Bulletin 2015.

adolescents, entails their previous detention, which can be prolonged for a long time. After the launch of the Southern Border Program, Mexico is currently detaining and deporting more Central American migrants than the United States, reversing the historical trend.<sup>524</sup> Also, civil society organizations informed the Commission that after the launch of the Southern Border Program (PIFS), crimes and abuses against migrants, asylum-seekers and refugees have increased.

**Table X – Events of detained migrants in migration stations I  
2013 – 2015\***



TOTAL NO. OF MIGRANTS DETAINED		
2013	2014	2015
86.298	127.149	144.452

\* Figures for January through September 2015. Source: National Institute for Migration

<sup>524</sup> IACHR, *Hearing on the Rights and Interception of Individuals Eligible for International Protection*, October 22, 2015. Available at: <https://www.youtube.com/watch?v=aoe3qH-oHd8>

CHAPTER 5  
SITUATION OF HUMAN RIGHTS  
DEFENDERS, JOURNALISTS AND  
FREEDOM OF EXPRESSION



## SITUATION OF HUMAN RIGHTS DEFENDERS, JOURNALISTS AND FREEDOM OF EXPRESSION

### A. *Human Rights Defenders*

353. In the context of violence that affects Mexico, during the visit, the Commission paid particular attention to the situation of human rights defenders, given their important role in the promotion and defense of human rights. Despite de acknowledgement of State authorities of the work that they do, which is also reflected in important efforts to provide them with protection, the IACHR observed that human rights defenders continue to be subject of grave situations that threaten their human rights.
354. The IACHR has received information about disappearances and attacks on the lives of journalists and lack of humane treatment by both state agents and non-governmental agents; there has been harassment and threats, surveillance, communication interception, as well as challenges in the application of the mechanism to protect human rights defenders and journalists. According to civil society organizations, legislation directly or indirectly criminalizes social protest and the work of human rights defenders. They highlight the open use of codified language such as “obstruction of public roadways” or attacks on “national wealth.”
355. In the recent years, the Inter-American Commission has granted several precautionary measures to protect an important number of human rights defenders that have experimented a series of continuous threats, harassment and acts of violence, because of their work in the defense of human rights. Some human rights defenders protected by precautionary measures in Mexico include defenders of the environment, migrants, indigenous peoples, internally displaced persons, LGBT community, and organizations that seek the truth in relation to forced disappearances, the investigation of acts of torture, extrajudicial executions and other human rights violations that have taken place in Mexico. Specifically, during the last year, eight of the precautionary measures granted by the Commission regarding Mexico are related to the situation of human rights defenders.<sup>525</sup> These have been in matters in which the IACHR has requested the State to adopt the necessary measures so that beneficiaries can do their activities as human rights defenders without being subject to violence, threats and harassment.

356. During the visit, the IACHR received testimonies of human rights defenders, including current beneficiaries, who informed that the murders, attacks, threats

<sup>525</sup>

IACHR, Precautionary Measures granted during 2015. Available at: <http://www.oas.org/en/iachr/decisions/precautionary.asp>

against them and their families, being followed continue, as well as a series of statements by state authorities that disparage and stigmatize them due to their work as human rights defenders. In this context, and the one observed in the follow up of precautionary measures that are granted, the Commission received worrying information on a series of challenges in the pursuance of the investigations related to threats, attacks, harassments, despite the intimidatory effect that these situations created among human rights defenders.

357. Regarding the situation of women human rights defenders in Mexico, the IACHR has issued a number of precautionary measures aimed at protecting the life and personal integrity of women human rights defenders who have been attacked, threatened and harassed as a direct consequence of their work. Under this scenario, the IACHR has received concerning information regarding the lack of timely implementation of effective security measures that allow the prevention of irreparable incidents that may compromise the life and integrity of human rights defenders and their families. In this sense, throughout 2015, the Inter-American Commission granted two precautionary measures in favor of three women human rights defenders who were allegedly in a situation of defenslessness.
358. First, on February 25, 2015, the IACHR granted precautionary measures in favor of Norma Mesino Mesino and 10 members of her family, who were at risk in light of the alleged incidents of violence, harassment and threats that they were allegedly subject to.<sup>526</sup> Under the circumstances, the Commission took into special consideration that, according to the allegations, the incidents were a direct consequence of Norma Mesino's work as a woman human rights defender and the actions taken by her to resolve the murders of her family members. In addition, the Commission took into account that, despite the fact that Norma Mesino had precautionary measures from the State, they were not ideal or effective, such that the human rights defender was in an alleged situation of defenselessness.
359. The IACHR also granted precautionary measures on April 27, 2015, in favor of two women human rights defenders in the Sierra Madre region of Sinaloa.<sup>527</sup> In that case, the Commission took into account that E. and K. were facing a series of threats and harassments as a consequence of their activities of reporting, representing and accompanying a group of people allegedly displaced in that region of Sinaloa. Under the circumstances, the Commission took into special consideration the information provided by the petitioners regarding the lack of safety measures that might protect the life and integrity of E. and K., coupled with the alleged attempt against the life of the Municipal President of Choix, who represented the only state authority that was offering support to these defenders.
360. The IACHR also received information on the violence suffered by human rights defenders and indigenous leaders, including those who are under precautionary measures issued by the Commission in the state of Chihuahua. Specifically the

<sup>526</sup> CIDH, Medida Cautelar Nro. MC 77/15, Defensoras E. y K. y sus familiares, 25 de febrero de 2015. Disponible en <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC77-15-ES.pdf>

<sup>527</sup> CIDH, Medida Cautelar Nro. MC 13/15, Norma Mesino Mesino y 10 miembros de su familia, 27 de abril de 2015. Disponible en <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC13-15-ES.pdf>

Commission has learned about leaders and defenders in rural areas of the aforementioned state, including defenders of the environment who oppose to extractive projects, being subject to violence at the hand of individuals who are allegedly connected to companies participating in said projects; sometimes with tacit or explicit support of the local authorities.<sup>528</sup> Reports indicate that as a strategy to pressure human rights defenders to desist from their work in many cases the companies driving the projects use the criminal justice system to prosecute indigenous leaders, farmers [*campesinos*] and opposing environmentalists for ordinary crimes.<sup>529</sup> During the *in loco* visit, the IACHR received plenty of information about specific cases criminalizing leaders, including members of *El Barzón el Chihuahua*, opposing environmentalists in General Cepeda, Coahuila, The Veracruz Assembly for Environmental Initiatives and Protection [*La Asamblea Veracruzana de Inicativas y Defensa Ambiental*] (LAVIDA), Mexican Center for Environmental Law (CEMDA), among many more.<sup>530</sup>

361. The Inter-American Commission observes that potentially opening groundless criminal investigations or judicial actions against human rights defenders in retaliation of their work, not only has a chilling effect on their work but it can also paralyze their efforts to defend human rights, since their time, resources, and energy must be dedicated to their own defense.<sup>531</sup> In this sense, the IACHR considers that the State must ensure that their authorities or third persons will not manipulate the punitive power of the state and its organs of justice in order to harass those who are dedicated to legitimate activities, such as human rights defenders.

## 1. Attacks on Life and Personal Integrity

362. During the 2006-2012 time frame, the United Nations High Commissioner for Human Rights (OHCHR) registered 245 attacks against defenders, 22 defenders and 5 family members killed allegedly for reasons related to their defense of human rights and reported 6 additional defenders whose whereabouts are unknown. The highest number of reported attacks on defenders was in Oaxaca,

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<sup>528</sup> “*Obstáculos para el acceso a la justicia ante violación de los derechos humanos en México*”, Report presented to the IACHR within the context of its on-site visit to Mexico, between September 28 and October 2, 2015, p. 6-17. These practices affect the Rarámuri and Tepehuan communities in Chihuahua, the Zapotec in Oaxaca, and the Yaqui people in Sonora, among many others.

<sup>529</sup> Information presented by civil society organizations meeting with the IACHR during its on-site visit to Monterrey, Nuevo León, September 29, 2015 (IACHR archive). Centro Mexicano de Derecho Ambiental (CEDMA), “*Acceso a la justicia de víctimas de violaciones de derechos humanos ambientales en México*”, on-site visit of the IACHR, September 28, 2015 (IACHR archive).

<sup>530</sup> CEMDA reported that between 2009 and 2015, it documented more than 251 cases of attacks against environmental rights defenders in 23 Mexican states. 109 of these documented cases took place between May 2014 and June 2015. Centro Mexicano de Derecho Ambiental (CEDMA), “*Acceso a la justicia de víctimas de violaciones de derechos humanos ambientales en México*”, on-site visit of the IACHR, September 28, 2015, para. 3 (IACHR archive).

<sup>531</sup> IACHR, *Annual Report of the Inter-American Commission on Human Rights 2009*, para 619.



Chihuahua, Coahuila, Guerrero and Federal District<sup>532</sup> and from December of 2012 to May of 2013, they report that 16% were committed in Oaxaca, 16% in Guerrero, 13% in Chiapas, 11% in the Federal District and 9% in Chihuahua.<sup>533</sup> Also the Rapporteurship for Freedom of Expression and the Human Rights Defender Assistance Unit of the Federal District Human Rights Commission (CDHDF) registered 47 alleged attacks against human rights defenders at the national level in 2010, sixty-three in 2011, 485 in 2012 and 214 up to June 29, 2013. Arbitrary detention was at the top of the list with 102 in 2012 and 73 in 2013. According to the numbers provided by civil society, from June 1, 2012 to May 1, 2015 there were at least 918 reported human rights violations against defenders in Mexico.

363. Also, the IACHR received the following information from Urgent Action for Human Rights Defenders [*Acción Urgente para Defensores de los Derechos Humanos*] (ACUDEH), Cerezo Mexico Commission [*Comité Cerezo Mexico*], and the National Campaign Against Forced Disappearance [*Campaña Nacional Contra la Desaparición Forzada*]:

### Human Rights Violations (HRV) against defenders in Mexico

	NUMBER OF HRV	TOTAL NUMBER OF CASES	TYPE O VICTIM
1 JUN 2012 – 31 MAY 2013 <sup>534</sup>	156	153	90 persons 25 organizations 10 communities
1 JUN 2013 – 31 MAY 2014 <sup>535</sup>	274	204	133 persons 47 organizations 24 communities
1 JUN 2014 – 31 MAY 2015 <sup>536</sup>	488	330	248 persons 47 organizations 35 communities
<b>TOTAL</b>	<b>918</b>	<b>687</b>	<b>471 persons</b> <b>119 organizations</b> <b>69 communities</b>

<sup>532</sup> OHCHR, *Informe sobre la situación de las y los defensores de derechos humanos en México: actualización 2012 y balance 2013* (Report on the situation of human rights defenders in Mexico, update 2012 and balance 2013), *junio de 2013*, p. 10.

<sup>533</sup> Acción Urgente para Defensores de Derechos Humanos, Comité Cerezo México y Campaña Nacional contra la Desaparición Forzada, *Defender los derechos humanos en México: el costo de la dignidad, Junio de 2012 a mayo de 2013*, (To defend human rights in MEXico: the cost of dignity. June 2012 to May 2013), p. 20.

<sup>534</sup> Acción Urgente para Defensores de Derechos Humanos, Comité Cerezo México y Campaña Nacional contra la Desaparición Forzada, *Defender los derechos humanos en México: el costo de la dignidad. Junio de 2012 a mayo de 2013*, (To defend human rights in MEXico: the cost of dignity. June 2012 to May 2013), p. 9.

<sup>535</sup> Acción Urgente para Defensores de Derechos Humanos, Comité Cerezo México y Campaña Nacional contra la Desaparición Forzada, *Informe: La defensa de los derechos humanos en México: una lucha contra la impunidad*, junio de 2013 a mayo de 2014, (Report: Human rights defense in MEXico: a fight against impunity, June 2013 to May 2014), 5 September 2014, p. 36.

<sup>536</sup> ACUDEH AC, Comité Cerezo México, y Campaña Nacional Contra la Desaparición Forzada' *Cuarto Informe de violaciones de derechos humanos contra personas defensoras de los derechos humanos. Defender los derechos humanos en México: la represión política, un práctica generalizada*, (Fourth Report on Human Rights Violations against human rights defenders. To defend human rights in Mexico: political repression, a generalized practice), 27 August 2015, p. 28.

**Source:** Urgent Action for Human Rights Defenders [*Acción Urgente para Defensores de los Derechos Humanos*] (ACUDEH), Cerezo Mexico Commission [*Comité Cerezo Mexico*], and the National Campaign Against Forced Disappearance [*Campaña Nacional Contra la Desaparición Forzada*]

364. According to these organizations, the most human rights violations would have been in the state of Guerrero in the June 2014 to May 2015 time frame, with 202 violations to human rights defenders; followed by Mexico City with 140.537 Likewise, there were 52 documented cases of human rights defenders who were victims of forced disappearance and 22 extrajudicial executions during that same time frame.<sup>538</sup>
365. The IACHR learned that between 2010 and 2014, civil society organizations registered 615 cases of attacks to human rights defenders and organizations; including 36 killings, with Guerrero and Oaxaca as the states with the highest number of reported attacks.<sup>539</sup> All these cases remain in impunity.

366. The IACHR has consistently reiterated that the most effective means to protect human rights defenders in the hemisphere is to investigate effectively acts of violence against them and sanctions those responsible.<sup>540</sup> Therefore, States have the obligation to fight impunity with all means available, because impunity facilitates the continuing repetition of human rights violations and the total defenselessness of victims and their families.<sup>541</sup> Impunity before these types of aggressions, feed the perception that these acts are tolerated by the State and its institutions.

367. The IACHR has noted that human rights defenders make a pillar that is essential for the strengthening and consolidation of democracies, since the ends of their work concerns society as a whole and is for its benefit. Therefore, when a person is not allowed to defend human rights, the rest of society is affected. The Commission also recalls that the work of defenders is essential for building a solid, long lasting democratic society. They are protagonists in the process to fully obtain the Rule of Law and strengthening of democracy.

<sup>537</sup> ACUDEH AC, Comité Cerezo México, and Campaña Nacional Contra la Desaparición Forzada, *Cuarto Informe de violaciones de derechos humanos contra personas defensoras de los derechos humanos. Defender los derechos humanos en México: la represión política, un práctica generalizada*, (Fourth Report on Human Rights Violations against human rights defenders. To defend human rights in Mexico: political repression, a generalized practice), August 27, 2015, p. 128.

<sup>538</sup> ACUDEH AC, Comité Cerezo México, and Campaña Nacional Contra la Desaparición Forzada, *Cuarto Informe de violaciones de derechos humanos contra personas defensoras de los derechos humanos. Defender los derechos humanos en México: la represión política, un práctica generalizada*, (Fourth Report on Human Rights Violations against human rights defenders. To defend human rights in Mexico: political repression, a generalized practice), August 27, 2015, p. 80, 98.

<sup>539</sup> Public letter from the Red Nacional de Defensoras de Derechos Humanos, “*Allega RNDDHM información sobre situación de defensores de derechos humanos en México*”, October 15, 2015. See also Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C., “*Violaciones graves a derechos humanos en la guerra contra las drogas en México*”, 2015, p. 11.

<sup>540</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124. Doc 5 rev.1 7, March 2006, para. 202.

<sup>541</sup> I/A Court H.R. *Case of the Ituango Massacres v. Colombia*. Preliminary Objections, Merits, Reparations and Costs, Judgment of July 1, 2006, Series C No. 148, para. 299; I/A Court H.R. *Case of Baldeón García v. Perú*. Judgement of April 6, 2006. Serie C No. 147, para. 168.

368. As the Commission has noted before, violent acts and other attacks against human rights defenders not only affects individual protection of every human, but also attack the fundamental role they play in society and is equal to leaving everyone they work for defenseless. Consequently, the protection of human rights defenders is urgent and indispensable in order to guarantee the right to life, their work as defenders and therefore the validity of democracy and human rights.
369. In addition, the Commission notes that statements delegitimizing and discrediting the work of human rights defenders makes them more vulnerable. On several opportunities the aforementioned comments suggest that non-governmental organizations work with dissenting armed groups, or design campaigns against State security or disparage the international image of countries.<sup>542</sup> Specifically, the Commission considers that these type of statements that discredit the work and comes from public officials, expressed within the context of political violence, or high polarization or social conflict, send a message that acts of violence used to silence human rights defenders and their organizations have governmental acquiescence.<sup>543</sup>
370. The State should publicly recognize that human rights protection and promotion is a legitimate action and that defenders are not acting against state entities by exercising them, but rather quite to the contrary they are strengthening the Rule of Law and the broadening of rights and guarantees for everyone. All the authorities and local public officials should be aware of the principles relative to defenders activities and their protection, as well as the applicable regulations for their observation.
371. Moreover, the UN Special Rapporteur on the Independence on Judges and Lawyers, on her mission to Mexico in 2011, noted that in many cases, judges, court officials and legal professionals are unable to act freely or fully independently because they are faced with threats, intimidation, harassment and other forms of undue pressure.<sup>544</sup> In addition, organized crime in particular is stepping up its efforts to infiltrate and interfere with judicial institutions through the use of corruption and threats.
372. According to the information received, in Guerrero, the IACHR learned that first instance operators of justice and prosecutors were subject to pressure when they investigate and preside over human rights violations cases.<sup>545</sup> It was also indicated that justice operators are subject to political pressure, mainly by the Executive, in cases where there are cases of alleged corruption of public officials.<sup>546</sup> It was also reported that prosecutors and judges are subject to intimidation and coercion by members of organized crime. In this context, the IACHR observes that on June 2,

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<sup>542</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc 5 rev.1 7, March 2006, para. 176. Available at : <http://www.cidh.org/countryrep/Defenders/defenderschap5.htm>

<sup>543</sup> IACHR, *Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II.124, Doc 5 rev.1 7, March 2006, para. 177. Available at : <http://www.cidh.org/countryrep/Defenders/defenderschap5.htm>

<sup>544</sup> UN Special Rapporteur on the Independence of Judges and Lawyers, *Mission to Mexico, 2011*. Available at : [http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3_en.pdf)

<sup>545</sup> Open Society Justice Initiative, *Report on Failed Justice in the State of Guerrero*. 2015.

<sup>546</sup> Open Society Justice Initiative, *Report on Failed Justice in the State of Guerrero*. 2015.

2015, unidentified persons threw an explosive artifact in the offices of the Judicial Branch of the Federation in the town of Matamoros, Tamaulipas resulting 4 persons wounded.<sup>547</sup> Also, on November 9, 2015, five bullets against the façade of the Judicial Branch of the Federation in the city of Saltillo, Coahuila were registered.<sup>548</sup>

373. The IACHR reiterates that if States do not guarantee the security of judges and justices against all kinds of external pressures, including direct reprisals against them and their families, their judicial role can be gravely affected, which frustrates the free exercise of the judicial functions and access to justice for victims of human rights violation.<sup>549</sup> Consequently, the IACHR urges the Mexican State to investigate, process and punish those who attack justice operators. Similarly, the State must put in place adequate protection mechanisms according to their needs.

## ***B. Situation of Journalists and Attacks on Freedom of Expression***

374. During the last decade Mexico has become one of the most dangerous countries for journalism.<sup>550</sup> The IACHR has noted with concern the increase of different types of attacks and killings of journalists and communicators in Mexico. According to reports received by the Office of the Special Rapporteur for Freedom of Expression there were more than 55 journalists killed between 2010 and 2015, six were killed in 2014<sup>551</sup> and six more so far in 2015. According to the National Commission on Human Rights (CNDH), there were 107 journalists killed between 2000 and September of 2015.<sup>552</sup>
375. According to the information gathered by the Special Rapporteurship during the *in loco* visit, in recent years the situations of violence towards journalists, communicators, and media workers in Mexico have increased, particularly in certain specific states,<sup>553</sup> despite the constitutional and legislative reforms and the adoption of measures by the Mexican State to safeguard their integrity, such as the approval and rollout of a mechanism to protect journalists and human rights defenders. Over the last decade the Commission has utilized their precautionary

<sup>547</sup> *Diario de Yucatan. Ataque contra instalaciones del poder judicial deja 4 heridos. 2 June 2015. Diario el Informador, Condenan ataques a oficinas del poder judicial en Matamoros, 2 June 2015.*

<sup>548</sup> *SDP Noticias. Investiga PGR ataque a edificio del poder judicial, 11 November 2015.*

<sup>549</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II, Doc. 66, December 31, 2011.

<sup>550</sup> Committee to Protect Journalists (CPJ). *CPJ's 2014 Global Impunity Index* and Reporters without Borders. *2015 World Press Freedom Index*.

<sup>551</sup> IACHR, *Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. March 9, 2015.

<sup>552</sup> CNDH, *Report by the Comisión Nacional de los Derechos Humanos for the on-site visit of the IACHR*. September 27, 2015, p. 38.

<sup>553</sup> IACHR, *Annual Report 2010, Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. March 7, 2011; IACHR. *Annual Report 2014, Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, March 9, 2015.

measures mechanism to request Mexico protect a significant number of journalists who have been victims of different types of harassment and threats.

376. Violence against communicators has worsened in federation areas where organized crime is prominent and in many cases, the members act in collusion with state agents. The information the IACHR has affirms that the victims of violence are mainly journalists who have filed complaints or reported on administrative corruption in the local arena, on drug trafficking, on organized crime, on public safety and on other related issues.<sup>554</sup> According to the information reported by the CNDH the states with the highest number of killings from 200 to August of 2015 are Veracruz, Tamaulipas, Guerrero, Chihuahua and Oaxaca; practically six out of ten homicides took place in those five states.<sup>555</sup>
377. Killing journalists and media workers is the most radical type of censorship.<sup>556</sup> Nonetheless, the Rapporteurship has also noted and received complaints about other types of attacks on those exercising their right to freedom of expression in Mexico. These attacks include disappearances, threats, kidnapping, physical assaults, attacks on media facilities and cyber attacks.
378. Within the context of elections in Mexico during the first quarter of 2015 there were 10 candidates murdered according to the information supplied by the State,<sup>557</sup> and information was received regarding different violent acts on journalists and communicators. Recorded attacks include physical assaults, equipment theft, deleting journalist material, cyber threats and attacks (blocking pages, hacking, denial of service –DDoS-). Guerrero was one of the states where the context of the election was the most adverse to communicators and protesters.<sup>558</sup>
379. In 2015, the press was affected in ways that show a complex context for the exercise of journalism, not only because of the risks of threats and attacks, but also because of events such as what occurred to journalist Carmen Aristegui, who

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<sup>554</sup> IACHR, Report by the Office of the Special Rapporteur for Freedom of Expression. *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*. 2013. IACHR. Report by the Office of the Special Rapporteur for Freedom of Expression. *2010 Special Report on Freedom of Expression in Mexico*, March 7, 2011.

<sup>555</sup> CNDH, *Report by the Comisión Nacional de los Derechos Humanos for the on-site visit of the IACHR*. September 27, 2015, p. 38. And IACHR. Report by the Office of the Special Rapporteur for Freedom of Expression, *2010 Special Report on Freedom of Expression in Mexico*, March 7, 2011.

<sup>556</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression, *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*, March 8, 2008. Introduction; IACHR. Report No. 37/10. March 17, 2010. *Case 12.308. Manoel Leal de Oliveira (Brazil)*, para. 7; United Nations. General Assembly. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, A/HRC/20/22*, April 10, 2012, para 21.

<sup>557</sup> According to the information provided by the State, all homicides are currently being investigated. United Mexican States. Mexican State's report in response to the request for information under Article 41 of the American Convention on Human Rights issued on June 19, 2015. Mexico, Federal District, August 24, 2015.

<sup>558</sup> Centro de investigación y Capacitación Propuesta Cívica. Elecciones y Agresiones, *Monitoreo de agresiones contra periodistas en contexto electoral*, July 7, 2015; Reporters Without Borders (RSF), *Attacks On Journalists Mar Mexico's Elections*, June 10, 2015; Article 19, *Más Violencia, más silencio*, July 2, 2015; Article 19, *Temporada electoral, una agresión contra la prensa cada 10.6 horas*, May 19, 2015; Imagen Siglo XXI, *Hackean AVC Noticias*, June 7, 2015.

uncovered an alleged corruption case with senior authorities purchasing a luxury home used by the president of the republic.<sup>559</sup> After that and other investigations, the concession company from the radio station they had a contract with excluded her and her team, even though the ratings indicated their program had a big audience. MVS, the company, alleged that Arestegui and her team used the image and brand of the press for unauthorized purposes in order to support the Mexico Leaks platform. This platform is used to find information from confidential sources.<sup>560</sup>

380. During 2014, the IACHR also received information about serious violent events and arbitrary detentions occurring during protests; affecting dozens of protestors and journalists.<sup>561</sup> During the *in loco* visit his information was confirmed by civil society organizations defending freedom of expression and human rights.

381. The IACHR notes that the main obstacles to freedom of expression in Mexico are acts of violence and intimidation against journalists and other media workers. Violence and the high levels of impunity make self-censorship the alternative journalists take in order to safeguard their rights to humane treatment and to life. The Commission has noted that violence against journalists or media workers because of their profession, not only affects their voices, specifically when it comes to freedom of expression, but is also a violation of the right society in general has to seek and receive all types of information and ideas in a peaceful and free manner.<sup>562</sup> As the Inter-American Court of Human Rights has stated: “journalism can only be exercised freely when those who carry out this work are not victims of threats or physical, mental or moral attacks or other acts of harassment.”<sup>563</sup>

382. In accordance with international human rights standards, the State of Mexico is not only obligated to guarantee their agents not commit acts of violence against journalists, but also to reasonably prevent attacks from individuals cuando they know or should know about the risk. Principle 9 of the IACHR Declaration of Principles on Freedom of Expression states: “The murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate

<sup>559</sup> Aristegui Noticias, *La casa blanca de Enrique Peña Nieto (investigación especial)*, November 9, 2014; Ombudsman Noticias MVS (on Facebook), *Posicionamiento público sobre caso México Leaks*, March 12, 2015.

<sup>560</sup> El Tiempo, *Despiden a periodista que destapó escándalo de mansión de Peña Nieto*, March 16, 2015; BBC, *El escándalo que condujo al despido de la destacada periodista mexicana Carmen Aristegui*, March 16, 2015; La Jornada, *MVS despide a la periodista Carmen Aristegui*, March 15, 2015; CNN, *Termina batalla judicial: Carmen Aristegui pierde amparo contra MVS*, July 14, 2015; Animal Político, *Carmen Aristegui pierde amparo contra MVS*, July 14, 2015.

<sup>561</sup> IACHR, *Annual Report 2014*, *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, March 9, 2015.

<sup>562</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*, OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008. para. 9.

<sup>563</sup> I/A Court H.R. *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012 Serie C No. 248, para. 209.

such occurrences, to punish their perpetrators and to ensure that victims receive due compensation.”

## 1. Killings

383. According to the numbers reported by the CNDH, from September of 2000 until September of 2015 there were 107 journalists killed,<sup>564</sup> on the other hand the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) reports on their web portal that from the year 2000 until August of 2015 there were 103 journalists murdered.<sup>565</sup>
384. Veracruz, where the IACHR went, has the greatest number of journalist killings in the last five years. According to the CNDH figures between the years of 2005 and 2015 there were 16 killings and between 2010 and 2013 there were four cases of journalists forced to disappear.<sup>566</sup> According to the information offered by FEADLE out of the 40 cases where it has exercised jurisdiction, 8 are in Veracruz. The Special Rapporteurship has received information on 16 murders of journalists as of 2010. The State Commission for the Care and Protection of Journalists, has opened 69 protection cases, 22 of them in 2015 and 46 open files for protection are open as of September of 2015.
385. During 2014 the Rapporteurship received information on 5 journalist and media worker killings<sup>567</sup> and has followed up on them using available tools. During 2015 the Rapporteurship documented 6 more journalist killings.<sup>568</sup> The Special Rapporteurship disapproves of all these events and has continued to follow up on

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<sup>564</sup> CNDH, *Report by the Comisión Nacional de los Derechos Humanos for the on-site visit of the IACHR*. September 27, 2015.

<sup>565</sup> PGR, Fiscalía Especializada para la Atención de Delitos contra la Libertad de Expresión, FEADLE. *Estadísticas*.

<sup>566</sup> CNDH, *Report by the Comisión Nacional de los Derechos Humanos for the on-site visit of the IACHR*. September 27, 2015, pp. 40, 41.

<sup>567</sup> The cases registered by the Rapporteur during 2014 are those of journalists and media workers: Jorge Torres Palacios, columnist for *El Dictamen* weekly and spokesperson of the Dirección Municipal de Salud of Acapulco, in the state of Guerrero; Octavio Rojas Hernández, correspondent of *El Buen Tono* daily in the state of Veracruz; Atilano Román Tirado, radio host of *Fiesta Mexicana 98.7 FM* and community leader; Jesús Antonio Gamboa Urías, editor of the political magazine *Nueva Prensa*; in an attack against journalist Indalecio Benítez, editor and founder of community radio station *Catalena Mexiquense 98.1 M*, his 12-year-old son was murdered. Twitter @Miut3, identified as María del Rosario Fuentes Rubio; and Gregorio Jiménez de la Cruz, journalist in the police section of newspapers *Notisur* and *Liberal del Sur*. During 2015, the IACHR also received information on other crimes in which the authorities find no clear connection to the exercise of the profession. On July 9, 2015 the editor of Oaxaca digital newspaper Foro Político, Edgar Hernández García, was murdered in Huatulco, Oaxaca. On June 26, the dead body of journalist Gerardo Nieto, editor of local weekly *El Tábano*, was found in Comonfort, Guanajuato. On June 18, 2015, journalist Ismael Díaz López was stabbed to death. The correspondent of daily “*Tabasco Hoy*” was found dead in his home of Teapa, Tabasco.

<sup>568</sup> The victims were Abel Manuel Bautista Raymundo, owner and editor of community radio station *Spacio 96.1* and chairman of the community radio association of Santiago Juxtlahuaca; Armando Saldaña Morales, who worked at radio station *La Ke Buena 100.9 FM* in Tierra Blanca, Veracruz and who covered regional politics and conflicts; Juan Mendoza Delgado, editor of news website *Escribiendo la verdad*; Filadelfo Sánchez, *La Favorita* radio host in Miahuatlán.

them and to demand an immediate and timely investigation of these crimes in order to identify and punish those responsible. Some of these horrible events have received special attention from Mexican society and the international community. For example, the cases of Moisés Sánchez Cerezo and Rubén Espinosa, two bloody murders represent the silencing of the press covering cases of high public interest in Veracruz. These are evidence of the challenges the judicial system in Mexico faces in order to comply with its obligation to effectively investigate, judge and punish violence against journalists.

386. The body of journalist and activist José Moisés Sánchez Cerezo, owner of the *La Unión* weekly, from Medellín de Bravo (Veracruz), was found by the police close to the city where he lived and practiced journalism 22 days after he disappeared.<sup>569</sup> Sánchez Cerezo published information of interest to his community in a publication he edited with some frequency, and more habitually on his Facebook social network page. He questioned the performance of Mayor Omar Cruz Reyes on both platforms.<sup>570</sup>
387. On January 26, 2015,<sup>571</sup> the Commission issued precautionary measures “to determine the situation and whereabouts of José Moisés Sánchez Cerezo, with the purpose of safeguarding his life and personal integrity.”<sup>572</sup> The investigation of this case is under the Office of the Prosecutor of the State of Veracruz (*Fiscalía General del estado de Veracruz*), which to date has been able to link in 4 people who participated in the plan to make Moisés Sánchez disappear and to kill him.
388. Although the victim is a journalist and there are indicia to believe this crime was related to his work, the FEADLE decided not to exercise jurisdiction. That decision was based on two arguments, the first is that Mr. Sánchez was not a journalist but rather a taxi driver;<sup>573</sup> the basis for this argument relies upon the fact that he was doing that over the last few years in order to support his family, and the second argument was that the Office of the Prosecutor for Veracruz had jurisdiction. The family of the journalist lodged an *amparo* recourse to demand FEADLE takes on the case; nevertheless the recourse was dismissed. The Commission is concerned that the very same investigative entity utilizing different arguments creates its own obstacles for leading the investigation. These may very well have a negative

<sup>569</sup> El Economista, *Encuentran cuerpo del periodista Moisés Sánchez*, January 26, 2015; CNN México. *El periodista Moisés Sánchez, de Veracruz, es encontrado muerto*, January 25, 2015; Article 19, *PGR identifica con exámenes periciales el cuerpo del periodista Moisés Sánchez*, February 6, 2015.

<sup>570</sup> Article 19, *Tres días antes de su desaparición, alcalde amenazó al periodista Moisés Sánchez*, January 3, 2015.

<sup>571</sup> IACHR. Resolución 1/2015. Medida Cautelar 5/15 Asunto José Moisés Sánchez Cerezo respecto de México. January 26, 2015. Available at: <http://www.oas.org/es/cidh/decisiones/pdf/2015/MC5-15-ES.pdf>

<sup>572</sup> IACHR, *Comunicado de Prensa R 1/15. Relatoría Especial expresa preocupación por desaparición de periodista en el estado de Veracruz, México*, January 6, 2015; IACHR, Medida cautelar No. 5/15. Asunto José Moisés Sánchez Cerezo respecto de México, January 26, 2015.

<sup>573</sup> Animal Político, *Fiscalía para la libertad de expresión descarta caso de Moisés Sánchez; dice que no es periodista*, September 11, 2015; Imagen Siglo XXI. *Descarta FEADLE caso Moisés Sánchez, dice que no era periodista*, September 11, 2015; *FEADLE no atraerá investigación del caso de Moisés Sánchez Cerezo, dice que no era periodista*. September 11, 2015; El Diario de Coahuila. *Fiscalía para la libertad de expresión descarta caso de Moisés Sánchez porque dice que no es periodista*. September 11, 2015.



impact on the investigation, especially when it comes to identifying masterminds for prosecution. As we will see later this will be repeated in other cases.

389. On July 31, 2015 in the Federal District of Mexico, press photographer Rubén Espinosa and activist Nadia Vera Pérez and three other women were killed. According to the information available, Rubén Espinosa worked in the state of Veracruz for the magazine *Revista Proceso* and the *Cuartoscuro* and *AVC Noticias* agencies. He was also an activist demanding the government of that state issue measures to prevent, investigate and punish violence against journalists.<sup>574</sup>
390. In June he decided to take refuge temporarily in Mexico City after being threatened.<sup>575</sup> In an interview days before his murder Espinosa expressed his fear on an attack and discussed the following events that took place while he was covering a student protest: “a person from the State Government Adjutancy [*Aydantía del Gobierno de Estado*]” for Veracruz approached him and warned him: “stop taking pictures if you do not want to end up like Regina.” Regina Martínez, also a journalist killed in 2012, was well known for reporting and investigating and her colleagues see her death as the beginning of a tragic and violent era against the press in Veracruz.<sup>576</sup>
391. On several occasions Espinosa noted that Javier Duarte Ochoa, the governor of Veracruz, was responsible for the lack of freedom of expression in the state. The photographer also reported recent harassment and surveillance incidents.<sup>577</sup> Although he was at risk he decided not to go to the state or federal mechanism for journalist protection because, according to several sources, he expressed his distrust towards those instances. The murder of Espinosa is the first killing of a journalist taking refuge in Mexico City; this sends a message of insecurity to several journalists who have left their regions to seek refuge in the safety of Mexico City after receiving threats. The multiple victim crime has created a general rejection by Mexican society. After the murder hundreds of people protested to demand justice and in fact close to five-hundred journalists from around the world signed an open letter to President Peña Nieto demanding justice be served in the cases of the killed journalists and guarantee the exercise of journalism as it has become one of the most dangerous countries for journalists.<sup>578</sup> PFGDF is currently heading the investigation.

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<sup>574</sup> IACHR. Press release R84/15. *The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims*, August 4, 2015; Article 19. *México: Asesinan al fotoperiodista Rubén Espinosa en DF*, August 3, 2015; CPJ, *Mexican photojournalist who fled violent Veracruz state murdered in capital*, August 3, 2015.

<sup>575</sup> Plumas Libres, *Fotoperiodista de Proceso sale de Veracruz por acoso e intimidaciones*, June 13, 2015; El Diario. *Salió de Veracruz para huirle a la muerte; en DF lo alcanzó*, August 2, 2015.

<sup>576</sup> Animal Político, *Entrevista: Rubén Espinosa, el fotoperiodista hallado muerto en la Ciudad de México*, July 9, 2015; Proceso, *Las últimas entrevistas de Rubén Espinosa*, August 11, 2015.

<sup>577</sup> IACHR. Press release R84/15, *The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims*, August 4, 2015; Article 19. *México: Asesinan al fotoperiodista Rubén Espinosa en DF*, August 3, 2015; CPJ. *Mexican photojournalist who fled violent Veracruz state murdered in capital*, August 3, 2015.

<sup>578</sup> El País.com, *La carta dirigida al presidente mexicano Enrique Peña Nieto*. Available at: [http://internacional.-elpais.com/-internacional/2015/08/17/actualidad/1439764029\\_365592.html](http://internacional.-elpais.com/-internacional/2015/08/17/actualidad/1439764029_365592.html); El Universal. *CARTA de*

392. On the other hand, Nadia Vera Pérez an activist for the #YoSoy132 student movement in Xalapa (Veracruz), in an interview published eight months earlier, Vera Pérez pointed the finger at Duarte de Ochoa and “all his cabinet” for “anything” that could happen to those who participate in social movements in that state: “they are the ones who are ordering to repress us,” she said.<sup>579</sup> According to the information available, Nadia Vera Pérez was tortured before she was killed.<sup>580</sup>
393. With this recent information, the IACHR wants to illustrate the serious wave of homicides of Mexican journalists that has not ceased in over a decade and most investigations continue in impunity. In the 2010 Special Report on the State of Freedom of Expression in Mexico, the Special Rapporteurship followed up extensively on a series of journalist killing, to bring to light the characteristics of the crime itself, as well as the perceived obstacles to prosecution at the time. On this new visit, the Rapporteurship again requested the updated information on the investigations of these and other earlier killings, however as of the date of this report the authorities were gathering the requested information.
394. It is fundamental for the Inter-American Commission that the State of Mexico fully investigates the murders of the journalists in an effective and impartial manner, shedding light on the motives and making a judicial determination on whether it is related to the exercise of journalism or freedom of expression. The authorities should not discard the exercise of journalism as motive for murder and/or attacks before the investigation is completed. In that regard, the IACHR reiterates the 2010 recommendation issued by Frank la Rue, the former United Nations Special Rapporteur on the promotion and protection of the right to freedom of expression to “[a]dopt special protocols for the investigation of crimes against journalists whereby the hypothesis that the motive for the crime was the profession be privileged and exhaustive.”<sup>581</sup>
395. The omission of logical avenues of investigation, or the lack of diligence in the gathering of evidence has had repercussions on the course of the proceedings for indictment or at trial.<sup>582</sup> Any deficiency in the logical avenues of investigation affects, above all, the identification of the masterminds.<sup>583</sup>

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*intelectuales dirigida a Peña Nieto.* Available at: <http://www.eluniversal.com.mx/articulo/nacion/segu-ridad/2015/08/17/carta-de-intelectuales-dirigida-pena-nieto>

<sup>579</sup> IACHR. Press release R84/15. *The Office of the Special Rapporteur Condemns the Killing of Graphic Reporter in Mexico in a Crime with Four Other Victims*, August 4, 2015; Aristegui Noticias, “*Responsabilizo a Javier Duarte de cualquier cosa que me pase: Nadia Vera, antes de su asesinato*”, August 3, 2015.

<sup>580</sup> Revista Proceso.mx, *El multihomicidio fue por encargo*. August 18, 2015.

<sup>581</sup> UN. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Mission to Mexico*, May 19, 2011.

<sup>582</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*, OEA/Ser.L/V/II.131. Doc. 35. March 8, 2008, para. 116.

<sup>583</sup> IACHR, Office of the Special Rapporteur for Freedom of Expression. *Special Study on the Status of Investigations into the Murder of Journalists during the 1995-2005 Period for Reasons that may be Related to their Work in Journalism*, OEA/Ser.L/V/II.131. Doc. 35, March 8, 2008, para. 125-126; IACHR, Office of the Special Rapporteur for Freedom of Expression, *Impunity, Self-censorship and Armed Internal Conflict: An Analysis of the State of Freedom of Expression in Colombia*, OEA/Ser.L/V/II Doc.51. August 31, 2005, paras. 65-66.

396. Likewise, the IACHR and its Special Rapporteurship for Freedom of Expression remind the State that it is important to: “Recognize, at the highest levels of the State, the legitimacy and value of the work of journalists, and condemn attacks committed in reprisal for the exercise of freedom of expression.”<sup>584</sup>

397. The IACHR recalls there is “the responsibility of government officials to maintain a public discourse that does not place journalists at increased risk of violence. The Office of the Special Rapporteur has recalled, among other things, that a simple but highly effective protective measure consists of the highest authorities of the State recognizing in a consistent, clear, public and firm manner the legitimacy and value of the journalistic profession, even when the information disseminated may prove critical of, inconvenient to or inopportune for the interests of the government. Similarly, it is essential that the authorities vigorously condemn attacks committed against media workers and encourage the competent authorities to act with due diligence and speed to investigate such events and punish those responsible.”<sup>585</sup>

## 2. Disappearances, Kidnappings and other Aggressions

398. According to statistics kept by the CNDH, 20 journalists disappeared from 2005 to September of 2015. During what has transpired of 2015, the Rapporteurship has been able to document 3 cases of journalist disappearance and kidnapping. These cases are Bernardo Javier Cano Torres, kidnapped in Iguala, Guerrero;<sup>586</sup> a journalist for digital media outlet *TV Sureste* was kidnapped for several hours and sexually assaulted;<sup>587</sup> Enrique Juárez Torres, editorial director for the *El Mañana* newspaper in Matamoros was kidnapped by an armed group in Matamoros.<sup>588</sup>

<sup>584</sup> IACHR, *2010 Report*. See also UN. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue. Mission to Mexico*, May 19, 2011. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/132/51/PDF/G1113251.pdf?OpenElement>

<sup>585</sup> IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para. 37

<sup>586</sup> The journalist was kidnapped along with three other people traveling with him in a van, and the perpetrators asked for their ransom. Cano worked at ABC Radio in Iguala, on the "Hora Cero" show. The city of Iguala has registered significant acts of violence in recent months and the state of Guerrero is one of the most dangerous for journalists in that country. The Office of the Attorney General of Guerrero reported that it is investigating the case. According to the local press, on May 27, 2015 the journalist was released after ransom was paid.

IACHR, Press release R48/15, *Office Of The Special Rapporteur Condemns Killing Of Journalist And Expresses Its Concern On The Disappearance Of Another One In Mexico*; El Financiero, *Fiscalía de Guerrero confirma secuestro de periodista en Iguala*; Reporters without Borders, *Secuestran al periodista Bernardo Javier Cano Torres en el estado de Guerrero*; Sin Embargo, *Familiares del periodista secuestrado en Iguala pagan el rescate y es liberado*; El Financiero, *Reportan liberación de periodista secuestrado en Iguala*.

<sup>587</sup> Article 19, *Privan de la libertad a mujer periodista en Veracruz y es víctima de violencia de género*, June 1, 2015; El Piñero de la Cuenca, *Tras festejar día de Libertad de Expresión, desconocidos secuestran y violan a una reportera en Veracruz*, May 31, 2015; Realidad de la Cuenca, *Desconocidos secuestran y violan a una reportera en Veracruz*, May 31, 2015.

<sup>588</sup> Committee to Protect Journalists (CPJ), *Mexican editor flees after gunmen abduct and beat him*, February 6, 2015; El Mañana, *Atentado a EL MAÑANA*, February 5, 2015.

399. The Special Rapporteurship has documented other types of attacks as well, in most cases threatening them with disappearance and death, attacks on the media outlet infrastructures, destruction of material, cyber attacks, and intimidating phone calls and stalking. In many cases the attackers entered the residences of the journalists and stole investigative material or key elements of it, such as computers for example.
400. Reporter Edwin Meneses for the *BMM* weekly and community station *La Joya 107.5*, as well as announcer Samuel López were detained by members of the Public Prosecutor of the Republic [*Procuraduría General de la República*] (PGR); accused of alleged unauthorized use of a radio through community radio. Both had to pay seventy thousand pesos (about \$4,000 dollars) as bail. That same day in the state of Oaxaca the PGR closed three community radio stations and seized their equipment in Salina Cruz and one in Tehuantepec.<sup>589</sup>
401. Likewise the Rapporteurship learned that at the beginning of the year the *Televisa* headquarters in Tamaulipas was attacked with explosives twice.<sup>590</sup>
402. Through the precautionary measures mechanism, the IACHR received information that two journalists from *Contralínea* magazine, beneficiaries of the precautionary measures issued by the IACHR, were victims of searches in their homes in September, where their documents and computers were taken. In addition, two police dressed in civilian clothing during the Xalapa, Veracruz Independence Day celebration, assaulted photojournalist Karlo Reyes. These events are in addition to the aforementioned assaults taking place in the context of elections.
403. In the 2014 annual report the Rapporteurship documented 35 cases of assaults on journalists, media outlet facilities, and organizations for the defense of freedom of expression; among other things.<sup>591</sup> Many of the following cases were brought to the attention of the authorities.<sup>592</sup>
404. Some of the cases of agresions against journalists recorded this year include Hernán Villarreal Cruz, journalist for the *Presencia* newspaper on December 14, 2014 in the municipality of *Las Choapas* in the state of Veracruz;<sup>593</sup> Anabel

<sup>589</sup> Página 3, “*Fue terrible*” la experiencia que viví: *Periodista Edwin Meneses tras ser detenido por la PGR*; Página 3. *PGR decomisa cuatro radios comunitarias en el Istmo; detiene a dos periodistas*, May 20, 2015; Red Acción. *AMARC México llama a no criminalizar a comunicadores*, May 22, 2015.

<sup>590</sup> AFP (through *El Espectador* of Bogotá), *Nuevo ataque con granada contra sede de Televisa en ciudad fronteriza de México*, March 26, 2015; Animal Político, *El segundo del año: explota una granada en la sede de Televisa en Matamoros*, March 26, 2015; Office of the Special Rapporteur for Freedom of Expression – IACHR, *The Office Of The Special Rapporteur Condemns Death And Attacks To Journalists In Mexico*, February 11, 2015.

<sup>591</sup> IACHR, *Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II Doc. 13. March 9, 2015 pp. 233-243.

<sup>592</sup> The cases can be consulted in depth in: IACHR. *Annual Report 2014. Annual Report of the Office of the Special Rapporteur for Freedom of Expression*. OEA/Ser.L/V/II Doc. 13 March 9, 2015, pp. 233 - 243. <http://www.oas.org/es/cidh/expresion/docs/informes/anales/Informe%20Anual%202014.pdf>

<sup>593</sup> *Los desconocidos habrían subido al comunicador a un vehículo y lo habrían llevado a un lugar despoblado. En el camino además de golpearlo, también le habrían dicho que “ya le bajara” y que “no te matamos por lo que representas [...]”*. Proceso, “*Levantán, amenazan y encañonan a reportero en Veracruz*”, 15 de diciembre de

Hernández, journalist for *Proceso* magazine, on December 21, 2013;<sup>594</sup> Antonio Mundaca, Eduardo Jiménez Sandoval, Víctor López and José de Jesús Alcántara, for the *El Tuxtepecano* newspaper in Oaxaca;<sup>595</sup> a reporter for *Pulso* and *San Luis Hoy*, on January 12, 2014.<sup>596</sup> Entrepreneur and partner in the *Notivisión* newspaper, Ulises Mejía del Ángel, in the municipality of Alamo Temapache in the state of Veracruz, on January 23, 2014;<sup>597</sup> reporter Sandra de los Santos and the news portal team where she works, *Chiapas Paralelo*;<sup>598</sup> José Alberto Morales Santos, in Chilpancingo, February 13, 2014;<sup>599</sup> Luis Méndez, reporter for the *Somos el Medio* portal, on February 18, 2014.<sup>600</sup> On March 20, 2014, Fabiola Gutiérrez Quiroz,

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2014; sin embargo, *En dos días, tres periodistas son agredidos por policías y sujetos armados en Zacatecas, DF y Veracruz*, 16 de diciembre de 2014; Independiente de Hidalgo, *Levantán y amenazan a reportero de diario Presencia, en Veracruz*, 16 de diciembre de 2014.

<sup>594</sup> The group apparently kidnapped the journalist's escort for a few hours. The incident was reported to the Office of the Attorney General linked to the Special Prosecutor for Crimes against Freedom of Expression (FEADLE). Article 19, *PGR obligada a esclarecer allanamiento a casa de Anabel Hernández*, January 6, 2014; El Diario, *Exigen investigación seria por agresión de periodista*, December 30, 2013; Zacatecas al día, *Allanan El Domicilio De La Periodista Anabel Hernández*, December 31, 2013; La Policiaca, *Comando armado allanó domicilio de la periodista Anabel Hernández*. No date; El Toque, *Nueva agresión contra la periodista mexicana, Anabel Hernández*, January 6, 2014.

<sup>595</sup> The attacks apparently took place on January 1, 2014 when the reporters reached the municipality to cover the inauguration of the mayor of San Miguel Soyaltepec. The journalists were apparently attacked with stones, sticks and machetes by people blocking a road in the municipality. Article 19, *ALERTA: Cuatro periodistas golpeados y amenazados en Oaxaca*, January 3, 2014; El Piñero de la Cuenca, *Militantes del PUP asestan golpiza e intentan linchar a fotógrafo y directivos del periódico El Tuxtepecano en Temascal*, January 1, 2014.

<sup>596</sup> According to reports, the journalist was stopped outside his home by strangers who allegedly identified themselves as judicial police and forced him into a vehicle. Once there he was accused of a crime, and when the reporter identified himself as such, they said, "Are you the one who publishes those little articles?" while he was physically and verbally assaulted. La Jornada, *Denuncian agresión a reportero en SLP*, January 19, 2014; La Orquesta, *Nueva agresión a periodista en San Luis Potosí*, January 18, 2014; Periodistas en riesgo, *Denuncia Editorial secuestro de reportero*, January 12, 2014; Centro de Reportes Informativos sobre Guatemala (Cerigua), *Denuncian agresión a periodista en San Luis Potosí*, January 20, 2014.

<sup>597</sup> The newspaper had been threatened before, and the Mechanism for the Protection of Human Rights Defenders and Journalists of the Ministry of the Interior (SEGOB) at the Federal level, as well as other government institutions in the State, had apparently ordered a set of protective measures to ensure the safety of the newspaper and its workers. Article 19, *ALERTA: Últimas agresiones contra la prensa en México*, January 25, 2014.

<sup>598</sup> The news website believes the judicial investigation "has a number of irregularities that suggest that this action seeks to intimidate the exercise of freedom of expression of the team at Chiapas Paralelo news website." The website noted that it was not the first time the government tried to intimidate them. Article 19, *ALERTA: Últimas agresiones contra la prensa en México*, January 25, 2014; Chiapas Paralelo, *Carta abierta al gobernador del estado, Manuel Velasco*, January 28, 2014; CNN México, *Una periodista de Chiapas denuncia un intento de "amedrentar" a su medio*, January 31, 2014; El País, *El Gobierno de Chiapas investiga a la familia de una periodista crítica*, January 29, 2014.

<sup>599</sup> The incidents took place after he published a column denouncing alleged arbitrariness and acts of torture committed by the paramilitaries in the municipality. Morales had filed a complaint with the Office of the Attorney General against the leader of the Unión de Pueblos y Organizaciones del Estado de Guerrero on charges of death threats, intimidation and violation of freedom of expression. *Proceso*, *Denuncia reportero acoso de autodefensas de Guerrero*, February 14, 2014; Libertad Guerrero, *Reportero denuncia penalmente a Bruno Plácido por amenazas e intimidaciones*, February 14, 2014; Alberto Morales Santos, *Solicito su valiosa intervención*, February 21, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>600</sup> Article 19, *Alerta: Policías capitalinos detienen a periodista*, February 18, 2014; Animal Político, *17 periodistas detenidos en DF por documentar en vía pública*, February 20, 2014.

journalist for that same portal;<sup>601</sup> Pedro Arzate García in Chilpancingo, state of Guerrero, on February 28, 2014;<sup>602</sup> Gustavo Sánchez, general director for the news portal *La Policiaca del Istmo*, in Salina Cruz, state of Oaxaca;<sup>603</sup> on March 12, 2014, Balbina Flores Martínez, correspondent for Reporters Without Borders (RSF);<sup>604</sup> Abel Martínez Reyes, for newspapers *Notisur y El Mañanero* and Isidro Domínguez Sánchez, owner of the political weekly *La Libertad*;<sup>605</sup> Columnist and political expert Denise Dresser on March 31, 2014;<sup>606</sup> the general director of the Mexico and Central America office for the *Artículo 19*, Darío Ramírez, on March 16, 2014;<sup>607</sup> the director of *Agencia Rubios News* agency, Abisaf Rubio; and journalists Mario Mosqueda and Neftali Antonio Gómez in the city of Nuevo Laredo, state of Tamaulipas, on April 4, 2014.<sup>608</sup>

601 Article 19, *Alerta: Policías del DF detienen ilegalmente a periodista de “Somos El Medio”*, March 20, 2014; Cimac Noticias, *Detiene STC de manera arbitraria a reportera Fabiola Gutiérrez*, March 24, 2014; Somos el Medio, *Corrupción, extorsión, censura, brutalidad policiaca y contubernio institucional en los casos de Fabiola Quiroz y Víctor Cilia*, March 23, 2014.

602 The incident apparently took place when the journalist, who is the news anchorman of *Siga TV* network, was heading to the local Office of the Attorney General to request protection and denounce acts against him. That morning, the reporter had noticed that a car was outside his office and was following him, after which he decided not to enter his workplace. Given the facts, the local authorities had commissioned, in a temporary and extraordinary manner, two escorts to accompany him. Article 19, *Alerta: Periodista es hostigado y es allanada su casa en Guerrero*, March 1, 2014; Cencos, *Alerta LE: Periodista es hostigado y es allanada su casa en Guerrero*, March 1, 2014; Clases de Periodismo, *México: Allanar casa de periodista hostigado*, March 2, 2014.

603 The first of these occurred on March 10 when in the midst of his radio news broadcast he apparently received a call on the air in which a man warned him that he already had his "location in order to murder him." This first threat was reported to the Office of the Attorney General which led to an investigation being opened by office 13 of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE), but which had shown no progress by the end of May. Following the publication of an article on its website on May 2, the journalist apparently received text messages on his phone warning him that, because he had published information related to a local television host, he would suffer the consequences. The third threat apparently occurred on May 5, when masked men stopped him and demanded he withdraw a newspaper article published on his website or otherwise he would be killed. Article 19, *#ALERTA: Periodista de Oaxaca amenazado de muerte por tercera ocasión*, May 9, 2014; Article 19, *Alerta: Periodista de Oaxaca recibe amenaza de muerte*, March 11, 2014; Reporters Without Borders (RSF), *“LAS AUTORIDADES MEXICANAS DEBEN OTORGAR PROTECCIÓN CUANTO ANTES A LOS PERIODISTAS AMENAZADOS”*, May 23, 2014; Diario Avanzada, *Amenazan de muerte a periodistas en Oaxaca y el DF; CNDH realiza investigaciones*, May 25, 2014.

604 The events were reported to the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) and the Human Rights Commission of Mexico City. Reporters Without Borders (RSF), *La corresponsal de RSF recibe llamadas amenazantes*, March 13, 2014; Article 19, *Alerta: Corresponsal de RSF en México es amenazada*, March 13, 2014; World Association of Newspapers and News Publishers (WAN-IFRA), *WAN-IFRA calls on Mexican authorities to investigate threats against freedom of expression advocate*, March 19, 2014.

605 Article 19, *México: Alcalde y Síndico de Chinameca, Veracruz, amenazan a periodistas*, March 31, 2014; Diario Presencia, *Y siguen las amenazas...*, April 4, 2014.

606 Article 19, *#ALERTA: Denise Dresser intimidada por escribir libremente*, April 15, 2014; Proceso, *Denuncia Article 19 “intimidaciones” contra Denise Dresser por texto sobre Beltrones*, April 15, 2014; Aristegui Noticias, *Dresser, “intimidada” tras publicar columna sobre Beltrones: Article 19*, No date.

607 Article 19, *ALERTA: La casa del Director General de ARTICLE 19 es allanada*, March 17, 2014; Aristegui Noticias, *Allanan la casa del Director de Article 19; solicita protección*, March 18, 2014.

608 The journalists had arrived on the scene to document a road accident between a passenger vehicle and an Army patrol. Apparently this upset the military, who threatened to "disappear them." The journalists filed a complaint with the Office of the Attorney General in Tamaulipas. Article 19, *FEADLE obligada a investigar*

405. The editor for the *El Buen Tono* newspaper edited in the state of Veracruz;<sup>609</sup> Marta Durán de Huerta, contributor to the *Proceso* magazine and correspondent for *Radio Nederland*, May of 2014;<sup>610</sup> the director for the *El Veraz* newspaper, edited in Xalapa, state of Veracruz, Claudia Guerrero, July 29, 2014;<sup>611</sup> director for the weekly *Tinta Verde*, Ignacio Domínguez, in Xalapa, state of Veracruz<sup>612</sup>; journalist Karla Janeth Silva Guerrero, correspondent for the newspaper *El Heraldo* in León in the municipality of Silao, state of Guanajuato;<sup>613</sup> correspondents for the magazine *Era*, in the state of Veracruz;<sup>614</sup> journalist Margarito Juárez, reporter for the police section of the newspaper *Página 24* and for channel *Canal B15*, in the city of Fresnillo, state of Zacatecas;<sup>615</sup> *SinEmbargo* news portal;<sup>616</sup> journalist Juan Manuel Auzua, program director for Guardian of the Night ‘*El Guardián de la noche*’ on station *Radio 92.7 FM*;<sup>617</sup> Spanish journalist Melchor Miralles, former

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*agresión de militares a periodistas tamaulipecos*, May 13, 2014; El Punto Crítico, *Aqueden a periodistas en Nuevo Laredo*, April 7, 2014; AgenciaRNnoticias/Official YouTube channel, *Soldados de la policía Estatal Aqueden a Reporteros y Chofer de transporte urbano*, April 5, 2014.

<sup>609</sup> Article 19, *#ALERTA México: Diario El Buen Tono de Veracruz recibe amenazas*, April 7, 2014; El Buen Tono, *Ante el MP, denuncia amenaza contra El Buen Tono*, April 8, 2014; Almargen, *El acoso a El Buen Tono de Córdoba: amenazan con volver a quemar las instalaciones del diario*, April 11, 2014.

<sup>610</sup> Sin Embargo, *Periodista de TV es asesinado en Zacatecas con al menos 20 puñaladas; RSF pide investigar si fue por su profesión*, July 30, 2014; Article 19, *ALERTA: Roban en la casa del director de Poblaciones.com*, July 29, 2014; Clases de Periodismo, *México: Denuncian agresiones contra periodistas de Puebla*, August 19, 2014.

<sup>611</sup> Proceso, *Por acoso y agresión, periodista veracruzana denuncia a los 400 Pueblos*, July 30, 2014; Article 19, *ALERTA: Periodista es agredida por Movimiento de los 400 Pueblos*, July 31, 2014; E-consulta, *Claudia Guerrero interpone denuncia por agresiones de 400 Pueblos*, July 30, 2014; Cencos, *OSC exigen seguridad para la periodista Claudia Guerrero*, August 4, 2014.

<sup>612</sup> Reporters Without Borders (RSF), *SHOTS FIRED AT NEWSPAPER EDITOR'S HOME IN VERACRUZ STATE*, September 4, 2014; NTN24/AFP, *Director de un semanario mexicano sale ileso de un atentado en su hogar*, September 2, 2014; El Heraldo de Veracruz, *CNC condena agresión al periodista Ignacio Domínguez*, September 4, 2014.

<sup>613</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression, *Press release R 96/14. Office Of The Special Rapporteur Condemns Attack To Journalist In Mexico*, September 9, 2014; El Universal, *Irrumpen en redacción y golpean a reportera en Silao*, September 5, 2014; Reporters Without Borders (RSF), *Local Newspaper Correspondent Beaten In Her Office In Guanajuato State*, September 5, 2014; Red Política, *Exigen que se investigue agresión a reportera en Guanajuato*, September 5, 2014; Enfoque/MVS, *Exigen condiciones óptimas para ejercer el periodismo tras agresión a reportera en Guanajuato*, September 6, 2014; Committee to Protect Journalists (CPJ), *Mexican journalist attacked after receiving threats*, September 8, 2014.

<sup>614</sup> Article 19, *ALERTA: Hostiagan a colaboradores de medio por cuestionar aparente “estado inconveniente” del Gobernador de Veracruz*, September 19, 2014; Revolución tres punto cero, *Por cuestionar aparente “estado de ebriedad” de Javier Duarte, hostiagan a periodistas #Audio*, September 22, 2014; Revista Era, *Revista Era responsabiliza al Gobierno de #Veracruz*, September 18, 2014.

<sup>615</sup> La Jornada, *Disparan contra casa de periodista en Zacatecas*, September 30, 2014; Zacatecas Online, *Aqueden a balazos vivienda de periodista fresnillense*, September 30, 2014; Proceso, *Balean casa de periodista de “Página 24” en Fresnillo*, September 30, 2014; Imagen, *Hombres armados atacan vivienda del periodista Margarito Juárez*, September 30, 2014; Proceso, *Roban y queman automóvil de un reportero en Zacatecas*, December 15, 2013; sin embargo, *En dos días, tres periodistas son agredidos por policías y sujetos armados en Zacatecas, DF y Veracruz*, December 15, 2013; Vanguardia, *Queman carro de un reportero en Zacatecas*, September 16, 2013.

<sup>616</sup> Sin embargo, *Delegado de Cuajimalpa amenaza por foto armado*, October 24, 2014; Article 19, *Delegado de Cuajimalpa amenaza a Sin Embargo*, October 24, 2014.

<sup>617</sup> Proceso, *Funcionario de Querétaro ordena “romperle la madre” a comunicador*, October 29, 2014; Sin embargo, *AUDIO evidencia al Secretario de Gobierno de Qro por mandar golpear a un periodista*, October 28, 2014; Inter American Press Association (IAPA), *La SIP condena censura y represión contra periodistas mexicanos*, November 5, 2014.

director of *El Mundo TV* and columnist for the Spanish newspaper *ABC*, in the city of Tapachula, state of Chiapas, on November 1, 2014.<sup>618</sup>

406. During 2014 there were also reports of assaults and harassment against national and local journalists in Iguala, state of Guerrero, allegedly by the so-called ‘falcons’ (individuals used by organized crime to reports the goings on in the city) that took pictures of them and followed them on foot and on motorcycles.<sup>619</sup> This happened within the context of the disappearance of the Ayotzinapa students. The Commission learned of a video where alleged federal police officers in the state of Guerrero used firearms to threaten television journalists who were travelling in a truck in the Cocula municipality on their way to a clandestine grave.<sup>620</sup> The Ministry of the Interior issued a press release stating the perpetrators of the attack were officers from the Intelligence and Investigation Division of the Federal Police who were working undercover in the alleged arrest of one of those responsible for the disappearance of the students from Ayotzinapa.<sup>621</sup>
407. In 2014 the Commission granted precautionary measures to the members of the *Contralínea* magazine after considering “rights to life and personal integrity of the identified members” of the magazine “face a situation of risk.”<sup>622</sup> The alleged events occurred on April 18, 2014 when unknown persons broke into the private residence of *Contralínea* director Miguel Badillo, while on June 23 unknown individuals ransacked the magazine facilities. These individuals stole computer equipment and audio and recording equipment from the media outlet office. The magazine had reported several attacks as of 2007, possibly due to its editorial line.<sup>623</sup>
408. The Commission also learned about the case for magazine *Luces del Siglo* edited in the municipality of Cancún, state of Quintana Roo, it was victim to systematic cloning of print and online issues.<sup>624</sup> The Quintana Roo government denied participation in cloning the magazine.<sup>625</sup> Based on the complaint, in October a

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<sup>618</sup> ABC, *Melchor Miralles: «Me están secuestrando»*, November 4, 2014; El Mundo, *Secuestro fallido del periodista Melchor Miralles*, November 4, 2014; El Correo, *Intentan secuestrar a Melchor Miralles en México*, November 4, 2014.

<sup>619</sup> sin embargo, *Iguala es una ciudad de halcones, dicen periodistas; los persiquen y toman fotos*, October 11, 2014.

<sup>620</sup> Proceso, *Federales vestidos de civil aqreden a periodistas en Cocula*, October 27, 2014; sin embargo, *Guerrero se vuelve territorio hostil para periodistas, denuncian comunicadores y ONG’s*, November 14, 2014; Juan Rivas/YouTube, *Aqentes federales aqreden a periodistas*, October 27, 2014.

<sup>621</sup> Proceso, *Seqab da su versión de ataque contra periodistas en Guerrero*, October 28, 2014; sin embargo, *Elementos de Inteligencia encubiertos atacaron a periodistas en Guerrero: Seqab*, October 28, 2014.

<sup>622</sup> IACHR, *Resolution 21/2014*. Matter of members of the Contralínea Magazine regarding Mexico. Mexico, July 18, 2014.

<sup>623</sup> Contralínea, *Asaltan instalaciones de Contralínea*, June 24, 2014; Reporters without Borders (RSF), *Break-In At Mexico City-Based Independent Magazine*, July 3, 2014.

<sup>624</sup> Animal Político, *Luces del Siglo ha sido clonada 48 veces, acusa su director*, September 25, 2014; Aristegui Noticias, *‘Luces del Siglo’ acusa a Roberto Borja de orquestar “terrorismo”*, September 25, 2014; Aristegui Noticias, *Fotos: Así clonaron en Quintana Roo las portadas de ‘Luces del Siglo’*, September 25, 2014.

<sup>625</sup> Animal Político, *“Nunca clonamos la revista Luces del Siglo”: Gobierno de Quintana Roo*, September 29, 2014; Aristegui Noticias, *Gobierno de Borja niega clonar revistas y ofrece “apoyo” para dar con responsable*, September 25, 2014.



federal judge ordered to the governor Borge and three main collaborators to cease the “defamation” against the owner of the magazine.<sup>626</sup> On October 1, the spokesperson for the State Government gave statements to the media claiming the weekly cloned itself with the alleged goal of extortion against the State and to play the victim in order to gain publicity.<sup>627</sup>

409. The IACHR also learned of different attacks, threats and detentions against journalists and directors of the *Noroeste* newspaper in the state of Sinaloa. Although the newspaper was a victim of attacks in years past, they especially increased in 2014.<sup>628</sup>

### 3. Impunity

410. After their visit the IACHR was able to confirm the general impunity context that exists in Mexico and that crimes against journalists are not the exception. According to the Committee to Protect Journalists (CPJ), Mexico is ranked 8 on

<sup>626</sup> Proceso, *Juez federal ordena a Borge cesar “actos de infamia” contra revista*, October 7, 2014; NotiCaribe, *NUEVA SUSPENSIÓN CONTRA BORGE: Ordena juez federal a Gobernador y funcionarios cesar “actos de infamia” contra dueña de Luces del Siglo*, October 7, 2014; Diario de Yucatán, *Dan amparo contra el gobierno*, October 8, 2014.

<sup>627</sup> El Universal, *QRoo acusa a semanario de ‘autoclonación’*, October 1, 2014; Luces del Siglo. *QROO ACUSA A SEMANARIO DE ‘AUTOCLONACIÓN’*, October 1, 2014; Aristegui Noticias. *Gobierno de Quintana Roo acusa de “autoclonación” a ‘Luces del Siglo’*, October 1, 2014; Article 19, *Irresponsables las declaraciones de vocero de Quintana Roo: Darío Ramírez*, October 1, 2014.

<sup>628</sup> For example, on the night of February 23, journalists of the newspaper in the city of Mazatlan received two telephone threats demanding they not publish information related to the drug dealer. The threats occurred after the reporters contacted city officials during an investigation of possible links between municipal police officers with said drug dealer, information that had already been reported by national newspapers. Grupo Editorial Noroeste had filed a complaint with the Office of the Attorney General stating its right to seek protection for the newspaper’s facilities and its reporters. On February 24, through the Facebook social network, the newspaper received threats and was accused of its editorial line being involved with an organized crime group. On February 25, two women allegedly guarded by Navy officers, apparently forced a newspaper photojournalist to delete the images he had taken of the building where this drug dealer had been recaptured. They had apparently warned him that if he failed to do so they would take away his photographic equipment. Other citizens were apparently forced to delete their photographs. On March 2, during the coverage of the marches in favor of drug dealer Guzmán Loera, three journalists were allegedly beaten by state and municipal police. The incident occurred in the cities of Culiacan and Guamuchil. The recording equipment of two of them were seized. On March 4, in Mazatlan, while covering a police event, a reporter for the newspaper was arrested and charged by local police for being responsible of criminal acts. The journalist had been in a vehicle identified with the newspaper’s name when he was apparently arrested by the police, who took him to a hospital. He was later released. In the first minutes of April 3, the CEO of Grupo Editorial Noroeste, Adrian López Ortiz, was assaulted, beaten and shot in the city of Culiacan. Lopez was traveling in his car when he was obstructed by another car while a van blocked his path. Youngsters who got off the van hit him and stole his belongings, and one of them shot him in the leg. The Office of the Attorney General of Sinaloa was quoted as saying that this attack might be a robbery, but López Ortiz and human rights organizations recalled the series of attacks against the daily’s staff. On September 28, Mazatlan municipal police arrested Iván Lizárraga, a photographer for the newspaper, and after threats apparently forced him to delete pictures that the photojournalist had taken of an operation in which police officers apparently entered a house without a search warrant. The agents handcuffed the reporter and took his personal data. Lizárraga filed a complaint with the Office of the Attorney General of the State. The newspaper has received threats and attacks before. In 2010, for example, gunmen fired high-powered weapons against their facilities.

impunity and is the country in Latin America with the highest rate of impunity for crimes against these professionals.<sup>629</sup>

411. In 2013 the National Commission on Human Rights issued General Recommendation 20, wherein it analyzed 145 cases of attacks on journalists (homicides, disappearances and attacks on media outlets). Only in “27 cases (19%) did the local, state and federal prosecutors report taking the necessary preliminary action<sup>630</sup> and the judge assigned to the case issued a conviction in only 14 cases (10%), and the criminal action was dismissed in two cases,<sup>631</sup> 11 of these have not been disposed, in addition to the 118 cases that have not been indicted, which means there is a considerable 89% that lie in impunity.”<sup>632</sup>
412. Both the Commission and the Court have made reference to the repercussions intimidation against journalists has on both other media professionals and on the citizens who are interested in reporting abuse of authority or illegal activity of any kind.<sup>633</sup> This intimidation factor may only be avoided by “decisive action by the State to punish those responsible, as required by international and domestic law.”<sup>634</sup>
413. In this regard and within the context of impunity in Mexico the existence of an adequate institutional framework with sufficient resources is crucial to a State’s ability to investigate, prosecute and punish crimes against journalists. The State has the obligation to guarantee that institutional frameworks are not designed so

<sup>629</sup> According to the Index there are “0.152 unsolved journalist murders per million inhabitants”. Committee to Protect Journalists (CPJ). CPJ’s 2015 Global Impunity Index spotlights countries where journalists are slain and the killers go free. Available at: <https://www.cpj.org/reports/2015/10/impunity-index-getting-away-with-murder.php>

<sup>630</sup> United Mexican States. Código Nacional de Procedimientos Penales. Article 134. *En cuanto aparezca de la averiguación previa que se han acreditado el cuerpo del delito y la probable responsabilidad del indiciado, en los términos del artículo 168, salvo en los casos previstos en este Código y demás disposiciones aplicables, el Ministerio Público ejercerá la acción penal ante los tribunales y expresará, sin necesidad de acreditarlo plenamente, la forma de realización de la conducta, los elementos subjetivos específicos cuando la descripción típica lo requiera, así como las demás circunstancias que la ley prevea.*

<sup>631</sup> Terminating proceedings means the process is completed before sentencing without the judge hearing the merits of the case.

<sup>632</sup> CNDH. *Recomendación General No. 20 sobre agravios a periodistas en México y la impunidad imperante*. México, D. F., August 15, 2013.

<sup>633</sup> I/A Court H.R.; *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Serie C No. 248, para. 148; IACHR. Report No. 136/10. Case 12.658. *Luis Gonzalo “Richard” Vélez Restrepo and family (Colombia)*. October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. *Héctor Félix Miranda (Mexico)*. April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza (Mexico)*. November 19, 1999, para. 58. *See also*, IACHR. *Annual Report 2010*. Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. 2010. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716.

<sup>634</sup> IACHR. Report No. 136/10. Case 12.658. *Luis Gonzalo “Richard” Vélez Restrepo and family (Colombia)*. October 23, 2010, para. 136; IACHR. Report No. 50/99. Case 11.739. *Héctor Félix Miranda (Mexico)*. April 13, 1999, para. 52; IACHR. Report No. 130/99. Case No. 11.740. *Víctor Manuel Oropeza (Mexico)*, November 19, 1999, para. 58; *See also*, IACHR. *Annual Report 2010*. Office of the Special Rapporteur for Freedom of Expression. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. OEA/Ser.L/V/II. Doc. 5. March 7, 2011, para. 716. *See also*, I/A Court H.R., *Case of Vélez Restrepo and Family v. Colombia*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of September 3, 2012. Serie C No. 248, para. 211.

as to lead to or even promote impunity when these crimes take place.<sup>635</sup> Likewise, the State must ensure that the agencies responsible for investigating, trying and punishing those responsible for these crimes work under the conditions necessary to do their jobs.<sup>636</sup>

414. As the IACHR has noted on other occasions, In order to prevent violence against journalists and media workers, it is indispensable for legal systems to punish this conduct in a manner that is proportional to the damage committed. In a more general sense, Article 2 of the American Convention requires States to adopt legislative or whatever other measures that may be necessary to make the rights and freedoms recognized in the treaty effective.”<sup>637</sup>
415. The Commission recognizes the efforts made by the Mexican State to address the situation on impunity; these have been manifested in legislative reform and the creation of investigation units. For example, the Federal Criminal Code was reformed to include in the general rules for punishment to be increased by one third of the sentence when a crime is willfully committed against a “journalist, person or facility with the intent to affect, limit or undermine the right to information or freedom of expression or print.” The Federal Criminal Code also establishes that in these cases the sentence may be increased by one half of the period of incarceration if the crime is committed by “a public official in the course of business” or “if the victim is a woman and gender coincides with the commission of the crime.”<sup>638</sup>
416. In 2010 the rapporteurs for freedom of expression for the OAS and the UN recognized the importance of the creation of the Office of the Special Prosecutor for Crimes against Freedom of Expression [*Fiscalía Especial para la Atención de Delitos cometidos contra la Libertad de Expresión*] (FEADLE) in the PGR, however they noted the need for political will in order to strengthen it and give more autonomy to the local PGRs, as well as strengthening the capability of action public agencies for human rights have.<sup>639</sup> Due to the ambiguous and deficient jurisdiction of FEADLE, recommendations were also made to make the necessary reforms in

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<sup>635</sup> IACHR, *Annual Report 2013. Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 175; United Nations. General Assembly. *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue*. A/HRC/20/17, June 4, 2012, para. 57. Available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/137/87/PDF/G1213787.pdf?OpenElement>

<sup>636</sup> IACHR, *Annual Report 2013. Office of the Special Rapporteur for Freedom of Expression*. Chapter III (Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators). OEA/Ser.L/V/II.149. Doc. 50. December 31, 2013, para. 175.

<sup>637</sup> IACHR, Report of the Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para. 55

<sup>638</sup> United Mexican States. Código Federal de Procedimiento. Article 51.

<sup>639</sup> IACHR, *Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. March 7, 2011, para. 297.

order to “allow the exercise of federal jurisdiction on crimes against freedom of expression.”<sup>640</sup>

417. Complying with said recommendations, in May of 2013 the National Congress passed legal reform wherein it changed several federal laws to regulate Federal Public Prosecutor jurisdiction<sup>641</sup> and that of the federal justice system to prosecute and adjudicate crimes against journalists, persons or facilities that: “affect, limit or undermine the right to information or freedom of expression or of the press.”<sup>642</sup> Said reform had as its objective to overcome the legal barrier that FEADLE had to assume jurisdiction and be more effective in solving cases that may be related to the exercise of journalism.
418. According to the information the IACHR has been able to gather through monitoring tools and the *in loco* visit, as well as information received directly by the entity, since the reform was passed, FEADLE has exercised jurisdiction in 40 cases for different crimes against journalists. Between December 1, 2012 and August 31, 2015, FEADLE has opened 458 preliminary actions and has decided on 337 of them. It decided there was lack of jurisdiction in 176 of those cases and indicted in 53 of the cases (the case was brought by FEADLE before a judge which does not mean there was a conviction).
419. The IACHR has reiterated that the murder of journalists constitutes the most extreme form of censorship and that States have the affirmative obligation to identify and punish the perpetrators of those crimes. Within the investigations initiated by FEADLE, after obtaining the authority to absorb investigations of serious crimes against freedom of expression, 24 were for murders perpetrated against journalists; however, the entity claimed lack of jurisdiction in 11 cases,

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<sup>640</sup> IACHR, *Annual Report 2010. Office of the Special Rapporteur for Freedom of Expression*. Chapter II: 2010 Special Report on Freedom of Expression in Mexico. March 7, 2011, paras. 724-725.

<sup>641</sup> United Mexican States. Decree to reform and add various provisions of the Federal Code of Criminal Procedure, of the Judicial Branch’s Administrative Law, the Office of the Attorney General’s Administrative Law, and the Federal Penal Code, May 3, 2013.

<sup>642</sup> United Mexican States. Decree to reform and add various provisions of the Federal Code of Criminal Procedure, of the Judicial Branch’s Administrative Law, the Office of the Attorney General’s Administrative Law, and the Federal Penal Code, May 3, 2013.

In this sense, the reform provides, *inter alia*, that the power of attraction of the federal authorities shall be exercised in cases where the intent of the author is presumed and at least one of the following circumstances concur: (i) where there is indication that a state or municipal public servant has participated in the offense; (ii) where the victim has stated in the complaint that a state or municipal public servant is the alleged perpetrator; (iii) in the case of serious offenses thus qualified by law; (iv) where the life or physical integrity of the victim or injured party is in real danger; (v) when requested by the competent authority of the federal state; (vi) where the acts constituting the offense impact the exercise of the right to freedom of expression in a transcendent way; (vii) when in the federal state in which the offense took place or its results were manifest there are objective and widespread circumstances of risk to exercise the right to freedom of expression; (viii) when the act constituting the offense goes beyond the scope of one or more federal states; or (ix) when a judgment or decision of an organ provided for in any international treaty to which the Mexican State is a party has determined the international responsibility of the Mexican State, by default or omission, in the investigation, pursuit or prosecution of these offenses.

indicted in one case and in only seven of those homicides FEADLE assume the investigation. These cases remain pending.<sup>643</sup>

420. According to the procedure established by FEADLE, when information about an attack on a journalist is received affidavits are taken immediately, this allows for a later determination on preliminary action. The PGR with state jurisdiction may simultaneously open an investigation; if such is the case FEADLE works in parallel in attempts to identify those responsible. Another possible avenue is what is known as third-party assistance (*coadyuvancia*), whereby the FEADLE works side by side with the regular prosecutor to ensure it is working within freedom of expression standards.
421. In that context, during the *in loco* visit, the prosecutor in charge of FEADLE reported that when common jurisdiction takes the case before a state judge, FEADLE may no longer exercise jurisdiction because double jeopardy attaches. In these cases, and under this interpretation, the special prosecutor is limited to follow-up on the case. However, the IACHR also met with other justice operators during its visit, and when asked about this interpretation, these operators indicated that this interpretation is not a firm jurisprudential precedent or a majority doctrine in the country.
422. Regarding this the Commission recalls: “a lack of cooperation and coordination between local and national agencies that pursue criminal prosecutions can present an additional obstacle to obtaining justice in these cases.”<sup>644</sup>
423. The Commission also observes that in crimes against journalists, the lack of specific investigation protocols to apply in cases that involve possible retaliations for the exercise of journalism and the alleged lack of judicial independence allow impunity to be ever higher, to the point that it becomes a structural flaw in the administration of justice. The Commission has confirmed the lack of investigation lines related to the exercise of journalism, in some cases this hypothesis is not even invoked, and in other cases it is not exhaustively investigated before being discarded. The Commission has noted that one of the contributing factors to impunity is the lack of protocols requiring authorities to exhaust the line of investigation regarding the exercise of the profession; this presents an obstacle to the criminal prosecution and does not include the identification of masterminds.<sup>645</sup>
424. In this regard the Commission took note of the statement made by FEADLE during the *in loco* visit, asserting they are working on an investigation protocol for crimes against journalists, with the object of directing the prosecutors to ensure that the

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<sup>643</sup> PGR. *Subprocuraduría de Derechos Humanos. Prevención del Delito y Servicios a la Comunidad. Fiscalía Especializada para la Atención de Delitos contra la Libertad de Expresión. Informe en materia de Libertad de Expresión del 1 de diciembre de 2012 al 31 de agosto de 2015*, p. 8.

<sup>644</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para. 170.

<sup>645</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para. 169.

first hypothesis for the investigation when the victim is a journalist is the victim's profession as a journalist. On this point, in its observations to the draft of this report, the State notified the IACHR that it is in the process of reviewing, publishing and authorizing (i) the acting Protocol regarding the first lines of investigations in cases related to journalism; (ii) Protocol for the accompanying of journalists; (iii) Manual for the Prevention of Crimes Committed against Freedom of Expression; (iv) Basic Guide for the investigation of murders committed against journalists; (v) Practical Manual for Ministerial investigations; and (v) Protocol for High-Profile Crimes.<sup>646</sup>

425. After the *in loco* visit, the Commission and the Special Rapporteurship are concerned about the practice to not exhaust the investigation line related to the profession, as this sends a message of justice by proxy. This omission creates a barrier to reaching the masterminds, only accomplishing perpetrator convictions, allowing for a reduction in impunity statistics and sending a mixed message to society since there is no explanation to what actually took place.
426. Another cause for impunity that the Commission and the Special Rapporteurship have noted in crimes against journalists, especially in a context such as Mexico's, is the wrongful influence of organized crime over the judicial system and police officers with illegal pressure to change the course of investigations.<sup>647</sup>

427. The IACHR understands and recognizes the efforts the State of Mexico has made to adapt legislation and institutions to respond to the challenge that is impunity. Nevertheless the reforms are inefficient when in practice there is no response to the public clamor for justice for the victims and society on the whole, and in fact quite the opposite occurs as impunity rises within the context of constant attacks on journalists. When those who assault journalists go unpunished, the wrong message is sent and journalists and communicators are left unprotected.

#### 4. Violence against Women Journalists

428. The Special Rapporteurship for Freedom of Expression has compiled information about distinctive characteristics found in the violence against women journalists, in this regard during the visit the IACHR received testimony from civil society organizations that have taken great effort to document and expose the situation in Mexico for women journalists. According to the information provided by the organizations although violence against journalists has risen in the last few years; violence against women journalists has increased by percentage at a higher rate than the violence against male journalists. Many of the attacked journalists cover

<sup>646</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015, pp. 88-89.

<sup>647</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression. *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, 2013, para. 171.

political matters and have denounced corruption; in addition, in many cases the violence was psychological in nature.<sup>648</sup>

429. On the other hand, the IACHR also received information regarding the lack of the gender approach to the protective mechanism of human rights defenders and journalists, although the law for this mechanism enshrines the approach. The IACHR met women beneficiaries who were granted protective measures without taking women's needs into account, for example bullet proof vests are set for the male anatomy and therefore the women are unable to use them. It also learned of cases where the public officials for the mechanism have stigmatized the beneficiaries based on their gender. In addition the IACHR learned about prosecutorial authorities that re victimize women when they file a complaint, or consider their complaints are unimportant and even make the victims feel judged by the officials themselves.
430. The Special Rapporteurship has noted “the importance of taking account of gender in the study of violence against journalists and the identification of strategies to eradicate it is reinforced by the obligation of the States to combat discrimination and violence against women with due diligence.” As the IACHR has recognized ‘violence is one of the most extreme and common forms of discrimination’ as it severely impedes and annuls women’s exercise of their rights, including the rights to life and personal integrity. Effectively the Inter-American system has highlighted the strong connection between the issues of discrimination and violence against women. An example of this can be found in the provisions of the ‘Convention of Belém do Pará,’ which establishes that all women have the right to a life free from violence, to be free of all forms of discrimination, to be valued and educated free from stereotypical patterns, to equal protection before the law and of the law, and to have a simple and quick remedy available through the competent courts when their rights are violated.”<sup>649</sup>

### **C. Mechanism for the Protection of Human Rights Defenders and Journalists**

431. Through different IACHR monitoring mechanisms, including precautionary measures, the Inter-American Commission has been closely following State efforts and implementation for the protection of persons at risk; within the context of serious violent acts human rights defenders and journalists have been facing in Mexico over the past several years. The Commission especially recognized that in 2012 Mexico became the second country in the region to adopt a specialized

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<sup>648</sup> Comunicación e Información de la Mujer- CIMAC. *Informe violencia e impunidad contra periodistas mujeres en México*. 2010-2011; Comunicación e Información de la Mujer- CIMAC. *Impunidad. Violencia contra Mujeres Periodistas. Análisis legal: 2014*.

<sup>649</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression. *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*. 2013, para. 253.

protective mechanism for human rights defenders and journalists.<sup>650</sup> These significant initiatives and procedures included passing the “Law for the Protection of Human Rights Defenders and Journalists” [*Ley para la protección de Personas Defensoras de Derechos Humanos y Periodistas*]<sup>651</sup> that went into effect in June of 2012. Within the legislative framework of that law and its implementation, the State has been meeting its duty to protect, promote and guarantee the human rights to “life, humane treatment and safety for those at risk as a consequence for defending or promoting human rights and the exercise of freedom of expression and journalism.”<sup>652</sup>

432. Moreover, information has been received regarding the high number of persons who resort to the mechanism in order to request protection and a considerable number of persons that are actually protected by it; including beneficiaries of IACHR precautionary measures. According to information provided by the State, the mechanism has 463 beneficiaries, 190 journalists and 273 human rights defenders.<sup>653</sup> In this regard the Commission notes the willingness of the State to adopt material protective measures. Without prejudice to the preceding or to the important advances that have been noted, the Commission received consistent information both prior to and during the visit, from civil society, beneficiaries of precautionary measures and the United Nations system,<sup>654</sup> on a series of shortcomings in the operation of the mechanism. According to the testimony and information received, there is considerable distrust of the efficiency of the mechanism due to some identified issues and violent acts people under the protective mechanism continue to face. This has created additional difficulty when a person makes the decision to request admittance into the program, they are subject to established procedures or limited to protective measures to be implemented.

## 1. Legislative Framework on Protection and its Implementation

433. According to reports the Law for the Protection of Human Rights Defenders and Journalists and its corresponding regulation guide the protective mechanism.<sup>655</sup> The main structure for the mechanism is a Government Board (the Mechanism’s highest body and primary decision-making body), A Consultative Council and a

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<sup>650</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*. December 31, 2013, para. 107.

<sup>651</sup> United Mexican States. Diario Oficial de la Federación, “*Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, June 25, 2012.

<sup>652</sup> United Mexican States. Diario Oficial de la Federación, “*Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*”, June 25, 2012, Article 1.

<sup>653</sup> IACHR visit to Mexico. Information from the Mexican State. Mexico D.F., September 25, 2015.

<sup>654</sup> Office in Mexico of the United Nations High Commissioner for Human Rights (OHCHR). *Report on the situation of human rights defenders in Mexico: 2012 update and balance for 2013*, paras. 77 - 78.

<sup>655</sup> United Mexican States. Presidency, Official Gazette of the Federation, *Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*, November 30, 2012.



National Executive Coordination Group, all operating under the Ministry of the Interior.<sup>656</sup>

434. In its observations to the draft of this report, the Mexican State reported that in the implementation and operation of the protection measures, to June 2015, a total of 68.9 million Mexican pesos (approximately 4.2 million U.S. dollars) had been spent by the Fund for the Protection of Human Rights Defenders and Journalists. As of November 30, the Fund had a remaining patrimony of 331.8 million Mexican pesos (approximately 20 million U.S. dollars).<sup>657</sup> The Mechanism has 34 authorized sites to carrying out its work.<sup>658</sup> In this regard, members of civil society have indicated that the budgetary allocation is not up to par with the needs of the Mechanism, which they claim shows the low political support that is being provided to the Mechanism.<sup>659</sup>
435. The Inter-American Commission considers the Law for the Protection of Human Rights Defenders and Journalists, as well as the general policy and protective procedures implemented by the State, have the purpose of responding to the serious situation of violence human rights defenders and journalists have been facing. In this regard the IACHR wishes to recognize among other efforts, those made and the existence of a specific legislative framework that includes the gender approach, the participation of the Government Board community of human rights defenders and freedom of expression, the repertoire of material measures, in accordance with the respective regular and extraordinary proceedings.
436. Over three years after the Law was passed, in spite of the identified advances, the Commission has learned about serious obstacles threatening the effectiveness of the mechanism and the application of the Law. Several of these difficulties are related to the lack of financial resources for the operation of the institution and for financial sustainability in the long term, constant personnel training in order to guarantee effective operation of the mechanism; an appropriate distribution of power and operating procedures; deploy strategies for different state and federal agencies work in a coordinated manner at all levels (some lack political will to participate). Since the inception of the mechanism these challenges have been of great concern to the United Nations System.<sup>660</sup>

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<sup>656</sup> United Mexican States. Presidency, Official Gazette of the Federation, *Reglamento de la Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*, November 30, 2012.

<sup>657</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015, p. 70.

<sup>658</sup> According to the information provided by the Mexican State in September 2015, the balance of the trust as of August 31, 2015 was 238,083,567.44 Mexican pesos (approximately 16,990,700 U.S. dollars). Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>659</sup> Peace Brigades International, Front Line Defender, Latin American Working Group, Washington Office on Latin America, Press release *Concerns about Protection of Human Rights Defenders and Journalists in Mexico*, April 3, 2014.

<sup>660</sup> Office in Mexico of the United Nations High Commissioner for Human Rights (OHCHR). *Report on the situation of human rights defenders in Mexico: 2012 update and balance for 2013*, paras. 77 and 78; and United Nations. Human Rights Council. Draft report of the Working Group on the Universal Periodic Review Mexico. A/HRC/WG.6/17/L.5, October 25, 2013.

437. The IACHR considers it is important to note, “the States must adopt rules clearly spelling out the authorities and responsibilities of the officials who will play a role in either implementing or monitoring the protection measures. Likewise, law must prescribe the powers that the officials have for those purposes.”<sup>661</sup> In this regard, for the Commission it is fundamental for the application of any legislative framework to be “sufficiently staffed with personnel trained in receiving requests for protection, evaluating the risk, adopting the measures of protection, [...] monitoring them to make certain they are still being enforced.”<sup>662</sup>

## 2. Advances and Challenges in the Implementation of Material Protective Measures

438. The Inter-American Commission has been following the implementation of the protection program in Mexico. During the State hearing “Human Rights Public Policy and Good Practices in Mexico” requested by the State and taking place on March 27, 2015 during the 150 Period of Sessions of the IACHR, the State reported that the mechanism would have significant budget appropriation and technical assistance for international entities specializing in freedom of expression. It added that 165 requests to join the mechanism were made, 31 agreements have been reached with 31 States of the Republic in order to provide collaboration and coordination with the protective measures and 211 measures have been issued to protect 238 people.<sup>663</sup>
439. In the mechanism implementation framework, the Commission received information that the non-governmental agency Freedom House in Mexico accompanied the National Executive Coordination Group [*Coordinación Ejecutiva Nacional*] (CEN) of the protective mechanism during 2014. A work plan was generated on the basis of this cooperation, which included, among other things, technical strengthening in three areas where methodologies needed to be adjusted: risk evaluation, processes and procedures of the National Executive Coordination Group, and lastly measures related to the Risk Evaluation and Risk Level Assessment Protocol.<sup>664</sup> In its observations to the draft of this report, the State specified that the strengthening process carried out with Freedom House has taken place in three phases. The first was dedicated to improve the methodology and internal procedure of the mechanism, which was able to overcome the backlog in the analysis of cases and took place through 2014; the second phase had as its objective of make protection measures more effective and include a gender perspective in their adoption, as well as training the mechanism’s personnel throughout 2015; and, the third phase, which is still ongoing, tends to establish a

<sup>661</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 489.

<sup>662</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 505.

<sup>663</sup> IACHR, Public Hearing, *Public policy on human rights and good practices in Mexico*, March 27, 2014.

<sup>664</sup> United Mexican States. Permanent Mission of Mexico to the OAS. Note No. OEA-02252 to the Executive Secretariat of the IACHR. May 28, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

program for the prevention of violence against journalists and media workers. The activities that have been announced include the creation of a Prevention Unit within the mechanism and a process for the formation and training to strengthen the capabilities of the staff.<sup>665</sup> The IACHR recognizes and welcomes the efforts of the Mexican State to solve the difficulties that arose at the beginning of the implementation of the protection mechanism.

440. Despite the advances, the IACHR has received information regarding serious deficiencies in the operation of the program. One of the persistent issues seen by civil society is the inconsistency in data regarding mechanism coverage. According to civil society data between October 2012 and December 1, 2014 the mechanism received 123 requests for protective measures to human rights defenders, and only 95 for journalists.<sup>666</sup>
441. National organizations that have followed the mechanism have assured that one of the components that affect implementation in a crosscutting manner is the lack of transparency and accountability, “just as zero interest in having a proactive dissemination strategy.”<sup>667</sup> Under these circumstances they maintain that the high number of acts of violence, threats and harassment to different human rights defenders, journalists and related organizations is not at the same level as the number of cases received by the mechanism.<sup>668</sup>
442. Some persons under the protection of the mechanism informed the IACHR on the shortcomings in the provided protective measures. For example, some of the measures include panic buttons and satellite phones. The people living in isolated areas, rural and mountainous – predominately indigenous peoples- report that these measures are not very useful since they are in isolated areas where it would be difficult for the police to respond to a panic button and the satellite phones barely work because of the topography in the area.<sup>669</sup> In addition, some organizations lament the lack of capacity the mechanism has to offer protection to collectives of people at risk. The IACHR urges the Mexican authorities to put concrete measures in place taking the specific circumstances of each person into account in order to better offer effective protection.
443. Regarding the panic buttons, the Governing Body explained to the Commission that for the device to work correctly- which is by means of a cellular telephone line directly connected to the mechanism and the security company contracted for this purpose-, it must remain turned on with the battery sufficiently charged. The equipment is provided by private companies contracted by the mechanism.

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<sup>665</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015, p. 70-71.

<sup>666</sup> Espacio OCS, “*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*”, July 28, 2015, p. 40.

<sup>667</sup> Espacio OCS, “*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*”, July 28, 2015, p. 40.

<sup>668</sup> Espacio OCS, “*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*”, July 28, 2015, p. 40.

<sup>669</sup> Information received from civil society organizations during the on-site visit to Monterrey, Nuevo León, on September 29, 2015.

However, the Governing Body recognized that in some federative entities it has been difficult to coordinate with the local authorities so that they would support the protected persons in case of emergency, given that it is those same authorities who have generated the risk. The IACHR views with concern the difficulties involved in this type of measure to effectively provide protection, along with observing the need to have tools for follow-up on the measures implemented.

444. According to the announcement by the State through the Observations to the draft of this report, the first evaluation of emergency buttons will take place in January 2016. The analysis will be presented to the Government Board along with a proposal to address the problems identified. The methodology announced by the State will contemplate collecting information from different sources, such as the beneficiaries themselves, the implementation periods, the reports of the company that provides the infrastructure, on-site observation, and the application of indicators developed in 2015 with the UN Office of the High Commissioner for Human Rights.<sup>670</sup> The IACHR welcomes the announcement made by the State, in the sense that in 2016 the principal measures utilized by the Mechanism will be evaluated.
445. Regarding risk assessment and the implementation of material protective measures, members of civil society have manifested: i) there is considerable delay in risk assessments and the personnel assigned to this task is minimal;<sup>671</sup> ii) there are no specific protocols in place for the analysis and implementation of material protective measures, to include the gender and indigenous peoples approach, among others;<sup>672</sup> iii) multiple instances and lack of coordination among the different institutions in charge of supporting the protective measures and their follow up;<sup>673</sup> iv) challenges on more specific data on the number of cases received, length of the procedures, as well as information on the main reasons for deciding not to process or to reject some cases;<sup>674</sup> to name a few of the issues raising deep distrust by civil society and the people protected by the program.<sup>675</sup>
446. The Governing Body stressed that in recent months the response times for applications have notably improved and has recognized that although in the beginning the mechanism faced serious problems in responding to the applications, after the process for strengthening that the mechanism carried out advised by the Freedom House organization, this is one of the aspects in which the

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<sup>670</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015, p. 93.

<sup>671</sup> Peace Brigades International, Front Line Defender, Latin American Working Group, Washington Office on Latin America, press release: *Concerns about Protection of Human Rights Defenders and Journalists in Mexico*, April 3, 2014.

<sup>672</sup> IISHR, Press release: *Mexico: Strengthen mechanism to protect women human rights defenders*, March 10, 2015.

<sup>673</sup> Peace Brigades International, Observaciones "*¿Qué hace falta para la cabal implementación del Mecanismo?*", August 18, 2015.

<sup>674</sup> Espacio OCS, "*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*", July 28, 2015, p. 41.

<sup>675</sup> Espacio OCS, "*Diagnóstico sobre la implementación del Mecanismo Federal de Protección a personas defensoras y periodistas*", July 28, 2015, p. 71.

most progress has been observed. As part of the strengthening process with the above-mentioned organization, processes and procedures were established so that the operability of the mechanism would work in a much more optimum fashion.<sup>676</sup>

447. In this same manner the Commission observes with concern that said shortcomings have also affected human rights defenders and journalists who are beneficiaries of the precautionary measures issued by the IACHR and provisional measures issued by the Inter-American Court. In the meetings held with beneficiaries for the IACHR visit to the country and in working meetings held at Commission headquarters in 2015, on precautionary measures issued related to Mexico, the Commission learned of a series of alleged shortcomings in the implementation of material protective measures for the beneficiaries, where there have been issues at the time of matching said measures to the creation of the protection program adapted to each individual.<sup>677</sup>
448. Based on these concerns the Commission believes it is important to reiterate to the state that it “must guarantee adequate communication and active participation in risk assessment”<sup>678</sup> by the people who are being protected or the beneficiaries of precautionary measures. Thereon it is necessary for all related procedures – including intake of individuals into the program, risk assessment, the implementation of material protective measures, among others- occur as quickly as possible taking appropriate action in light of the fact that life and humane treatment are at risk. Likewise, and according to each individual situation, the Inter-American Commission wishes to recall that every implemented protective measure must be adapted, since it must be appropriate to protect the at risk individual, and must also be effective as it should produce the expected results.<sup>679</sup> In correlation to the aforementioned, the States must design policies that allow for monitoring the effectiveness of the measures and a constant follow up on its implementation, as it relates to the risks the beneficiary may face.<sup>680</sup>
449. The Commission has stated: “States have an obligation not only to protect at-risk journalists, but also to guarantee that the protective measures adopted are effective and adequate. In this sense, when measures are adopted to protect journalists from the credible threat of damage to their physical integrity, the

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<sup>676</sup> Freedom House. *Proyecto para el fortalecimiento técnico del mecanismo para la protección de personas defensoras de derechos humanos y periodistas-México*, December of 2014.

<sup>677</sup> During the 154th session of the IACHR in Washington DC, on March 21, 2015, the Commission held two meetings in connection with precautionary measures MC 252-14, related to members of *Contralínea* magazine, and MC 185-13, regarding the human rights defender Sofia Lorena Mendoza and others.

<sup>678</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 493.

<sup>679</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 133.

<sup>680</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 337.

measures must take into account the needs specific to the profession of the beneficiary, the beneficiary's gender, and other individual circumstances."<sup>681</sup>

450. On the other hand the Commission wishes to draw attention to people who, although they are part of the protective mechanism, have IACHR precautionary measures and Inter-American Court protective measures, continue to be threatened, intimidated and be victims of violence. For example, during 2014 and 2015 the Commission has continued to receive information about serious at-risk situations program beneficiaries face, among them journalists,<sup>682</sup> human rights defenders,<sup>683</sup> indigenous leaders,<sup>684</sup> and others.

451. The Inter-American Commission considers it of utmost importance for the State to double its efforts in order to guarantee the effective protection of beneficiaries under the protective mechanism, within the framework of the concerns expressed in this chapter. In this regard the IACHR wishes to underscore that the evaluation of the effectiveness of a State protective measure rests on the efficiency it has to reduce violence against the current program beneficiaries.

### 3. Investigation as a Means of Identification and Removal of Risk Factors, and to Prevent Repetition

452. The Commission has taken note of the denunciations made by members of civil society, people under the protective mechanism and precautionary measures beneficiaries who have noted the existence of ongoing threats, harassment and acts of violence they continue to face, regardless of being beneficiaries of protection programs.
453. As it has been considered regarding other contexts and protection programas in the region,<sup>685</sup> the Commission considers as priority that the protection mechanisms articulate with the corresponding investigation units, in order to determine the risk sources as well as to identify and sanction possible perpetrators. The advance in the investigations will allow, in addition, complement the effectiveness of the protection measures adopted, and deactivate the elements that put at risk the persons who are protected under these programs.

<sup>681</sup> IACHR, *Violence against journalists and media workers: Inter-American standards and national practices on prevention, protection and prosecution of perpetrators*, December, 2013, para. 72.

<sup>682</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. *Carta al Estado de México: Mecanismo de protección para Personas Defensoras de Derechos Humanos y Periodistas en México*. April 17, 2014. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>683</sup> Within the context of the precautionary measures granted (MC 77-15) in favor of defenders "E" and "K", the Commission has received information provided by the State, of April 27, 2015, and the petitioners (CMDPDH), of August 4, 2015, on alleged new risk situations.

<sup>684</sup> Within the context of the precautionary measures granted (MC 452-13) in favor of leaders of the Yaqui people, through a report dated July 23, 2015, they have continued to provide information on alleged new risk situations.

<sup>685</sup> IACHR, *Truth, Justice and Reparation – Report on the Situation of Human Rights in Colombia*, OEA/Ser.L/V.II. Doc 49/13, December 31, 2013, para. 196.

454. The Inter-American Commission recalls “the most efficient medium to protect [...] is to efficiently investigate acts of violence and punish those responsible,”<sup>686</sup> and therefore calls upon the State to conduct exhaustive independent investigations on attacks to people in protection programs, including those who are beneficiaries of IACHR precautionary measures, whose at-risk situation is constantly renewed by virtue of the patterns of violence that gave rise to the measures and entering the protective mechanism in Mexico.
455. The IACHR received information about the creation of local mechanism of protection, as for example the Commission for the Care and Protection of Journalists in Veracruz. The Commission for the Care and Protection of Journalists was created in 2012 by Law 586 and began operating in January 2013. According to the provisions of said law, the aforementioned Commission is an independent state body, a legal entity with its own resources, technical autonomy, budget and management; tasked with protecting the humane treatment of journalists and fostering conditions for the exercise of freedom of expression.<sup>687</sup> Some of the Commission activities are: intake and analysis of the cases presented before it, taking action to prevent risks, journalist and public official training, as well as entering into agreements with strategic actors.<sup>688</sup>
456. According to the information provided by the Commission for the Care and Protection of Journalists itself, from January 2013 to September 2015, sixty-nine cases were opened wherein it was determined in 25 of them the risk was moderate, 22 of them were at high risk, and 11 were at extremely high risk; to date 46 of the protection cases are still in effect. The files were 67% men and 33% women.<sup>689</sup>
457. After the visit in loco the IACHR had notice that according with the announcement made by the State, the Government Secretariat on November 3th created the early alert system and contingency for the protection of journalists in Veracruz, it is about a program of public policies and the objective is avoid acts of attacks to journalists. The system was adopted by request of a group of journalist and by the Federal Mechanism of Protection to Journalists. This was adopted according with the diagnostic of civil society organizations, the Special Rapporteur of freedom of expression, the office of the High Commissioner for Human Rights-UN; with this mechanism the State recognize that Veracruz is the federal state with the highest number of journalists murdered with Chihuahua and the second with the number of people protected by the federal mechanism of protection.
458. The program includes 13 actions to complete during twelve months, and each one has an indicator. The categories of actions are: i) Respect the right of freedom of

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<sup>686</sup> IACHR, *Second Report on the Situation of Human Rights Defenders in the Americas*, OEA/Ser.L/V/II. Doc. 66, December 31, 2011, para. 202.

<sup>687</sup> Official Gazette. Government of the state of Veracruz de Ignacio de la Llave. Law 586 of the State’s Commission for the attention and protection of journalists. Monday, December 3, 2012.

<sup>688</sup> State’s Commission for the Attention and Protection of Journalists, Executive Report, 2013-2015. September 2015.

<sup>689</sup> State’s Commission for the Attention and Protection of Journalists, Executive Report, 2013-2015. September 2015.

expression; ii) risk map; iii) journalist protection; iv) straight and follow up the ministerial investigations; v) training of government officials; vi) streamline the auto protection of journalists; vii) conditions of work for journalists; viii) immediately respond measures; ix) program evaluation.

459. The Commission considers as an important step the official recognition of the difficult situation that journalist from Veracruz are facing and hope that all the authorities involved, federal as well as local ones, carry out their obligations, and at the same time expect that journalist as civil society would participate in an active and effective roll with guarantees during the development and monitoring of the early alert system.
460. Without prejudice to the foregoing, the Inter-American Commission was able to see the protective mechanism for Veracruz faces the challenge of earning the trust of a great part of the media, especially those journalists who are critical or work in alternative media outlets. In addition, the government must guarantee financing for it and autonomy from the government in the long term.





CHAPTER 6  
THE STATE'S RESPONSE



## THE STATE'S RESPONSE

### A. *Advances and Reforms*

461. The Commission appreciates the measures the State has taken regarding human rights. Particularly, the Commission recognizes the important human rights reforms that have been adopted in Mexico since 2011. The IACHR recognizes the amendment of various articles of the Constitution, which establish that in Mexico all persons shall enjoy the human rights enshrined in the Constitution and in the international treaties of which Mexico is a Party, as well as the guarantees for their protection. Similarly, the Commission notes the decision of the Supreme Court of Justice, which limits military jurisdiction in cases in which members of the armed forces commit human rights violations against civilians, as well as the decision that established the authority of all courts in the country to undertake conventionality control.
462. The Commission also welcomes the adoption of the new *Amparo* Law published in April 2013. In January 2013, the General Law of Victims was published and, although it is a positive step, the Commission has been informed of the need for an integral revision of the National System for Attention to Victims, in order to comply effectively with the law's mandate.
463. In addition, the Commission recognizes the approval in 2012 of the Mechanism for the Protection of Human Rights Defenders and Journalists, examined in the previous chapter. The IACHR highlights its importance and invites the State to continue its efforts to ensure its strengthening to face the various challenges in its implementation.
464. The IACHR also salutes the National Human Rights Program 2014-2018 (PNDH), which entered into force on April 30, 2014, and has as its principal objective achieve the effective implementation of the constitutional reforms regarding human rights. The Commission invites all federal entities to adopt a human rights program at the state level.
465. Similarly, the IACHR salutes the approval of the General Law for Children and Adolescents in 2014. The promulgation of this law represents an important advance in the protection of children in the country since this is the first time the legal framework that creates a National System for the Internal Protection of the Rights of Children. The President of the Republic will preside this system, which reflects the importance that the matter is being given. It is noteworthy that the new norm foresees inter-departmental coordination mechanisms, as well as mechanisms for coordination among the federal state and municipal levels, with

the goal of achieving a holistic and integral approach to the protection of children. Other positive aspects contemplated in the new law are the creation of a System of Information that will provide the statistical data to monitor the advances in the protection of the rights, as well as the provision that policies regarding children will be evaluated by the National Council for the Evaluation of Social Development Policy (CONEVAL), which gives the system the necessary tools for an adequate design, implementation, monitoring and evaluation of public policies regarding children. The application of this law will require sufficient financial resources for that, which the legislators have taken into account, as they pointed out the need to increase the resources currently allocated to children's policies, with the goal of complying with the mandate of the new law and to ensure that the National System of Protection works effectively.

466. The IACHR also welcomes the Integral Program to Prevent, Address, Punish and Eradicate Violence against Women 2014-2018.
467. Regarding LGBTI persons, the IACHR highlights as a positive development that on August 18, 2014, the Supreme Court of Mexico adopted a protocol for justice operators in cases involving sexual orientation and gender identity, according to binding and internationally recognized norms regarding human rights.<sup>690</sup> The Law to Prevent and Eliminate Discrimination of Mexico City includes express mentions of terms such as “sexual preference” and “gender identity”.<sup>691</sup> The Mexico City Penal Code criminalizes discrimination, but to date there is no information regarding any convictions for that crime.<sup>692</sup> There are 15 local laws in Mexico City that reference LGBT persons and prohibit discrimination, exclusion or denial of benefits and protect personal information, among others.<sup>693</sup> The IACHR celebrated the entering into force, on March 7, 2015, of a decree that permits the recognition of the identity of trans persons in Mexico City, through an administrative proceeding, as a result of reforms to the Civil Code approved by the Mexico City Legislative Assembly in November 2014. Similarly, on that occasion, the Commission urged Mexico to enact “gender identity legislation, which ensures enhanced protection of trans persons” and “comprehensive measures, in law and policy, to effectively address discrimination and violence against trans persons, particularly those outside the capital.”<sup>694</sup>

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<sup>690</sup> IACHR, Press Release No. 95/14, *IACHR Congratulates Mexican Supreme Court for Adoption of Protocol Involving Sexual Orientation and Gender Identity*, August 29, 2014.

<sup>691</sup> Law to Prevent and Eliminate Discrimination of Mexico City, published in the Official Gazette of Mexico City on July 19, 2006. Available at: [http://www.finanzas.df.gob.mx/ppeg/docs/ley\\_prevenir\\_erradicar\\_discriminacion\\_df.pdf](http://www.finanzas.df.gob.mx/ppeg/docs/ley_prevenir_erradicar_discriminacion_df.pdf)

<sup>692</sup> Press article published in Notiese, *Public officials: seven years after the criminalization of discrimination there are no convictions (A siete años de tipificar la discriminación como delito no hay sentencias: funcionarios)*, November 4, 2013.

<sup>693</sup> Technical Secretariat of the Committee for the design of a Human Rights Diagnosis and Program for Mexico City; Directorate of communication and Publications of the Human Rights Commission of Mexico City, (*“Diagnóstico de Derechos Humanos del Distrito Federal”*), 2008.

<sup>694</sup> IACHR, Press Release No. 75/15, *“IACHR Congratulates Mexico and Colombia for Measures Recognizing Identity of Trans Persons”*, July 1, 2015.

468. The Supreme Court of Mexico has also constituted protocols regarding various human rights issues for judicial authorities.<sup>695</sup> Specifically, in 2014, the SCJN published the Protocol for justice operators in matters involving acts that constitute torture and cruel treatments.<sup>696</sup> The IACHR considers the protocol a commendable advance towards the investigation, punishment and eventual prevention of torture and other cruel, inhuman or degrading treatments, and to combat impunity when such acts take place, while following the standards established in the Istanbul Protocol. In that regard, the IACHR was informed that the Mexican Attorney General's Office (PGR) modified its Specialized Medical/Psychological Diagnosis report for cases of Possible Torture and/or Mistreatment in October 2015.<sup>697</sup> It is of utmost importance that these protocols do not remain as mere formalities and juridical aspirations, but rather that they are translated into real changes that guarantee access to justice for victims.
469. The IACHR also welcomes the adoption of the National Program for Social Prevention of Violence and Crime (2014-2018), and particularly the progress made in reducing violence in the municipalities where it has been implemented. The State reported that in municipalities with populations over 100,000 where the program has been implemented, rates of violence have reportedly dropped by more than 30%. Civil society organizations have stated that the decrease in violence is less than that.
470. The IACHR also recognizes as a step forward the signing of the Collaboration Agreement to Create a Forensic Commission to Identify Remains, signed in 2013 by the PGR and civil society organizations. The aim of the agreement is to cooperate with the PGR to identify and determine cause of death in the case of remains located in clandestine graves in the states of Tamaulipas and Nuevo León. Since the Forensic Commission was created, it has identified the remains of 22 migrants.<sup>698</sup>
471. Along the same lines, the IACHR also received information from civil society organizations and from the State about some initiatives that have yielded positive results regarding the search for disappeared persons. For example, in Nuevo León, with the creation of the Special Groups for Immediate Search (GEBI, their Spanish

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<sup>695</sup> The full list of protocols published by the Supreme Court can be accessed at: <https://www.scjn.gob.mx/-/libreria/paginas/protocolos.aspx>

<sup>696</sup> Protocol for justice operators in matters involving acts that constitute torture and cruel treatments. Available at: [http://www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/Protocolo\\_tortura\\_-\\_electronico\\_actualizacion.pdf](http://www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/Protocolo_tortura_-_electronico_actualizacion.pdf)

<sup>697</sup> Agreement No. A/085/15, published in the Official Gazette of the Federation on October 5, 2015. Available at: [http://dof.gob.mx/nota\\_detalle.php?codigo=5410519&fecha=05/10/2015](http://dof.gob.mx/nota_detalle.php?codigo=5410519&fecha=05/10/2015)

<sup>698</sup> Collaboration Agreement for the identification of remains found in San Fernando, Tamaulipas and Cadereyta, Nuevo León which will be carried out through a Forensic Commission, entered into by the Attorney General's Office, the Argentinean Team of Forensic Experts; the Committee of Relatives of Migrants who have Died or Disappeared from El Salvador; the Committee of Relatives of Migrants from El Progreso; the Foundation for Justice and the Democratic Rule of Law; the House of the Migrant from Saltillo, Coahuila; the Diocese Center for Human Rights Fray Juan de Larios A.C.; the Civil Association Mesoamerican Voices; Human Rights Center Victoria Diez, A.C.; and the National Forum for Migration in Honduras. Published in the Federal Official Gazette of the Federation on April 9, 2013. Available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5312887&fecha=04/09/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5312887&fecha=04/09/2013)

acronym), backed by the adoption of a specific protocol regarding searching for disappeared persons, the state government reported that around 80% of persons reported as disappeared have been found.<sup>699</sup> The GEBIs are designed to operate almost immediately upon the report of a disappeared person, concentrate and systematize information, carry out timely actions in relation to the search, and in many cases they have been able to find the person reported as disappeared alive.<sup>700</sup> As it is well known, the actions taken in the first 72 hours after a disappearance takes place are critical for the search and possible finding of the victim. The IACHR considers that this is an example of good practices that could be perfected and implemented in other areas of the country, taking into account the particular characteristics of the different regions and the disappearances' own circumstances.

472. The IACHR welcomes the fact that, in fulfillment of a recommendation made by this body, the Attorney General has announced that a Special Prosecutor's Office for Crimes of Violence against Migrants will be created in the first half of 2016.
473. The Commission also recognizes the publication of the National Code of Criminal Procedures in March 2014, which will enter into effect across the country in June 2016. In this regard, the IACHR has received information indicating that some provisions contained in that Code need to be reviewed in light of international human rights standards.
474. In addition, the implementation of the new criminal justice system, which is scheduled to enter into effect nationally no later than June 2016, has shown progress across the country. The IACHR emphasizes that it is important for the State, at every level, to carry out the full implementation of the system as scheduled.
475. In terms of disappearances and torture, the Commission recognizes the Law for the National Registry of Data of Missing or Disappeared Persons, adopted in 2012, and the subsequent National Data Registry created as a result, as a first step in the integration of information on disappeared persons. However, the Commission has received information indicating that this registry needs to be strengthened to produce information that is reliable, which it currently is not, and to make it more functional and include data that is disaggregated by type of disappearance. In this respect, the IACHR welcomes information indicating that in some states, groups on the front lines of searching for missing persons have proved to be capable and have found people alive who had been reported as disappeared.

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<sup>699</sup> Information received during the Commission's visit to the state of Nuevo Leon, September 29, 2015; Information received during the meetings with civil society organizations in Monterrey, Nuevo Leon, September 29, 2015.

<sup>700</sup> UN highlights model of the government of Nuevo Leon to search for disappeared persons ("*Exalta Naciones Unidas modelo del Gobierno de Nuevo León para localizar personas desaparecidas*"), Bulletin of the Government of the state of Nuevo Leon, October 1, 2015. Available in Spanish at: <http://www.nl.gob.mx/noticias/exalta-naciones-unidades-modelo-del-gobierno-de-nuevo-leon-para-localizar-personas>

476. The IACHR also highlights the constitutional reform of July 2015 that authorized Congress to adopt general laws regarding kidnapping, forced disappearance, human trafficking, torture and other cruel, inhuman or degrading treatment or punishment, among others.<sup>701</sup> The Commission recalls that these laws must comply fully with Inter-American and international standards on the subject. According to the reform decree, Congress shall adopt these laws within 180 days of the decree, and as of the date of approval of this Report, the law had not been approved.<sup>702</sup> The Commission will follow these draft laws closely and with great attention, and expects that they will be consistent with international standards on their respective subjects, and that the contributions of civil society organizations and victims will be taken into account.
477. The Commission also recognizes the signing of an agreement between the Attorney General's Office and the International Committee of the Red Cross for use of the software license for the Ante Mortem-Post Mortem database, as well as the launch of the Ante Mortem-Post Mortem Database System (AM/PM) as part of the National Plan of Disappeared Persons as of October 26, 2015.
478. The Commission also welcomes the approval, in August 2015, of the Protocols for Investigation of Forced Disappearance and Torture. The Commission was glad to receive information about the creation of a Specialized Prosecutor's Office for the Search of Disappeared Persons, under the Prosecutor's Office for Human Rights, Crime Prevention and Community Services of the PGR. Similarly, the Commission welcomes the creation of a Specialized Unit regarding the Crime of Torture within the PGR.
479. The IACHR also values especially the State's commitment to the Inter-American system and its initiative to devote more attention to the petitions, cases, and precautionary measures of the system, as well as the involvement of the various federal entities in this program.
480. Without prejudice to the advances regarding protocols, codification and laws, the IACHR confirmed a profound gap between Mexico's legislative and judicial framework, and the daily reality that millions of persons in the country experience in their search for access to justice.
481. The IACHR also recognizes the openness and disposition of the Mexican State in the establishment of the Interdisciplinary Group of Independent Experts (GIEI), at the request of the State and of the representatives of the family members of the students who were disappeared, killed and wounded in Iguala on September 26 and 27, 2014.

<sup>701</sup> Decree to reform article 73, subsection XXI, item a), of the Political Constitution of the United Mexican States, published in the Official Gazette of the Federation on July 10, 2015. Available in Spanish at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5400163&fecha=10/07/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5400163&fecha=10/07/2015)

<sup>702</sup> Civil society organizations have presented suggestions to the Chamber of Deputies about the need to ensure that the draft General Law to Prevent, Investigation, Punish and Repair Torture comply with international standards on the subject.



482. On November 18, 2014, through a technical assistance agreement between the Mexican State and the representatives of the disappeared students, the parties agreed to “the establishment of an Interdisciplinary Group of Independent Experts on human rights, to carry out a technical verification of the actions initiated by the Mexican State” after the disappearance of the 43 students beneficiaries of precautionary measures.<sup>703</sup> During its term, the GIEI has issued four respective reports and a report that was published in September 2015. From the outset, the Group has worked in coordination with authorities and relatives, as well as the students who survived the attacks. The Commission joins the reports presented by the Group.
483. In October 2015, the IACHR decided to extend the mandate of the GIEI at the request of the State, the representatives of the victims, and the GIEI itself, until April 2016. The Commission welcomes the openness of the State so that the technical collaboration between the GIEI and the Mexican State may continue.

## ***B. Challenges in the Structural Causes of Impunity***

484. The Mexican people consider impunity one of the country’s primary problems.<sup>704</sup> According to statistics from INEGI, the majority of Mexicans perceive impunity among the ten most important problems affecting the country.<sup>705</sup> Impunity levels in Mexico have been historically high, and the IACHR has received alarming information indicating that as many as 98% of crimes reported in Mexico do not result in a conviction.<sup>706</sup> Again and again, the IACHR heard from victims that justice in Mexico is a “simulation,” either because alleged perpetrators are falsely accused or because the authorities do not act with due diligence and their actions do not produce results.<sup>707</sup>

485. The biggest problem in terms of access to justice in Mexico is precisely the systemic and structural impunity that affects the country. As mentioned, this leads to an underreporting of crimes, which generates inaccurate statistics and therefore a partial diagnosis of the gravity of violence and criminality in Mexico. During its visit to the country, the IACHR could confirm that the lack of trust in the

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<sup>703</sup> In this regard, the IACHR appointed an Interdisciplinary Group of Independent Experts (GIEI) for a period of six months with the following responsibilities: analysis of the plans to find the disappeared persons alive, and where appropriate, to recommend best practices for a more efficient investigation; a technical analysis of lines of inquiry to determine criminal responsibilities; a technical analysis of the Comprehensive Plan for Assisting Victims of the events of September 26 and 27.

<sup>704</sup> University of the Americas Puebla, Center for the Study of Impunity and Justice, *Global Impunity Index 2015*, April 2015, p. 63. Available in Spanish at: [http://www.udlap.mx/cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/cesij/files/IGI_2015_digital.pdf)

<sup>705</sup> National Survey on Victimization and Perception of Public Security (ENVIPE) 2014, available in Spanish at: <http://www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2014/default.aspx>

<sup>706</sup> IACHR, Public Hearing, *Citizen security and human rights in Mexico*, October 27, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=123&page=2>

<sup>707</sup> Testimonies received by the IACHR during meetings with civil society organizations in Mexico City, Veracruz, Guerrero y Nuevo León.

authorities causes many people not to report the crimes they suffer either for fear of reprisals by the authorities themselves or by criminal groups, or simply because of the idea that reporting the crime will not lead to the capture of the perpetrators. When the perpetrators are agents of the State, the hesitation to report is even greater. The population's trust in the capacity, honesty and actions of the authorities is a *sine qua non* requirement for people to exercise their right to access to justice.

486. In its visit to the country in 2014, the UN Special Rapporteur for extrajudicial, summary or arbitrary executions noted with concern that the distrust and lack of accountability is one of the principal obstacles to protect the right to life in Mexico.<sup>708</sup> According to INEGI's latest statistics, in Mexico only 1 of every 10 crimes is reported, and 92.8% of crimes remain in "dark figure" (also known as "hidden figure" or "unreported rate"), that is, they are either unreported or, if they are reported, they do not lead to a formal investigation.<sup>709</sup> The number of crimes that eventually lead to a judgment is *de minimis*.
487. In all areas of the country the Commission visited during its *in loco* visit, it received reports about the lack of justice for victims of gross violations of human rights and their families. Victims and their relatives face obstacles at each stage of the process. Despite the numerous complaints received by the CNDH and the various human rights commissions at the state level, and even some recommendations issued regarding such violations, the number of legal cases involving gross violations that have ended in convictions is extremely low. A first step to address this problem ought to be solving crimes and assigning due criminal responsibilities for gross violations committed in the past, in order to break with the historic impunity that has dragged on for decades in Mexico. The fight against impunity at all levels of government, understood as a concrete and resolute State policy, is essential in order to regain citizens' trust in the institutions of justice.
488. When a victim overcomes the reluctance and decides to report a crime, and the report leads to a formal investigation (*averiguación previa*), the victim faces obstacles at the investigation phase. The lack of autonomy and professionalization of many agencies in charge of investigating and prosecuting crimes in Mexico is one of the structural causes of impunity, as it obstructs an integral, comprehensive and prompt investigation process. The problem permeates agencies and public servants who are initially involved in the investigation of a crime, from those in charge of examining and identifying corpses in homicide cases, the public servants

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<sup>708</sup> "Problems in the protection of the right to life in Mexico are due to various factors including deficiencies in the legal system; increased organized crime activity and drug trafficking; unwillingness or lack of capacity of police and prosecutors to investigate; distrust in the judicial system by citizenry; and lack of accountability for violations." United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico, A/HRC/26/36/Add.1*, April 28, 2014, Summary.

<sup>709</sup> Results of the National Survey on Victimization and Perception of Public Security (ENVIPE) 2015, Primary Results, September 30, 2015. According to the Primary Results, "it is estimated that in 2014 10.7% of crimes were reported, and 67.5% of those lead to the opening of a formal investigation by the Public Prosecutor. Of the total number of crimes, a formal investigation was opened in 7.2% of cases. This leads to 92.8% of crimes resulting in either NO report or NO opening of a formal investigation." The crime with the highest rate of "figure," at 99%, is extortion. Available in Spanish at: [http://www.inegi.org.mx/est/contenidos/proyectos/-encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015\\_presentacion\\_nacional.pdf](http://www.inegi.org.mx/est/contenidos/proyectos/-encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf)

charged with apprehending potential perpetrators, those responsible for the criminal prosecution process, to those involved in the sentencing and confinement phases.<sup>710</sup>

489. The causes range from lack of political will, lack of resources, to structural deficiencies and legal lacunae that lead to the absence of a diligent investigation. Some times, local authorities cite lack of jurisdiction to investigate crimes that are codified only in special laws and not in the local penal codes.<sup>711</sup> The lack of resources or the will to act also causes investigations to drag on for a long time. In Nuevo Leon, to cite an example, clandestine graves discovered in 2011 with human remains were still being investigated in 2015.<sup>712</sup> In Guerrero, the public servants themselves have admitted that the infiltration of members of organized crime groups into state agencies, including those in charge of investigations, is such that only a dramatic purge and structural change could begin to professionalize them.<sup>713</sup> Federal Mexican authorities have also acknowledged that organized crime groups have surpassed the capacity of many municipalities.<sup>714</sup>

490. Particularly, as mentioned earlier in this Report, the fact that forensic agencies depend on the prosecutors' offices represents a structural problem that makes it very difficult to have comprehensive, prompt and impartial investigations. Specialized international organizations have addressed the seriousness of the problem, which affects agencies at the state and federal levels.<sup>715</sup> When investigating agencies do not collect the forensic evidence and testimonies about events that might constitute crimes in a way that safeguards their integrity, then their utilization and juridical relevance in the criminal process faces factual and legal hurdles, which can be raised either by the defense or by the judge. These deficiencies in the investigation process eventually cause problems in the judicial process, and often result in the crimes going unpunished.

491. Additionally, even if the criminal process is carried out with due diligence, the autonomy of the judicial branch may pose another obstacle. A judicial branch that

<sup>710</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 47. Available at: [http://www.hchr.org-.mx/images/doc\\_pub/G1413997.pdf](http://www.hchr.org-.mx/images/doc_pub/G1413997.pdf); University of the Americas Puebla, Center for the Study of Impunity and Justice, *Global Impunity Index 2015*, April 2015, p. 63. Available in Spanish at: [http://www.udlap.mx/-cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/-cesij/files/IGI_2015_digital.pdf)

<sup>711</sup> Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, 2015, p. 47. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>.

<sup>712</sup> Press article published on BBC.com, *Thousands of fragments of human remains found in ranch in Mexico*, (*Revelan hallazgo de miles de fragmentos humanos en rancho de México*), published on September 1, 2015. Available at: [http://www.bbc.com/mundo/noticias/2015/09/150901\\_mexico\\_restos\\_humanos\\_nuevo\\_leon\\_an](http://www.bbc.com/mundo/noticias/2015/09/150901_mexico_restos_humanos_nuevo_leon_an)

<sup>713</sup> Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, 2015, p. 47. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>.

<sup>714</sup> Statements expressed in meeting between the IACHR and federal authorities at the Ministry of Foreign Relations on September 28, 2015, as well as at the meeting between members of the IACHR and members of the office of the Minister of the Interior, September 28, 2015.

<sup>715</sup> United Nations, *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, A/HRC/26/36/Add.1, April 28, 2014, para. 98. Available at: [http://www.hchr.org-.mx/images/doc\\_pub/G1413997.pdf](http://www.hchr.org-.mx/images/doc_pub/G1413997.pdf)

is autonomous, professional and independent of the political branches is fundamental in order to complete the justice process and combat impunity. The IACHR received information that indicates that many judges and other justice operators in Mexico do not enjoy the necessary independence to carry out their jobs adequately. The IACHR was informed that in the state of Chihuahua, for instance, some first instance judges were allegedly appointed by reason of their familial relationship with political figures of the state, which, if true, would prevent them from being independent of the political branches.<sup>716</sup> In addition, in Guerrero, some judges are subject to pressures by the political branches as well as by groups of organized crime, which similarly compromises their work.<sup>717</sup> The information received by the IACHR indicates that these are not isolated situations, that these types of pressures and corruption exist in other regions of the country as well, and that many judges do not have adequate protections mechanisms to face these pressures and corruption.

492. Human rights violations committed by members of the armed forces exemplify the relationship between impunity and denial of justice in Mexico. Two serious problems in Mexico in connection with the process to solve this type of violation are the lack of access to information, and the failure to investigate the chain of command. On the one hand, the Commission received information that requests for public information in the possession of the armed forces are extremely difficult to obtain, despite the recent law on the matter, which stipulates that information related to gross human rights violations and crimes against humanity may not be classified as “reserved.”<sup>718</sup> In these cases, the scant information released by the authorities makes it very difficult to comply with the obligation to investigate the military chain of command and assign criminal responsibilities of the superiors according to international standards.

493. On the other hand, information received by the Commission indicates that in Mexico it is common that the military chain of command is not investigated with a view towards determining any responsibility of the superiors for the crimes committed by their subordinates. On the contrary, instead of carrying out comprehensive investigations of the chain of command to determine the superiors' responsibility, in Mexico it is common for the high authorities in government to make pronouncements regarding the non-existence of a crime by their subordinates, even when the investigation is still pending.<sup>719</sup>

<sup>716</sup> Meeting with victims and civil society organizations in Saltillo, Coahuila, September 30, 2015.

<sup>717</sup> Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, 2015, p. 33. Available at: <https://www.opensocietyfoundations.org/sites/default/files/broken-justice-mexicos-guerrero-state-eng-20-150826.pdf>

<sup>718</sup> Press article published on AnimalPolítico.com, What does the CNDH understand by “gross violations”? (¿Qué entiende la CNDH por “violaciones graves”?), Mexican Commission for Defense and Promotion of Human Rights, September 7, 2015. Available at: <http://www.animalpolitico.com/blogueros-verdad-justicia-reparacion/2015/09/07/que-entiende-la-cndh-por-violaciones-graves/>

<sup>719</sup> For instance, the Minister of Defense declared during a televised interview that in the case known as Tlatlaya—in which there are indicia of extrajudicial executions and which was still under investigation at the time of these declarations, and seven members of the Army have even been processed for homicide in relation with the case—there were no extrajudicial executions, stating that the soldiers “were still and they

494. The IACHR recalls that in accordance with international standards and Mexico's own legal framework, civil authorities are charged with determining potential human rights violations committed by members of the armed forces, and that it is the task of the entire State apparatus to safeguard the procedural integrity of the civil and criminal processes, and especially, abstain from having any inference or exercising any undue pressure on those processes, particularly through pronouncements by the highest authorities that prejudice the result of ongoing investigations. Respect for the autonomy and independence of justice institutions by other state actors is key to recover the population's trust in those institutions, and to reduce the levels of impunity and denial of justice when members of the armed forces commit human rights violations in Mexico.

495. The Commission has explained previously the link between violence, the occasional inefficacy of Mexico's judicial systems, the inadequate application of national and international standards, and the lack of access to justice.<sup>720</sup> This combination of factors impedes that some of the human rights and access to justice reforms adopted by the Mexican State transcend from mere formalities on paper, to a real advancement in the protection of fundamental rights. The lack of due diligence to investigate, process and punish gross violations generates the perception that these violations are tolerated, which does not contribute to prevent their repetition and in fact favors their perpetuation and fosters a climate of impunity.<sup>721</sup>

496. In order to achieve a true access to justice, it is necessary to go from a formal recognition of the right to access to justice to a real and tangible enjoyment of that right for all persons. As the Inter-American Court and Commission have stated repeatedly, "the States' duty to provide judicial remedies is not fulfilled merely by making those remedies available to victims on paper; instead, those remedies must be adequate to remedy the human rights violations denounced."<sup>722</sup> Particularly, the IACHR recalls that independently of the date on which a crime was committed and the government that was in power at the time it was committed, it is a continuous obligation of the State as such to clarify the truth and achieve justice for the victims.<sup>723</sup>

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acted in self-defense, if they wouldn't have, they would have been killed. And that is the end, there are no more shots fired. Then the rest of the official personnel entered with a light and they realized that there were a lot of people dead, 22 of them." The IACHR notes with concern the statements by the highest military officer in Mexico about a case that at that time was still undergoing a criminal process in charge of the civilian authorities, specifically the Office of the Attorney General, PGR.

<sup>720</sup> IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 247.

<sup>721</sup> IACHR, *Human Rights of Migrants and other Persons in the Context of Human Mobility in Mexico*, OEA/Ser.L/V/II, doc. 48/13, December 30, 2013, para. 247.

<sup>722</sup> IACHR, *Access to Justice for Women Victims of Violence in the Americas*, OEA/Ser.L/V/II, Doc. 68, January 20, 2007, para. 26; I/A Court H.R., *Rosendo Cantú and other v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of August 31, 2010. Series C No. 216.

<sup>723</sup> IACHR, *The Right to Truth in the Americas*, OEA/Ser.L/V/II.152, Doc. 2, August 13, 2014, paras. 64-67; I/A Court H.R., *Velásquez Rodríguez v. Honduras*. Judgment of July 29, 1988. Series C No. 4, para. 181; *Anzualdo Castro Vs. Peru*. Preliminary Objection, Merits, Reparations and Costs. Judgment of September 22, 2009. Series C No. 202, para. 118; I/A Court H.R., *Gomes Lund and others (Guerrilha do Araguaia) Vs. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219,

497. According to the Global Impunity Index, Mexico ranks 58 of 193 UN Member States in terms of impunity, but it ranks 58 of 59 States that have enough statistical information to perform the Global Impunity Index.<sup>724</sup> This Index, an international academic effort by the University of the Americas Puebla, reports that Mexico has two priority areas to address: the functioning of its security system, and the structure of its justice system. On the one hand, the security system in Mexico does not lead to investigations in the majority of cases in which suspects are reportedly identified, detained, or under “*arraigo*”. On the other, some of the structural deficiencies in the justice system that foster impunity include the low ratio of judges per 100,000 inhabitants, which in Mexico is 4, while the worldwide average is 17 judges per 100,000 inhabitants; and the consequent over-utilization of pretrial detention, since around 42% of detained persons are still awaiting judgment.<sup>725</sup> The seriousness of the scarcity of judges per 100,000 inhabitants in Mexico can be understood considering that each judge receives approximately 500 new cases each year.<sup>726</sup> The number of police officers per 100,000 inhabitants, in contrast, is much closer to the worldwide average.<sup>727</sup>
498. In addition to these concrete problems, another structural issue that permeates many justice institutions in Mexico is, as already mentioned, corruption and the protection, collusion and infiltration of organized groups into various State agencies. It is urgent for the Mexican State to adopt concrete, prompt and effective measures to fight against corruption at all levels and in all three branches of government.

### **C. Access to Information in Cases of Gross Human Rights Violations**

499. The IACHR welcomes the adoption of the General Law of Transparency and Access to Public Information,<sup>728</sup> which was the result of a process that included the participation of civil society organizations, which reflects a commitment by the Mexican State with transparency and access to information. Without detracting from the importance and relevance of the adoption of this law, the Commission received information during its visit regarding the obstacles that remain in the efforts to guarantee access to information related to human rights violations.

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para. 201; I/A Court H.R., *Gelman Vs. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 243.

<sup>724</sup> University of the Americas Puebla, Center for the Study of Impunity and Justice, *Global Impunity Index 2015*, April 2015, p. 64. Available in Spanish at: [http://www.udlap.mx/cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/cesij/files/IGI_2015_digital.pdf)

<sup>725</sup> University of the Americas Puebla, Center for the Study of Impunity and Justice, *Global Impunity Index 2015*, April 2015, p. 64. Available in Spanish at: [http://www.udlap.mx/cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/cesij/files/IGI_2015_digital.pdf)

<sup>726</sup> Press article published in AnimalPolítico.com, Why is there impunity in Mexico? (“*Por que hay impunidad en México*”), April 21, 2015. Available at: <http://www.animalpolitico.com/2015/04/por-que-hay-impunidad-en-mexico-cada-ano-un-juez-recibe-500-casos-nuevos/>

<sup>727</sup> University of the Americas Puebla, Center for the Study of Impunity and Justice, *Global Impunity Index 2015*, April 2015, p. 64. Available in Spanish at: [http://www.udlap.mx/cesij/files/IGI\\_2015\\_digital.pdf](http://www.udlap.mx/cesij/files/IGI_2015_digital.pdf)

<sup>728</sup> Congress of the United Mexican States. Law of Transparency and Access to Public Government Information (*Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental*), July 2014.

500. Although the Law contains a prohibition against hiding or denying information related to gross human rights violations, the Commission points out that article 157 of this Law authorized the Office of the Legal Counsel of the Presidency to appeal any decision to declassify information by the National Institute for Access to Information, if doing so poses risks for national security interests.<sup>729</sup>
501. Even though this provision is applicable to any subject matter, it is expected to have a particularly complex effect with respect to information related to investigations of human rights violations. According to this provision, the appeal must be filed with the Supreme Court, and it presents at least two challenges for the prosecution of justice in terms of human rights: delays in the access to critical information necessary to investigate these gross violations, and establishing clear guidelines or criteria to be applied when making a decision regarding such reservation and appeals.
502. In this sense, the Inter-American Court “has also established that in cases of violations of human rights, the State authorities cannot resort to mechanisms such as official secret or confidentiality of the information, or reasons of public interest or national security, to refuse to supply the information required by the judicial or administrative authorities in charge of the ongoing investigation or pending procedures. Moreover, when it comes to the investigation of punishable facts, the decision to qualify the information as secretive or to refuse to hand it over cannot stem solely from a State organ whose members are charged with committing the wrongful acts. In the same sense, the final decision on the existence of the requested documentation cannot be left to its discretion.”<sup>730</sup>
503. During the *in loco* visit, the Commission was made aware of a gradual regression in terms of active transparency policies and public information regarding the deaths of civilians and members of the armed forces in security operations, particularly when there is involvement by the armed forces. In this respect, it was reported that in the last two years the Ministry of Defense agencies have ceased informing periodically regarding the deaths that take place during operations. The media and civil society organizations have had to resort to access to information proceedings in order to access this information, albeit partially, both at the state and national level.
504. During the 156th Period of Sessions in October 2015, civil society organizations pointed out the advancements that the transparency law entails, while at the same time expressed their concerns because it is not compatible with the national security law, given that it is the national security law that defines what constitutes “national security.” Due to this norm and interpretation by relevant authorities, there appears to be difficulty in accessing information regarding disappearances, persons killed in the context of the war on drugs, and access to the military budget.

<sup>729</sup> Congress of the United Mexican States. Law of Transparency and Access to Public Government Information (*Ley General de Transparencia y Acceso a la Información Pública Gubernamental*), July 2014, Article 157.

<sup>730</sup> I/A Court H.R., *Gomes Lund and others (Guerrilha do Araguaia) Vs. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 24, 2010. Series C No. 219, para. 202 (internal citations omitted).

For its part, the Federal Law of Archives contemplates a period of over 30 years for the reservation of classified documents. In addition to this concern, there is also the fact that the Ministry of Defense's policy regarding its archives contemplates that they shall be maintained for three years, and after that they may be destroyed.<sup>731</sup>

505. Moreover, the State's defense entities, particularly the Army and the Navy, informed the Commission during meetings in the context of the *in loco* visit that they no longer inform regarding the number of people who are wounded or killed in military actions against organized crime. They stated that the aforementioned laws protect them and that, since the Supreme Court established that these incidents shall be investigated by the civil courts, it is not the Army's or the Navy's responsibility or competence to even document and investigate the results of their actions.

#### ***D. Administration of Justice in relation to Human Rights Violations***

506. The administration of justice in Mexico has experienced important changes in recent years. The criminal reform of 2008, which paved the way for the unification of penal codes and criteria in the country, contemplates the transformation of the Mexican criminal justice system from an inquisitive and predominantly written system, to one that is adversarial and predominantly oral.<sup>732</sup> The constitutional reforms of 2011 related to human rights and "*amparo*" elevated to constitutional level the human rights contained in international treaties of which Mexico is a Party, and made the "*amparo*" a judicial tool to seek redress for violations of those rights.<sup>733</sup>

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<sup>731</sup> IACHR, *Hearing on Access to Information and national security in America (Acceso a la información y seguridad nacional en América)*. October 20, 2015.

<sup>732</sup> In its observations to the draft of this report, the State indicated that through the new Criminal Justice System, less than 10% of cases reach an oral trial, which means that more than 90% are resolved by control judges, through alternative means of dispute resolution—reparation agreements and suspension of processes subject to evidence—(36.4%); summary trials (36.9%); and other types of resolution—non-ratification of detention, non-initiation of the proceeding or forgiveness by the victim (21%). In addition, through the New Criminal Justice System, all criminal cases are resolved in less than 365 days. For summary trials and alternative means of dispute resolution, the time ranges from half to one-third of the time that it would take to resolve through an oral trial. According to the State, in this context, the new system allows the administration of justice to be more expedited. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

<sup>733</sup> In its observations to the draft of this report, the State stated that the new Amparo Law expands the application of *amparo* and allows for it to be filed not only for those who have a legal interest, but also in the exercise of a legitimate individual or collective interest. Indeed, in case of extradition, forced disappearance and forced incorporation to the Army of Navy or Air Force, the *amparo* can be filed by any person in addition to the individual concerned. The State also indicated that the law provides that the *amparo* applies against private party when they are considered responsible authority through acts that are equivalent to those of an authority, which broadens the number of individuals subject to the *amparo*. For example, there are judgments of the federal Judicial Branch that have allowed *amparos* against private schools as agents



507. The 2014 reform of the Military Justice Code established that human rights violations committed by members of the armed forces against civilians shall be judged by civilian courts.<sup>734</sup> With this and other reforms, the Commission considers that the Mexican legal framework is generally evolving in the appropriate direction. The great challenge for the Mexican State is to close the gap between its normative framework and the reality that the Mexican population experiences in its attempt to access justice.
508. One of the critical aspects in terms of administration of justice is independence and autonomy of judges and other justice operators, who are essential in the fight against impunity in Mexico. On the one hand, it is necessary that judges and justices have institutional independence, that is, that they are not subject to interference by other power structures and institutions of the State.<sup>735</sup> They should be independent firstly in budgetary terms, and also not have other positions of any kind in the executive or legislative branch.<sup>736</sup> Their autonomy should be absolute in order to ensure that the judicial branch does not respond to political interests of any kind.<sup>737</sup> In addition, it is of utmost importance to have mechanisms to protect members of the judicial branch from the risk of being intimidated, corrupted or coopted by criminals, particularly by members of organized crime groups.<sup>738</sup> As long as the political branches and criminal interests are able to infiltrate the judicial branch, as has happened in some parts of Mexico,

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that can do acts that are equivalent to those of an authority when they prohibit a student from exercising the right to education. In addition, the State reported that as a result of the publication and entry into force of the new Amparo Law, the National Training and Dissemination Program in Amparo Matters was created. This program was created with a series of activities of different formats whose central axis was a critical analysis of the normative framework that regulates the amparo proceedings and their application in the judicial practice, for the purpose of giving justice operators better tools to promote the consolidation of their role as protectors of rights. Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015. Supreme Court of Justice of the Nation, General Secretariat of Agreements. Constitutional Reforms in matters of human rights and *amparo*, published in June 2011 (List of international treaties of which the Mexican State is a party and which recognize Human Rights), 2012. Available at: <http://www2.scjn.gob.mx/-red/constitucion/inicio.html>; "Visit of the Inter-American Commission on Human Rights to Mexico: Information of the Mexican State," Mexico City, September 25, 2015, p. 31.

<sup>734</sup> Ministry of Foreign Relations, General Directorate of Human Rights and Democracy, Information Bulletin: Mexico reforms the Code of Military Justice, June 17, 2014. Available at: [http://embassyofmexico.org/web/-Bolet%C3%ADn\\_54\\_espanol.pdf](http://embassyofmexico.org/web/-Bolet%C3%ADn_54_espanol.pdf). In this context, the IACHR notes that even when the victims of human rights violations are other military members, international jurisprudence indicates that these violations must be adjudicated in civilian courts.

<sup>735</sup> IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013, para. 29.

<sup>736</sup> IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013, paras. 33-34. In the state of Guerrero, for example, a minister and president of the Council of the Judicature of Guerrero also held a position in the office of the governor. *Open Society Justice Initiative, Broken Justice in Mexico's Guerrero State*, 2015, p. 49. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>

<sup>737</sup> IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013, para. 34.

<sup>738</sup> In the state of Guerrero, for example, a minister and president of the Council of the Judicature of Guerrero was also General Secretary of the Interior of the state government. *Open Society Justice Initiative, Broken Justice in Mexico's Guerrero State*, 2015, p. 33. Available at: <https://www.opensocietyfoundations.org/-reports/broken-justice-mexico-s-guerrero-state>

it will be impossible for the justice system to function fully to guarantee justice to victims of crimes and their families.<sup>739</sup>

509. The IACHR has expressed the importance that the process to select and appoint justices of the High Courts takes place in a context of equality of conditions and without discrimination, be based on merit and professional qualifications, and be free from all interference by the political branches.<sup>740</sup> In Mexico, the process to selection and appointment Supreme Court justices takes place with the President sending a group of three candidates to the Senate, which then can ratify one of those candidates. Recent appointments have been tarnished by accusations of political interference, and sectors of civil society criticized the appointment of a Supreme Court justice who did not have previous judicial experience. The IACHR urges the Mexican State to ensure that future shortlists of candidates include female and male candidates who are properly qualified for a position as important as that of Justice of the Supreme Court of Mexico, and that their selection does not take into account political considerations.<sup>741</sup>
510. Another issue that stands out in relation to the administration of justice in Mexico is the definition of jurisdiction between the federal courts and the state courts in criminal matters. The determination of whether the federal or state authorities shall be competent to investigate and hear a crime carries extremely important implications for the protection of human rights of victims as well as defendants, and to ensure respect for due process. When there is discretion without clear and concrete criteria regarding jurisdiction between federal and state authorities in the so-called “concurrent laws”, it becomes prone to abuse, since the federation may decide whether or not to absorb investigation regarding a specific crime based on considerations that are not exclusively technical.<sup>742</sup>
511. Some federal laws contemplate that investigation of crimes that are within the jurisdiction of the state's authorities (known as the “common” jurisdiction) may be absorbed by the Federal Public Prosecutor if it simply requests that the investigation of the specific crime be remitted to the Federal Public Prosecutor.<sup>743</sup>

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<sup>739</sup> IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013.

<sup>740</sup> IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013, paras. 34, 75.

<sup>741</sup> The Commission has highlighted the importance of selecting male and female candidates with proper training and qualifications, and has suggested open, public contests with opposition and merit-based as a viable alternative. IACHR, *Guarantees for the Independence of justice operators: Towards strengthening access to justice and the rule of law in the Americas*, OEA/Ser.L./V/II, Doc. 44, December 5, 2013, paras. 75-76. *See also*, Principle No. 10 of the Basic Principles on the Independence of the Judiciary, Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by General Assembly resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985. Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>

<sup>742</sup> Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, 2015, p. 49. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>

<sup>743</sup> General Law on Health, latest reforms published on the Official Gazette of the Federation on June 4, 2015, article 474, which provides that “Federal authorities shall have competence over crimes in any of the following cases: I. Cases of organized crime. II. The amount of the controlled substance is no greater than that mentioned in the first paragraph of this article. III. The controlled substance is not contemplated in the

Other “concurring laws”—that is, those under which both federal and state authorities have jurisdiction to investigate or prosecute a crime—do not contain provisions regarding how jurisdiction is to be shared among the federation and the federal states. This jurisdictional ambiguity creates legal uncertainty and, therefore, reduces compliance with the State’s obligation to respect due process, judicial protection, among other rights. Without prejudice to the State’s sovereignty to organize its internal justice system, with respect to gross human rights violations, it is fundamental that there be a clear and direct assignment of jurisdiction among the various components of a federal system.

512. Furthermore, the lack of uniformity of judicial criteria creates disparities in the administration of justice in Mexico. The areas that lag behind economically, which tend to be rural and predominantly indigenous areas, have judges and other justice operators with less training and less human and material resources, which generates arbitrariness when it comes to interpreting and applying laws, and even more so when it comes to undertaking the control of conventionality analysis and applying international standards (see discussion above, at Chapter III).<sup>744</sup> Similarly, the administration of justice is affected by the codification of crimes in different ways in different states, and even by the lack of codification of some crimes. This problem, as explained earlier in this Report, is particularly concerning with respect to gross human rights violations.
513. The Inter-American Court and Commission have highlighted the importance of courts and other State entities related to the administration of justice apply criteria that are consistent among one another and in accordance with international human rights standards.<sup>745</sup> The Commission expects that with the adoption of laws with national reach regarding forced disappearance and torture, and with the homologation of the penal codes of the various states that already contain these crimes, some of these problems will be addressed.
514. In addition to clear and uniform juridical criteria, an integral and professional investigation is critical to ensure a true access to justice. The IACHR has seen how investigative police and other public servants in charge of investigations and prosecution of crime in Mexico, especially at the local level, lack the most basic capacity to investigate ordinary crimes, and much more so to investigate complex crimes and gross human rights violations.<sup>746</sup> These problems exist in connection with investigation under both federal and state jurisdiction, and the lack of

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chart. IV. Independently of the amount of the controlled substance, the Federal Public Prosecutor: a) Intervenes in the competence of the matter, or b) Requests the state Public Prosecutor to submit the investigation. (...) For purposes of subparagraph b) of section IV above, it shall be enough for the Federal Public Prosecutor to request to the competent state authority that the corresponding investigation be submitted (...)”

<sup>744</sup> Open Society Justice Initiative, *Broken Justice in Mexico’s Guerrero State*, 2015, p. 49. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>

<sup>745</sup> I/A Court H.R., *Cabrera García and Montiel Flores Vs. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 26, 2010. Series C No. 220, paras. 225, 233; I/A Court H.R., *Gelman Vs. Uruguay*. Merits and Reparations. Judgment of February 24, 2011. Series C No. 221, para. 239.

<sup>746</sup> Open Society Justice Initiative, *Broken Justice in Mexico’s Guerrero State*, 2015, p. 42. Available at: <https://www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state>

professionalization of some authorities in charge of conducting initial investigations after a crime is committed is concerning to the Commission.<sup>747</sup>

## 1. Criminal Justice System

515. As mentioned above, the new criminal justice system is designed to function in the entire country by June 18, 2016, at the latest. This reform entails one of the most robust transformations in the history of criminal justice in Mexico. The IACHR acknowledges the institutional and budgetary effort undertaken by the Mexican State in this regard. SETEC, the technical secretariat in charge of coordinating implementation of the new criminal justice system, informed the Commission about the potential of the new system to improve access to justice in Mexico, since it is designed to resolve criminal matters in less time, reduce costs, and create incentives to apply precautionary measures other than pretrial detention.<sup>748</sup> It also reported that the new system represents an advance in terms of respect for human rights, in three primary aspects: (i) it makes the administration of justice more transparent, as it allows greater access for victims and for defendants; (ii) it creates effective instruments to fight organized crime without overlooking due process; and (iii) it takes as its starting point an inter-institutional coordination among all three levels of government (municipal, state and federal).<sup>749</sup> The Commission hopes that the aspirations of the new criminal justice system will be reflected in practice.

516. The State has reported important advances in the implementation of the new criminal justice system, and roughly nine months before the constitutional deadline, it reported that it expects to comply with the stated expectations.<sup>750</sup> At the same time that it expressed this commitment, the State recognized that there is:

a delay in the implementation of the New Criminal Justice System due to the fact that, at the time, the assignment of public resources was subordinated to other goals. In addition to that, the insufficient legislative harmonization, the lack of training among operators and the functioning of the institutions

<sup>747</sup> See, e.g., Ayotzinapa Report. Investigation and first conclusions regarding the disappearances and deaths of the students from Ayotzinapa, September 6, 2015. Available in Spanish at: <http://prensageieiayotzi.wix.com/-giei-ayotzinapa#!informe-/c1exv>

<sup>748</sup> Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System, "Report of the status of the Reforms regarding the justice system. Advances and challenges in the implementation of the New Criminal Justice System," September 2015, pp. 132-136.

<sup>749</sup> Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System, "Report of the status of the Reforms regarding the justice system. Advances and challenges in the implementation of the New Criminal Justice System," September 2015, p. 136.

<sup>750</sup> As of September 25, 2015, the State reported that it still did not have a timeline for the entry into force of the new criminal justice system in the state of Sonora.

by inertia had become obstacles for the implementation of the New System.<sup>751</sup>

517. One of the challenges in the implementation of the new justice system is that it be uniform throughout the country. While Sonora will be the last state where the new criminal justice system will be implemented and the National Code of Criminal Procedure will enter into force at the local level, the Commission notes with concern that at the federal level, the gradual progress agreed and approved by Congress shows delays in some of the states with the highest crime rates, such as Tamaulipas, Michoacán, Guerrero and Veracruz.<sup>752</sup>
518. As the State itself has indicated, another important challenge is the inertia derived from the professional training of justice operators in the old, inquisitive criminal justice system. This institutional and individual inertia requires the State to double its efforts in terms of training of all justice operators. One of the fundamental challenges of the new criminal justice system will be to ensure that investigations are carried out in a technical, independent and professional manner, as well as ensuring that there is due coordination among the state prosecutors' offices and the federal prosecutor's office, as appropriate.<sup>753</sup> A system of independent public defenders with sufficient resources will also be fundamental to ensure that the new justice system functions according to its objectives.
519. In addition, the IACHR has received information indicating that the National Code of Criminal Procedure (NCCP)—the pillar of the new criminal justice system—contains some concerning deficiencies. Notable among them are the permissibility of detention without a court order, through *arraigo* and also through the search of persons and vehicles without an order issued by a competent judicial authority.<sup>754</sup> It also allows the detention of person in cases of crimes that require a complaint by the injured party up to a maximum of 24 hours.<sup>755</sup> The NCCP also establishes a precautionary measure similar to *arraigo* that contemplates confinement in the person's own residence with the conditions imposed by a judge, applicable in all types of crimes,<sup>756</sup> and which establishes the seizure of assets in the investigation

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<sup>751</sup> Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System, "Report of the status of the Reforms regarding the justice system. Advances and challenges in the implementation of the New Criminal Justice System," September 2015, p. 22.

<sup>752</sup> Technical Secretariat of the Coordination Council for the Implementation of the Criminal Justice System, "Report of the status of the Reforms regarding the justice system. Advances and challenges in the implementation of the New Criminal Justice System," September 2015, p. 24.

<sup>753</sup> Mexican Institute for Human Rights and Democracy, "Prosecution: status of the implementation of the adversarial criminal justice system and its challenges," (*Procuración de justicia: estatus de implementación del sistema penal acusatorio y sus retos*), September 15, 2015 (IACHR archives).

<sup>754</sup> National Code of Criminal Procedure, articles 132, 147, 251, 266 and 268. Observations regarding the National Code of Criminal Procedure to be considered by the Inter-American Commission on Human Rights, Documenta, October 1, 2015 (IACHR Archives).

<sup>755</sup> National Code of Criminal Procedure, articles 132, 147, 251, 266 and 268. Observations regarding the National Code of Criminal Procedure to be considered by the Inter-American Commission on Human Rights, Documenta, October 1, 2015 (IACHR Archives).

<sup>756</sup> National Code of Criminal Procedure, article 155, subsection XIII. Observations regarding the National Code of Criminal Procedure to be considered by the Inter-American Commission on Human Rights, Documenta, October 1, 2015 (IACHR Archives).

- of a crime without a court order.<sup>757</sup> It will be essential that the Mexican State undertake all necessary modifications to the NCCP to ensure it complies with international standards regarding criminal due process.
520. In addition, the new Investigative Police, which will operate starting with the new criminal justice system and will be in charge of coordinating the investigation in cases of potentially criminal acts, supervise and direct the processing of the crime scene, and coordinate the experts that intervene in the crime scene, among others, will need to overcome the institutional structures of the police bodies that operate and operated under the inquisitive criminal justice system.<sup>758</sup> It will be fundamental for this Investigative Police to have real autonomy and resources to act professionally during the investigation, and that it not conduct itself in response to its hierarchical superiors or political actors.
521. The paradigm shift that the New Criminal Justice System supposes has no precedent in Mexico, and the transition period will have additional challenges. The persons who will implement it day to day have been formed for years primarily in the old system; the judges will be more or less the same that operated under the old system; attorneys were also formed under the old system. The IACHR is aware that it will not be an easy task to quickly eliminate all the ways of the old system, and it is precisely there that lies the challenge for the Mexican State, in ensuring that the change is not only on paper, but that it actually reaches the individuals who make and will make the new criminal justice system possible in practice.
522. The Commission received information indicating that the case of seven persons disappeared and subsequently murdered allegedly by members of the Mexican Army in the municipality of Calera, Zacatecas, will be processed under the new criminal justice system.<sup>759</sup> The IACHR will follow this process closely, as an example, to verify the functioning of the new criminal process in connection with gross human rights violations.
523. The IACHR is aware of the challenge presented by the implementation of the new criminal justice system of Mexico's justice institutions. As pending cases under the old inquisitive system are processed until their conclusion, the two justice systems will coexist in parallel and will be administered by the same institutions and in some cases by the same individuals.<sup>760</sup> This overlap will represent an even greater challenge in order for the justice system in Mexico to comply fully with its objectives, which the IACHR will follow closely.

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<sup>757</sup> National Code of Criminal Procedure, articles 242 and 249. Observations regarding the National Code of Criminal Procedure to be considered by the Inter-American Commission on Human Rights, Documenta, October 1, 2015 (IACHR Archives).

<sup>758</sup> SETEC, Guide for Journalists, "How to report on the New Criminal Justice System" ("*Cómo reportear en el Nuevo Sistema de Justicia Penal acusatorio*"). Available in Spanish at: [http://www.setec.gob.mx/es/SETEC/-Informacion\\_para\\_Periodistas](http://www.setec.gob.mx/es/SETEC/-Informacion_para_Periodistas)

<sup>759</sup> Information presented during the hearing on "*Reports of extrajudicial executions in Mexico*," 154<sup>o</sup> Period of Sessions, March 20, 2015.

<sup>760</sup> Mexican Institute for Human Rights and Democracy, "Prosecution: status of the implementation of the adversarial criminal justice system and its challenges," ("*Procuración de justicia: estatus de implementación del sistema penal acusatorio y sus retos*"), September 15, 2015 (IACHR archives).

## 2. Law of Attention to Victims

524. The General Law of Attention to Victims (GLV), adopted in 2013, is the main juridical framework for attention to victims of human rights violations and their families.<sup>761</sup> Among other things, the GLV establishes as the main entity of the Mexican State in this regard, the National System for Attention to Victims.<sup>762</sup> In addition, it provides the mechanism for the functioning of the Executive Commission of Attention to Victims (CEAV), the National Registry of Victims, the Federal Legal Advisor's Office, and the Fund for Help, Assistance, and Integral Reparation.<sup>763</sup> The Commission welcomes these important normative advances to offer support to victims and their families.
525. Without prejudice to the foregoing, the Commission has received information regarding certain deficiencies in the functioning of the CEAV in practice. On the one hand, the information received indicated lack of coordination among the institutions that make up with National System for Attention to Victims (SNAV), as well as among the federal and state agencies for attention to victims.<sup>764</sup>
526. The duplicity of functions between federal and state agencies creates confusions for many people who approach them in search of assistance.<sup>765</sup> Additionally, the attorneys general's offices, prosecutors' offices, and human rights commissions at times differ in their criteria for assisting victims, which causes some victims to consider that the search for legal, medical or psychological assistance is a "labyrinth."<sup>766</sup> In addition to the need for more human resources so that their operational capacity can match the demand that the CEAV faces, it is also notable that in practice many victims cannot access to the services offered when it relates to crimes not contained in any federal law, in which case they are sent to their respective state governments. However, not all state governments have laws regarding attention to victims for cases not covered by CEAV, and out of those that do, not all have a state commission for attention to victims, so that in practice there are no mechanisms to ensure that all victims can access the services that the General Law of Attention to Victims establishes as their right. It is therefore imperative that all state laws are homogenized with the General Law of Attention to Victims, and the political will of all relevant states is necessary to achieve it.

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<sup>761</sup> "Visit of the Inter-American Commission on Human Rights: Information of the Mexican State," Mexico City, September 25, 2015, Section 2.5, p. 34.

<sup>762</sup> Information from the Executive Commission of Attention to Victims, in loco Visit by the IACHR, Report for January-August 2015, p. 2 (IACHR Archives).

<sup>763</sup> Visit of the Inter-American Commission on Human Rights: Information of the Mexican State," Mexico City, September 25, 2015, Section 2.5, p. 35.

<sup>764</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, pp. 17-18 (IACHR Archives).

<sup>765</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, p. 18 (IACHR Archives).

<sup>766</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, p. 20 (IACHR Archives).

527. Some instances of investigation and administration of justice destined to attention to victims at times are not apt to protect the privacy of sensible information, guarantee its security, and generate an environment of trust for the victims.<sup>767</sup> The Commission has also received information that many times it is difficult for relatives of victims to be recognized as indirect victims and assist in the process, as contemplated by the GLV, particularly in the context of disappeared migrants in Mexico.<sup>768</sup>
528. Moreover, indigenous persons whose relatives have disappeared also frequently face the problem of lack of interpreters.<sup>769</sup> All this contributes further to the distrust in these institutions. Things are even more complicated when the public servants who do try to provide assistance to victims are harassed, threatened or intimidated by their superiors, which is a situation about which there is limited information since it is rarely reported.<sup>770</sup> The IACHR also received information indicating that attention to victims frequently lacks differentiated perspectives to assist victims with a gender perspective, a particular perspective to address the needs of children and adolescents, indigenous persons (including the absence of a national center of interpreters and translators of indigenous languages in the context of attention to victims), migrants, among others.<sup>771</sup> The IACHR calls on the Executive Branch of Mexico to strengthen the mechanism and address these deficiencies of the National System for Attention to Victims, as well as others identified in the CEAV's own report.<sup>772</sup>
529. Since October 2012 the Ministry of the Interior established the Trust for Compliance with Human Rights Obligations, designed to comply with recommendations regarding monetary reparations issued by the Inter-American Court, the IACHR, the CNDH, as well as to provide victims of human rights violations with scholarships, medical and psychological attention, and any other measure that entails the expenditure of public resources.<sup>773</sup> The regulations for the functioning of the Trust were published in the Official Gazette of the Federation on

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<sup>767</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, p. 19 (IACHR Archive).

<sup>768</sup> Report addressed to the Inter-American Commission on Human Rights after its *in loco* visit to Mexico from September 28 to October 2, 2015, Expansion of Information, October 16, 2015, p. 9 (IACHR Archives).

<sup>769</sup> Report addressed to the Inter-American Commission on Human Rights after its *in loco* visit to Mexico from September 28 to October 2, 2015, Expansion of Information, October 16, 2015, p. 10 (IACHR Archives).

<sup>770</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, p. 22 (IACHR Archives).

<sup>771</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015, pp. 23-25 (IACHR Archives).

<sup>772</sup> Information provided by the Executive Commission of Attention to Victims, "Project for a Program of Integral Attention to Victims, 2014-2018", April 2015 (IACHR Archives).

<sup>773</sup> Reception of Inter-American Criteria related to Criminal Law in Mexico (*La recepción de los criterios interamericanos en materia penal en México*), Luis Manuel Jardón Piña. Available in Spanish at: <http://biblio.juridicas.unam.mx/libros/8/3817/17.pdf>; Official Gazette of the Federation, Operational Rules for the Trust for Compliance with Human Rights Obligations, December 6, 2013. Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5324803&fecha=06/12/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5324803&fecha=06/12/2013)



May 29, 2014.<sup>774</sup> The IACHR reiterates its satisfaction with these formal advances, and repeats the importance of making sure that they are translated into real changes for victims of human rights violations in Mexico.

## ***E. National Human Rights Commission***

530. The protection and defense of human rights in Mexico was elevated to constitutional level on January 28, 1992, with the reform of article 102 of the Mexican Constitution. This reforms states that the National Human Rights Commission (CNDH) is an entity with operational and budgetary autonomy, as well as legal personality and its own assets. The fundamental objective of this entity is the protection, observance, promotion, study and dissemination of the human rights established in the Mexican legal framework. In addition, the Constitution stated that the various federal states would establish human rights commissions in their respective jurisdictions.
531. In terms of gross human rights violations addressed in this Report, the CNDH reported having registered, between 2006 and 2015, 10,249 complaints for arbitrary detention; 9,331 for torture and other cruel, inhuman or degrading treatments; 313 for forced disappearance; and 11 for extrajudicial execution.<sup>775</sup> It is worth mentioning that each complaint can be related to more than one victim (for instance, the CNDH counts the case of the 43 students from Ayotzinapa who were disappeared as a single complaint of forced disappearance). As a result of its investigation and analysis of these complaints, the CNDH reported having issued, between 2006 and 2015, 13 recommendations for forced disappearance, 82 for torture, and 2 for judicial executions.<sup>776</sup> In addition, during that same period, the CNDH issued 160 recommendations for other cruel, inhuman or degrading treatments, and 127 for arbitrary detention.<sup>777</sup> The acts for which the CNDH issued the highest number of recommendations to the State's security forces were deprivation of life, torture, and forced or involuntary disappearance.<sup>778</sup>
532. In 2014, the Mexican Senate approved a constitutional reform to authorize the CNDH to file unconstitutionality actions to defend human rights.<sup>779</sup> The CNDH

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<sup>774</sup> Official Gazette of the Federation, Operational Rules for the Trust for Compliance with Human Rights Obligations, May 29, 2014. Available at: [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5346590-&fecha=29/05/2014](http://www.dof.gob.mx/nota_detalle.php?codigo=5346590-&fecha=29/05/2014).

<sup>775</sup> *Report of the National Human Rights Commission in the context of the visit of the Inter-American Commission on Human Rights*, September 27, 2015, p. 19 (IACHR Archives).

<sup>776</sup> *Report of the National Human Rights Commission in the context of the visit of the Inter-American Commission on Human Rights*, September 27, 2015, p. 20 (IACHR Archives).

<sup>777</sup> *Report of the National Human Rights Commission in the context of the visit of the Inter-American Commission on Human Rights*, September 27, 2015, p. 20 (IACHR Archives).

<sup>778</sup> *Report of the National Human Rights Commission in the context of the visit of the Inter-American Commission on Human Rights*, September 27, 2015, p. 19 (IACHR Archives).

<sup>779</sup> Senate of the Republic, Communication No. -880, CNDH will be able to file action of unconstitutionality to defend human rights, approved by the Senate (*CNDH podrá interponer acción de inconstitucionalidad en defensa de los derechos humanos, avala Senado*), December 15, 2014. Available at: <http://comuni->

reported having filed six unconstitutionality actions since the reform: five relating to states' laws, and one relating to the National Code of Criminal Procedure.<sup>780</sup> These legal actions represent an essential attribute of the CNDH to perfect the Mexican legal framework.

533. Even though the Mexican Constitution authorizes the CNDH to investigate facts that constitute gross human rights violations, when it determines it appropriate to do so,<sup>781</sup> information received by the Commission indicates that this authority is not utilized broadly or systematically.
534. In addition, the CNDH must act in a uniform manner and following clear criteria regarding what constitutes a gross human violation.<sup>782</sup> For instance, the information received indicates that the CNDH has classified acts of torture as cruel, inhuman or degrading treatments, or as abuse of authority. Additionally, it is necessary to strengthen the human rights commissions of the various states, which have been strongly criticized by civil society organizations for their minimal action in the face of human rights violations. In particular, the information received indicates that they do not open up investigations for gross violations under the pretext that “the case does not proceed or they do not appear to document the facts after having received a complaint.”

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[cacion.senado.gob.mx/index.php/informacion/boletines/17796-cndh-podra-interponer-accion-de-inconstitucionalidad-en-defensa-de-los-derechos-humanos-avala-senado.html](http://cacion.senado.gob.mx/index.php/informacion/boletines/17796-cndh-podra-interponer-accion-de-inconstitucionalidad-en-defensa-de-los-derechos-humanos-avala-senado.html)

<sup>780</sup> CNDH, *Report of activities from January 1 to December 31, 2014*, Summary, January 2015, p. 35. Available in Spanish at: [http://www.cndh.org.mx/sites/all/doc/informes/anales/2014\\_Sintesis.pdf](http://www.cndh.org.mx/sites/all/doc/informes/anales/2014_Sintesis.pdf)

<sup>781</sup> Constitution of the United Mexican States, Article 102, subsection B (reform published in the Official Gazette of the Federation on June 10, 2011).

<sup>782</sup> The IACHR has been informed that at times, the CNDH has not characterized as “gross” events that implicate members of the armed forces in alleged criminal acts that range from deprivation of liberty and torture to even deprivation of life, which the CNDH nonetheless did not classify as “gross violations” of human rights.



CHAPTER 7  
CONCLUSIONS AND  
RECOMMENDATIONS



## CONCLUSIONS AND RECOMMENDATIONS

535. The situation of violence and insecurity in Mexico reviewed in this Report, which is generated by the acts of organized crime groups along with a militarized response, and the capture of members of the State by organized crime groups, has had as its consequence an increase in gross human rights violations. Despite the significant advances in constitutional and legislative terms in recent years, as well as the adoption of important public policies in Mexico, which were designed in accordance with international human rights law, the information received by the Commission indicates that the insecurity and violence continue without the required State's response. They are fueled by the fear generated by organized crime groups that act on their own and at times in collusion with authorities throughout the Mexican territory, as well as by the subsequent impunity that surrounds these acts.
536. In this context, the reports of disappearances, extrajudicial executions and torture continue to be of concern, as well as the situation of insecurity of persons or groups that are more exposed because of historical discrimination or because of their activities like women, children, migrants, indigenous peoples, human rights defenders and journalists, who are victims of murders, disappearances, kidnapping, torture, threats and harassment.
537. For the Commission, the current crisis of gross human rights violations that Mexico is undergoing is in part a consequence of the impunity that persists since the so-called "Dirty War" and that has fostered its repetition up to today. Currently, the task for the Mexican State is to close the existing gap between its normative framework and its unrestricted support for human rights, and the reality facing a large number of inhabitants who seek access to a prompt and effective justice.
538. Therefore, the great challenge for the Mexican State lies in breaking the cycle of reigning impunity with the mechanisms it has created in recent years, in order to achieve an effective prevention, investigation, processing and punishment of those responsible for human rights violations, and to ensure that the normative advances generate real improvements in the lives of all persons in Mexico.

539. In this context, the IACHR makes the following recommendations to the Mexican State, some of which, according to the information provided in the observations to the draft of this report, are reportedly being carried out by the State<sup>783</sup>:

## ***A. Citizen Security***

1. Develop a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks and for the recovery of such tasks by the civilian police forces.
2. Strengthen the capacity of police forces to carry out public security tasks according to international human rights standards.
3. Adopt a General Law regarding the use of force according to international human rights standards.
4. Implement measures so that federal and state public servants abstain from issuing public statements regarding the legality of the acts of security forces in cases that may constitute an undue use of force before the results of an investigation are available.
5. Adopt and implement accountability measures by an agency that is independent of all security forces, in relation to their operations and public security tasks whenever there is use of lethal force.
6. Ensure that in cases of forced disappearances, extrajudicial executions and torture, investigation lines relate not only to the material perpetrators, but also include the responsibility of those in the chain of command.
7. Create systems for the information, compilation and analysis of data regarding the violence that affects the different groups addressed in this Report, such as women, children and adolescents, migrants, human rights defenders, justice operators, LGBT persons, indigenous peoples, and persons deprived of liberty.
8. Re-direct the approach to the issue of drugs in Mexico, away from a focus on militarization and “frontal attack” using public force, to one with an integral approach of human rights and public health regarding addictions and consumption without intent to distribute.

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<sup>783</sup> Communication of the Mexican State, Observations of the Mexican State to the Draft Report regarding the Human Rights Situation in Mexico, Note No. OEA-03636, December 15, 2015.

## ***B. Disappearances and Forced Disappearances***

9. Adopt a General Law regarding Disappearances and Forced Disappearances, and adopt all necessary measures to ensure that both at the federal and state level, the laws and practices comply with international standards on the subject.
10. Establish mechanisms of immediate search for disappeared persons in the entire national territory.
11. Improve the National Registry of Disappeared Persons to become a sole registry of disappearance so that it can also register a person as a victim of forced disappearance. A database should contain personal information of the disappeared persons, all necessary information, primarily genetic information and cellular samples, of relatives of disappeared persons with their consent, and genetic information and cellular samples from any unidentified person who is deprived of life. Such personal information shall be protected on the Registry's platform in accordance to international standards regarding access to information.
12. Strengthen existing mechanisms in terms of early alerts and urgent search in cases of disappearances of women and children, to ensure their effective application at the federal, state, and municipal levels. In addition, strengthen the National Registry of Data of Missing or Disappeared Persons, so that it may provide precise and reliable information about women and children who are disappeared and forcibly disappeared.
13. Follow the recommendations of the Interdisciplinary Group of Independent Experts (GIEI) in accordance with the attributes established by its mandate, specifically the reiterated request to interview the members of the Army and visit Battalion No. 27, and continue the investigation of the Ayotzinapa case. Consider utilizing similar mechanisms for other cases of gross human rights violations.

## ***C. Torture***

14. Adopt a General Law against Torture and other cruel, inhuman or degrading treatment or punishment, and adopt all necessary measures to ensure that both at the federal and state level the laws and practices comply with international standards on the subject, particularly the Inter-American Convention to Prevent and Punish Torture and the Optional Protocol to the UN Convention Against Torture.
15. In particular, ensure that the General Law against Torture excludes "evidence" or "confessions" obtained through the use of torture from the criminal process of the tortured person and of other persons implicated in such confessions. Establish clearly in the law that the prosecution has the burden of proof to prove the lawfulness of any questioned evidence or confession.



16. Create a Single National Registry of detained persons and ensure that such persons are taken immediately before a judge under risk of sanctions for failure to do so.
17. Investigate cases in which judges have not ordered an investigation where there are reports of indications that torture or mistreatment took place. Ensure that the Istanbul Protocol is applied at the national level by competent and independent authorities in an expedited manner and under risk of sanctions for failure to do so.
18. Establish the mandatory use of cameras and other security protocols during investigations and inside police vehicles, as a measure to prevent torture and other cruel, inhuman and degrading treatments.
19. Establish federal and state-level guidelines regarding the collection of uniform statistics regarding gross human rights violations. In particular, the State should improve its system to compile information that is disaggregated, transparent and that follows a consistent methodology.
20. Eliminate “*arraigo*” and *quasi flagrante delicto* (*flagrancia equiparada*) from the Mexican legal framework.

#### **D. Extrajudicial Executions**

21. In any act in which there is lethal use of force or loss of life at the hands of members of the security forces, undertake a comprehensive formal investigation in accordance with international standards, que las investigaciones desde la escena del crimen sean procedidas por peritos no integrantes de organismos policiales o militares.
22. Ensure that the Armed Forces register statistics regarding persons who are killed or wounded in their operations, and that the relevant investigations are initiated as appropriate.
23. Establish a national registry regarding the unidentified remains unearthed in cemeteries throughout the country, which are the result of violent deaths. In addition, search for clandestine graves in states with the highest levels of violence.
24. Create a national, autonomous institution of forensic services with adequate infrastructure, sufficient financial and human resources, and standardized protocols applicable at the national level.
25. Undertake all processes of unearthing and identifying remains strictly abiding by a dignified treatment of the victims’ families by all authorities of all levels of government involved in the process.
26. Continue and expand the work of the Forensic Commission for the Identification of Remains in cases found along the routes followed by migrants. Adopt all necessary measures to create a Transnational Mechanism of Access to Justice for Migrants

and their Families, as well as the creation at the federal level of a Special Prosecutor's Office for Violent Crimes against Migrants.

27. Implement a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Mexicans and Central Americans disappeared in Mexico with the forensic databases of disappeared migrants that have been developed throughout the region.

## ***E. Access to justice***

28. Strengthen the prosecutors' offices throughout the country in terms of technical and independent training, with the objective of guaranteeing investigations with due diligence.
29. Establish a coherent plan regarding cooperation between prosecution authorities at the federal and state levels in the investigation of gross human rights violations, with an integral vision, specific protocols, and the adoption of technical and professional—but not political—criteria for the decision to transfer specific investigations to the federal level.
30. Adopt specific protection measures for victims, their families, their representatives, witnesses, experts and defenders who participate in the investigation or search for justice, when they are at risk. Guarantee access to files to families and their legal representatives. Impose appropriate sanctions in cases of reprisals against any of these persons.
31. Adopt specific protection measures for justice operators according to their particular needs and in consultation with them.
32. Ensure the implementation of the General Law of Victims and the functioning the Executive Commission of Attention to Victims at the federal and state level. In consultation with civil society organizations and with victims, analyze and address concretely the barriers that impede its effective implementation, and eliminate them.
33. Assume the historic responsibility of accountability for gross human rights violations. Investigate, clarify and punish the acts committed during the time period known as the Dirty War.
34. Strengthen the Mechanism of protection for human rights defenders and journalists, guaranteeing its financial sustainability in the long-term and vesting it with greater administrative autonomy, and urging the states to collaborate with it. In turn, the recommendations for the Mechanism are to evaluate and adopt differentiated protection measures taking into account gender, indigenous leaders, environmental defenders; measure the effectiveness of implemented measures; foster the institutional articulation and cooperation with the PGR; and increase the transparency of all actions to increase the trust of the beneficiaries in the

mechanism. The foregoing shall be accompanied by a policy of prevention and participation by the population object of the Mechanism.

35. Reform the Code of Military Justice to provide that whenever a member of the armed forces commits acts that may constitute a human rights violation, such acts shall be judged by civil tribunals, independently of whether the victim is a civilian or a member of the armed forces.
36. Monitor the entry into force of the new criminal justice system as well as the effectiveness of the trainings regarding it. Include public defenders in the trainings.
37. Evaluate the effective implementation of the new criminal justice system, as well as the areas that will require more specific monitoring, with adequate training and all necessary resources. Include permanent training for justice operators and public defenders regarding the conventionality control.

## ***F. Persons in particularly vulnerable situations***

Regarding LGBT persons, the IACHR urges the Mexican State to:

38. Adopt necessary measures to investigate, punish and repair acts of violence against LGBT persons, according to international standards regarding due diligence. Investigations of cases of violence against LGBT persons must be free of stereotypical notions of LGBT persons and should include a determination of whether the acts were committed because of the sexual orientation or gender identity of the victims.
39. Adopt necessary measures in terms of prevention of violence, including legislative measures and public policies aimed at eradicating social discrimination towards LGBT persons, which causes and reinforces the violence based on prejudice.

Regarding the rights of women, the IACHR recommends the Mexican State to:

40. Implement and strengthen measures that incorporate a gender perspective to comply with the duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women, including specific efforts to comply with the obligation to prevent, investigate, punish and repair human rights violations against women; this includes training and monitoring of the authorities in charge of stages beginning with the investigation, including health services in the context of justice.
41. Adopt necessary measures to prevent, punish and eradicate acts of sexual violence and other forms of violence, torture and cruel, inhuman or degrading treatment by security forces against women, especially those who are deprived of life.
42. Implement uniform protocols by the prosecutorial authorities for crimes related to violence against women, as well as a proper supervision of their implementation

43. Adopt public policies aimed at restructuring stereotypes regarding the role of women in society and promote the eradication of socio-cultural patterns of discrimination that impede their access to justice, including training programs and integral policies for the prevention of violence against women.
44. Design and implement culturally adequate policies, with the participation of indigenous women, and apply a comprehensive and holistic focus that has as its objective prevention, investigation, punishment and reparation of acts of violence and discrimination committed against them.

Regarding children and adolescents, the IACHR urges the Mexican State to:

45. Develop operational protocols for the police regarding interventions involving children and adolescents, aimed at ensuring the protection of their rights.
46. Implement and strengthen measures to fulfill the duty to act with due diligence to prevent, punish and eradicate violence against children and adolescents, including concrete efforts to fulfill the obligations to prevent, investigate, punish and repair human rights violations and consider the corresponding aggravating factors related to the age of the victim.

Regarding indigenous peoples and gross human rights violations:

47. Adopt measures to ensure that a culturally adequate perspective, which takes into account the collective nature of indigenous peoples and communities, is considered when they or their members are victims of human rights violations.
48. Guarantee the availability of translators throughout the country and at all levels of government so that indigenous peoples and their members may have access to justice when they so require it.
49. Adopt necessary measures to carry out free, prior and informed consultations on projects that affect their lands.

Regarding persons deprived of liberty:

50. Correct the excessive use of pretrial detention, and apply it exceptionally, using other precautionary measures that do not deprive of liberty. In this context, guarantee that detained persons are immediately presented before a judge, so that detention without judicial order may be restricted in cases of alleged *flagrante delicto* and *quasi flagrante delicto*.
51. Adopt all necessary measures to guarantee a strategy of reincorporation into society. In this sense, guarantee that financial resources are directed at humanizing and implementing measures that allow persons deprived of liberty to be reincorporated into society. In particular, regarding persons with disabilities, identify a strategy for social reincorporation through programs that include community service.

52. Make publicly available the information regarding the standards of the American Correctional Association (“ACA”) to certify prisons and penitentiaries.
53. Implement normative and other measures to guarantee detention conditions that are adequate for the particular needs of groups in particularly vulnerable situations. In relation to women deprived of liberty, the State should guarantee that the adoption of corresponding measures takes into account a gender focus. Regarding persons with disability who are deprived of liberty, the Mexican State should guarantee the elimination of barriers in the surroundings that complicate the exercise of their rights, through reasonable accommodations.
54. Adopt measures to address pretrial detention and the high levels of overcrowding. The measures may include, among others, an increase in the number of criminal judges, and the establishment of periodic review of case files to be able to identify cases with excessive duration of pretrial detention.
55. Ensure that the National Criminal Sentencing Law includes international standards that guarantee the rights of persons deprived of liberty, both those who are being processed and those who have been sentenced, with an emphasis on criminal due process and reincorporation into society.

#### Regarding migrants:

56. Comply with the series of recommendations formulated in the Report Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico.
57. Create a national survey to “characterize” internal forced displacement in Mexico and, consequently, adopt a national policy and measures to provide a response to this problem in accordance with international standards on the subject, particularly the UN Guiding Principles on Internal Displacement.
58. Adopt specific legislation at the federal and state level to address internal displacement, in accordance with the UN Guiding Principles on Internal Displacement.
59. Ensure, at the federal level, that there is an institution in charge of the protection of persons who are victims of forced displacement.

#### Regarding human rights defenders:

60. Strengthen the instances in charge of protection of human rights defenders and journalists, so that their life and integrity can properly be guaranteed. At the same time, incorporate gender and multicultural perspectives in the design and adoption of protection measures for defenders and journalists.

Regarding freedom of expression, the Commission makes the following recommendations to the Mexican State:

61. Recognize, at the highest levels of the State, the legitimacy and the value of the journalistic work, and condemn attacks as reprisals for the exercise of the freedom of expression.
62. Define a single methodology to generate and publish detailed and disaggregated statistics regarding violence against journalists and investigations of attacks, as well as the protection measures adopted. Define a State authority in charge of capturing information and publishing statistics, and inform the various actors regarding the challenges that arise in the application of said methodology.
63. Remove all obstacles so that, in practice, the Specialized Prosecutor's Office for Attention to Crimes against Freedom of Expression (FEADLE) may absorb investigation of crimes against journalists and against freedom of expression. This way, make more effective the exercise of federal jurisdiction over crimes within its competence and guarantee that the most serious violations of freedom of expression are always investigated by that Office.
64. Maintain the FEADLE's character as a specialized prosecutor's office and vest it with sufficient financial and human resources so that it may achieve its objectives.
65. Adopt special protocols for the investigation of murders pursuant to which the hypothesis of a relation to the journalistic profession is exhausted completely.
66. Improve the existing relation between the federal and state jurisdictions with the objective of avoiding competence conflicts that impede or delay investigations.
67. Allow victims, their families and, when applicable, assisting third parties to participate in the criminal processes with full guarantees, both for the search of the truth and for clarifying the facts, as well as at the time of demanding reparations.

#### Access to Information

68. Regarding the legal attributions that the Law of Access to Information assigns to the Presidency's Legal Advisor's Office, such attribution should be regulated according to international principles regarding access to public information and national security.
69. Strengthen laws, policies and practices to ensure that judicial authorities have complete access to relevant information when they investigate and process cases on human rights violations attributed to the security forces.
70. Adopt pertinent measures so that security agencies compile, systematize and publish periodically information regarding injuries to life and personal integrity as a consequence of the fight against organized crime. The information regarding such injuries should describe the place where they occurred, the date, information regarding the unit of the security force that was present when they occurred,

information regarding its mandate and control. In addition, it should describe what were the causes of the injury and the inability to prevent them.

Regarding the Mechanism to Protect Human Rights Defenders and Journalists, the Commission makes the following recommendations to the Mexican State:

71. Require competent authorities to take into account international parameters regarding protection, especially the considerations outlined in the “Second Report on the Situation of Human Rights Defenders in the Americas” and the “Report on Violence against Journalists and Media Workers of the IACHR’s Special Rapporteurship for Freedom of Expression.”
72. Provide all political support necessary for the adequate operation of the protection mechanism, which should include all the necessary financial resources so that it may develop its competencies efficiently in relation to protection, and so that it may be sustainable over time.
73. Adopt all necessary measures to assign and train all necessary personnel for its adequate operation.
74. Guarantee that risk assessments and the implementation of prevention and protection measures are done adequately and addressing the urgency of the situation. Therefore, assign protection and review schemes regarding the adequacy of the risk evaluation processes, guarantee an adequate participation, communication and consensus-building with the persons protected by the mechanism, as well as the beneficiaries of precautionary measures requested by the IACHR.
75. Undertake an evaluation and adoption of differentiated protection measures for women, indigenous leaders, and environmental defenders.
76. Implement strategies so that the various institutions at the state and federal level work in a coordinated fashion to provide an integral response to all matters related to the protection of human rights defenders and journalists.
77. The protection mechanism should implement a communication strategy regarding its competencies, the requirements to enter the program, among other necessary information, with the objective of making human rights defenders and journalists aware about the protection that the mechanism can offer. Similarly and in accordance with international standards, provide access to necessary information regarding the protection mechanism so that it may provide greater transparency regarding the work it is doing.
78. Encourage the mechanism to adopt a process that allows it to issue protection measures directly and of its own initiative (*sua sponte*) in those cases which, because of their gravity and urgency, require them immediately.

79. Double efforts to investigate acts that cause the entry and permanence of protected persons into the protection mechanism, with a view towards conducting thorough investigations as prevention policy of the State.
80. Encourage the mechanism to adopt tools that allow it to evaluate the effectiveness of the implemented protection measures, as well as increase transparency of all its action to increase the trust of beneficiaries. The foregoing shall be accompanied by a policy of prevention and participation by the population object of the mechanism.