

MEXICO

“Disappearances”: an ongoing crime

Since December 2000, Amnesty International has gathered documentary evidence on at least four people who have “disappeared” following detention by federal and state police. The true number of cases could well be higher as Amnesty International has also received reports of “disappearances” of people from marginalised communities in which relatives are too afraid of reprisals to pursue investigations and assume their relatives have been killed. In each of the four cases documented in this report, the authorities have failed to conduct proper investigations to establish the fate or whereabouts of the victims or taken appropriate measures to bring those responsible to justice. The institutions responsible for securing justice and the protection of human rights continue to fail in their fundamental duties. As has so often happened in the past, it is only the determination of relatives with the aid of non-governmental human rights organizations to bring attention to these cases that keeps the issue of the “disappeared” on the agenda, putting pressure on the authorities to secure truth and justice and reminding the wider public that forced “disappearances” continue to occur in Mexico.

Under previous administrations, the use of “disappearance” was endemic in army and policing practice. In the 1970s and early 1980s members of armed opposition groups as well as others considered by the authorities to be political opponents such as political activists and social leaders were the target of widespread and systematic human rights violations including arbitrary detention, torture, “disappearance” and extrajudicial execution. In this period, over 400 people “disappeared”. The majority of cases took place in the state of Guerrero in the context of counterinsurgency operations jointly undertaken by the army and police against the armed opposition group, the *Partido de los Pobres* (Party of the Poor). In other states, many of the “disappearances” were carried out during operations by the police and army against urban armed opposition groups, most notably the *Liga Comunista 23 de Septiembre* (23 September Communist League).

In the mid-1990s, the number of reported cases of “disappearance” began to increase again. Most of these cases occurred in the southern states of Chiapas, Guerrero and Oaxaca in the context of counterinsurgency operations carried out by the armed forces and police against the *Ejército Zapatista de Liberación Nacional* (EZLN, Zapatista National Liberation Army) and the *Ejército Popular Revolucionario* (EPR, Popular Revolutionary Army)¹. At the same time, there were increasing reports of “disappearances” in the context of anti-narcotics operations mainly carried out by the army, or in the context of police operations against criminal suspects. There were also reports of “disappearances” carried out by police officers involved in kidnapping or drugs gangs.

¹ For further information see *Mexico: “Disappearances”: a black hole in the protection of human rights* – AMR 41/05/98

Whatever the circumstances, "disappearances" constitute a serious and ongoing crime. Under a range of international treaties which Mexico has ratified, including the Inter-American Convention on Forced Disappearance of Persons, the state is obliged to adopt and enforce safeguards against "disappearance", do everything to establish the truth of each "disappearance", provide judicial remedy and redress to victims and their families.

This report looks at the "disappearances" that have been reported since December 2000 and considers the legal, institutional and political factors that facilitate the practice and that impede truth and justice. It describes steps being taken to investigate past "disappearances" and considers the main obstacles the authorities must address if all those responsible are to be brought to account. The report also contains a list of recommendations for the prevention of "disappearances" and recommendations Amnesty International believes must be implemented if the new office of the Special Prosecutor (*Fiscalía Especial*) is to be effective in dismantling the mechanisms of impunity that for nearly thirty years have allowed those responsible to evade justice.

Mexico's International Human Rights Obligations

The International Covenant on Civil and Political Rights (ICCPR) includes a range of rights which Mexico, as a party to the Covenant, is obliged to uphold. These include the right to life, article 6(1); the right to liberty and security of the person, article 9; the right to be free from torture or cruel, inhuman or degrading punishment, article 7; and the right to a fair and public trial, article 14. Article 2 obliges state parties to investigate all reports of violations of human rights and provide redress to victims or their relatives.

The UN Declaration on the Protection of All Persons from Enforced Disappearance was adopted by the UN General Assembly without a vote in December 1992 "as a body of principles for all States" (Preamble). Mexico has a responsibility to adhere to its provisions. It says in its preamble that the General Assembly considers that

"enforced "disappearance" undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, ...the systematic practice of such acts is of the nature of a crime against humanity"

The Declaration emphasises the non-derogable right to be free from "disappearances", stating in article 2 that the prohibition of "disappearance" is absolute and in article 7: *"No circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify enforced "disappearance"."* It places the obligation on states to adopt and enforce safeguards against "disappearance" (articles 2, 3, 4(1), 8, 10, 11, 12, 13, 14, 16, 17, 18) and

requires states to provide judicial remedy (articles 9, 13, 14, 16, 17) and to provide redress to victims and their families (article 19).

A large number of other international treaties, including the UN Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, the American Convention on Human Rights and various UN guidelines and principles also prohibit specific aspects of violations of human rights that occur during "disappearance". The latter group include the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, the Standard Minimum Rules for the Treatment of Prisoners, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions.

International treaties have declared that enforced disappearances constitute a continuing offence. Article 17 (1) of the United Nations Declaration on the Protection of All Persons from Enforced Disappearance states: "Acts constituting enforced disappearance shall be considered a continuing offence as long as the perpetrators continue to conceal the fate and the whereabouts of persons who have disappeared and these facts remain unclarified". Similarly, Article III of the Inter-American Convention on the Forced Disappearance of Persons, states that the offence of forced disappearance "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined".

States have an obligation to legally prosecute and punish the perpetrators of human rights violations. This obligation is regulated not only by the International Covenant on Civil and Political Rights and the American Convention on Human Rights, but also by other international instruments, including most importantly the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Inter-American Convention for the Prevention and Punishment of Torture and the Inter-American Convention on the Forced Disappearance of Persons.

In various judgments the Inter-American Court of Human Rights has recalled that State parties to the American Convention on Human Rights have the international obligation to prosecute and punish those responsible for violations of human rights². For this reason,

² Inter-American Court of Human Rights, Series C: Decisions and Judgments: *Velásquez Rodríguez Case, Compensatory Damages*, Judgment of July 21, 1989 (Art. 63.1 American Convention on Human Rights), Series C, No. 7, paras. 32 and 34; *Godínez Cruz Case, Compensatory Damages* (Art. 63.1 American Convention on Human Rights), Judgment of July 21, 1989, Series C, No. 8, paras. 30 and 3; *Caballero Delgado y Santana Case*, Judgment of December 8, 1995, Series C, No. 22, para. 69 and decision point 5; *El Amparo Case, Reparations*

the Inter-American Court of Human Rights has recalled that: "[...] the State has the obligation to use all the legal means at its disposal to combat that situation, since impunity fosters chronic recidivism of human rights violations, and total defenselessness of victims and their relatives."³ And that: "The State has the duty to avoid and combat impunity."⁴

The International Covenant on Civil and Political Rights also points to this obligation to prosecute and punish those responsible for human rights violations. Thus the Human Rights Committee has recalled that: "...the State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations ..."⁵

Advances in interpretations of international law recognize that forced disappearances on a widespread or systematic basis are crimes against humanity, as the Mexican Government acknowledged as signatory to the Rome Statute for an International Criminal Court, Article 7 of which gives the Court jurisdiction over forced disappearances as crimes against humanity. It has also been recognized that forced disappearances constitute severe pain or suffering amounting to torture, both for the families of the "disappeared" person and the victim, as long as the "disappearance" remains unresolved. The Human Rights Committee, a body of 18 experts established under the International Covenant on Civil and Political Rights to monitor implementation of that treaty, in an authoritative interpretation of that treaty concluded that enforced disappearances inflict severe mental pain and suffering on the families of the victims in violation of Article 7, which prohibits torture and cruel, inhuman or degrading treatment or punishment.⁶ The European Court of Human

(Article 63.1 American Convention on Human Rights), Judgment September 14, 1996, Series C, No. 28, para. 61 and decision point 4; *Castillo Páez Case* Judgment of November 3, 1997, Series C, No. 34, para. 90; *Suárez Rosero Case*, Judgment of November 12, 1997, Series C, No. 35, para. 107 and decision point 6; and *Nicholas Blake Case*, Judgment of January 24, 1998, Series C, No. 36, para. 97.

³ Inter-American Court of Human Rights, Series C: Decisions and Judgments, No.37, *Paniagua Morales et al. Case*, Judgement of March 8, 1998, para. 173.

⁴ Inter-American Court of Human Rights, Series C: Decisions and Judgments, No. 48, *Caso Blake, Reparaciones*, Judgement of January 22, 1999, para. 64 (free translation).

⁵ Decision in the case of Nydia Erika Bautista, Communication No. 563/1993 (Colombia), of November 13, 1995, United Nations document CCPR/C/55/D/563/1993, para. 8.6. See also the decision in the case of José Vicente and Amado Villafaña Chaparro, Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres, Communication No. 612/1995 (Colombia), United Nations document CCPR/C/60/D/612/1995, para. 8.8.

⁶*Elena Quinteros Almeida v. Uruguay*, Communication No. 107/1981, views of the Human Rights Committee adopted on 21 July 1983, para.14, *reprinted in* Selected Decisions of the Human Rights Committee under the Optional Protocol, 2 (1990)

Rights reached the same conclusion, finding that the extreme pain and suffering an enforced disappearance inflicted on the mother of the "disappeared" person violated Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and inhuman or degrading treatment⁷.

A break with the past?

President Vicente Fox Quesada of the *Partido de Acción Nacional* (PAN, National Action Party) came to office pledging to end the impunity that characterised much of the previous 70-year rule of the *Partido Revolucionario Institucionalista* (PRI, Institutional Revolutionary Party) and promising his government would fully uphold human rights and the rule of law. Since assuming power, the Mexican Government has committed itself to the introduction of legal reforms designed to improve the legislative framework for the protection of human rights and to ensure their implementation. While welcome, the reforms have not yet been implemented effectively and have not so far resulted in a reduction in the level of human rights violations.

In March 2002 a number of important ratifications of international instruments were lodged with the United Nations. Though an important step, the challenge now is to incorporate the principles contained in international law into domestic legislation and ensure their full implementation. In June 2001 the Federal Penal Code (*Código Penal Federal*) and the Federal Code of Penal Procedures (*Código Federal de Procedimientos Penales*) were amended, criminalizing "disappearance". While a step in the right direction, the amendment fails to address issues such as the actions of private individuals or groups acting with or on behalf of public officials involved in forced disappearances and the need to establish chain-of-command responsibility. It falls short of Mexico's obligations under international human rights treaties, in particular as defined under the Inter-American Convention on Forced Disappearance of Persons, such as the obligation on the state to provide adequate reparations to victims and relatives and the requirement to codify the crime of "disappearance" as one with no statute of limitations. A year earlier, a similar private bill had led to the criminalization of "disappearance" in the Federal District and established the crime of "disappearance" as one with no statute of limitations. Some states have also taken steps to introduce legislation at state level. It is essential however that such initiatives fully comply with international human rights standards regarding "disappearance".

The Mexican Government has also ratified several outstanding human rights treaties, including, on 10 December 2001, the Inter-American Convention on Forced Disappearance of Persons, and removed reservations on treaties ratified by previous governments.

⁷*Kurt v. Turkey*, Judgment, Eur.Ct.Hum.Rts, Case No. 15/1997/799/1002, 25 May 1998, para. 134

However, in ratifying the Convention, the Senate approved a reservation put forward by the government to Article IX with regard to military jurisdiction⁸ and an interpretative declaration⁹ concerning prescriptability which seriously call into question the Mexican Government's willingness to effectively implement the Convention.

The reservation to Article IX effectively means that cases of "disappearance" involving military agents will continue to be heard in military tribunals which have consistently provided impunity for members of the armed forces accused of human rights violations¹⁰. The UN and Inter-American Commission on Human Rights have repeatedly criticised the persistent failure of military tribunals to bring to justice members of the military involved in human rights violations and UN Special Rapporteurs have expressed serious concerns in successive reports about levels of impunity within the military justice system. In his 1998 report, the UN Special Rapporteur on Torture concluded: "Military personnel appear to be immune from civilian justice and generally protected by military justice ... Neither the CNDH nor the Military Prosecutor General informed the Special Rapporteur of any prosecution of named military personnel for torture"(86) and recommended that "Cases of serious crimes committed by military personnel against civilians, in particular torture and other cruel, inhuman or degrading treatment or punishment, should, regardless of whether they took place in the course of service, be subject to civilian justice" (88j).

In her report in 1999, the UN Special Rapporteur on Extrajudicial, Arbitrary or Summary Executions wrote, "The ineffectiveness of the justice system has given rise to

⁸Article IX of the Inter-American Convention on Forced Disappearance of Persons notes: "Persons alleged to be responsible for the acts constituting the offense of forced disappearance of persons may be tried only in the competent jurisdictions of ordinary law in each state, to the exclusion of all other special jurisdictions, particularly military jurisdictions. The acts constituting forced disappearance shall not be deemed to have been committed in the course of military duties. Privileges, immunities or special dispensations shall not be admitted in such trials, without prejudice to the provisions set forth in the Vienna Convention on Diplomatic Relations.

⁹"On the basis of article 14 of the Mexican Constitution, the Mexican Government in ratifying the Inter-American Convention on Forced Disappearance of Persons, adopted in the city of Belem, Brazil, on 9 June 1994, understands that the provisions of the Convention will apply to acts that constitute the forced disappearance of persons, ordered, executed or carried out after the coming into force of the present Convention".

¹⁰An example of the way in which the military view the role of military jurisdiction was provided during an interview with retired general Alberto Quintanar Alvarez that appeared in the daily newspaper La Jornada on 7 December. Asked what he thought about the creation of a Special Prosecutor's Office to investigate forced disappearances, the general replied, "Prosecutor,***! I've got a Public Ministry, judges, prosecutor, military prison! Is military jurisdiction worth nothing?". The general went on to demand that they be tried by military jurisdiction (Jornada 7 December 2001)

("Qué opina de la creación de una fiscalía especial para investigar las desapariciones forzadas?")

Fiscal, ***! Yo tengo Ministerio Público, jueces, procurador, prisión militar El fuero de guerra vale madre?")

violations of human rights. Their lack of jurisdiction to try members of the armed forces for violations of human rights committed against civilians erodes the independence of the ordinary courts (98) and "There is a reluctance on the part of the competent Mexican authorities to hold members of the military forces accountable for extrajudicial killings and other human rights violations ... Ordinary courts cannot try members of such forces for violations of human rights, even when the victims are civilians. The prosecution of military personnel is in the hands of the Military Attorney-General who is subordinate to the Ministry of Defence. The Special Rapporteur is concerned that this situation, combined with peer pressure and misconceived collegial loyalty, may work to the detriment of civilian victims and their families and seriously circumscribe their opportunities to have their cases heard before a competent, independent and impartial tribunal, as provided for in the Basic Principles on the Independence of the Judiciary".(102) She recommended the government, "Initiate reforms aimed at ensuring that all persons accused of human rights violations, regardless of their profession, are tried in ordinary courts".(107f)

One of the key challenges facing the Fox administration is to bring the military establishment fully under civilian control. The reservation, rather than achieving this, reinforces the lack of accountability for human rights violations committed by the military. It is therefore essential that the Mexican Government removes this reservation without delay in order that any investigations conducted into "disappearances" remain under civilian jurisdiction and that relatives of victims and their legal representatives are empowered to play an active role¹¹. The reservation seeking to place the military outside the reach of the Convention goes against its fundamental principles and threatens to further entrench impunity.

According to the interpretative declaration concerning prescriptability, punishment for those involved in ordering or carrying out "disappearances" would only apply in cases that occurred after the Convention came into force. This would have the effect of guaranteeing impunity for those responsible for the hundreds of cases of "disappearance" that have occurred over the last three decades and contravenes article III of the Convention which says that a "disappearance" "shall be deemed continuous or permanent as long as the fate or whereabouts of the victim has not been determined". The interpretative declaration clearly goes against the fundamental definition of the crime and is incompatible with the aim and objective of the Convention. It is clear from the Convention that unresolved

¹¹In Mexico a mechanism *coadyuvancia*, exists whereby relatives or lawyers acting on their behalf can play an official supporting role to the prosecutor; being allowed access to the case file and having the right to suggest lines of enquiry and possible new evidence. However, in practice, this mechanism is rarely granted or prosecutors and judges frequently prevent the *coadyuvante* from playing an active role. *Coadyuvancia* also exists theoretically in the system of military justice. However, it is almost never granted and is even more ineffective in this jurisdiction.

"disappearances" are ongoing and actual crimes and therefore the question of retroactivity is not relevant in these cases.

In April 2002, at the request of relatives of the "disappeared" the governor of the Federal District, presented a constitutional challenge to the Supreme Court calling for the reservation and the interpretative declaration to be annulled for violating the Federal Penal Code, the Constitution and international human rights standards ratified by the Mexican Government, including the Inter-American Convention on Forced Disappearance of Persons.

Unresolved "disappearances" as stated in the Inter-American Convention on Forced Disappearance of Persons are ongoing and constitute crimes. The Mexican authorities should therefore seek to ensure there is no evasion of responsibility. The Mexican Government must also ensure that ratification of the Convention is matched by the implementation of comprehensive internal legislation to criminalize "disappearances" in order that all state agents at federal, state and municipal level are brought to justice across the federation and that victims and relatives have the right to reparations.

Steps by the Mexican Government to ratify international treaties and extend the state's obligations under international law are important. However, unless this is matched with a clear determination to reform domestic legislation and implement the core principles of these international obligations, impunity which has so long protected those responsible for human rights violations will remain unchallenged.

Institutionalized impunity

This section identifies some of the core challenges that human rights organizations and inter-governmental organizations have identified as key obstacles to human rights protection and punishment of human rights violations. The impunity which has ensured that almost no one has been brought to justice for human rights violations is particularly entrenched in the case of forced "disappearances". Institutions which should be responsible for ensuring justice such as the courts, prosecution services, investigating police and state human rights commissions have repeatedly failed in their obligations to investigate crimes of forced "disappearance" and have remained subordinate to the interests of those state institutions such as the military and civilian executive authorities who have sought to prevent access to truth and justice. The challenge for the Fox administration is to heed the range of criticisms and recommendations made by national and international human rights organizations and inter-governmental organizations in order to reform these structures and make justice possible for the victims and their relatives.

Impunity for human rights violations in Mexico is endemic. Recommendations by the United Nations and Inter-American Commission on Human Rights regarding measures to

end impunity have rarely been heeded. One of the principle reasons for impunity is the way the civilian public prosecution services are presently structured and run. Another, is the weakness of the judiciary. "Confessions" obtained under duress where the onus falls on the defendant to prove he or she has been tortured are frequently accepted in court as evidence. The judiciary is also prone to giving excessive weight to evidence provided by the public prosecution services, frequently identifying with the interests of the executive in the deliverance of justice. In addition, cases of serious human rights violations in which members of the army are implicated, while formally subject to civilian jurisdiction, are invariably passed into the jurisdiction of the military justice system.

Criminal investigations in Mexico are under the exclusive responsibility of the Procuraduría General de la República (PGR), Attorney General's Office, the *Procuradurías Generales de Justicia los Estados* (PGJEs), State Attorney Generals Offices, and the *Procuraduría General de Justicia del Distrito Federal* (PGJDF), Attorney General's Office of the Federal District of Mexico City.⁽⁹⁾ These bodies are in charge of investigating crimes and prosecuting suspects under their jurisdiction, procuring, evaluating and presenting evidence before the courts, recommending that sentences be imposed, and ensuring that the legal rights and guarantees of defendants, including the right to due process, are fully respected. These bodies also have the responsibility for investigating complaints of human rights violations by law enforcement officers under their jurisdiction. This means that victims and their relatives are unable to bring a prosecution themselves and also that judges cannot take the initiative to open investigations. The PGR, PGJDF and the PGJEs are subordinate to the Executive and frequently act in the direct interest of the federal or state executives, rather than as an independent prosecuting authority upholding the rule of law. The lack of independent investigations into reports of human rights violations and the lack of autonomy of the federal and state-level prosecution services is a serious impediment to ending impunity. The lack of autonomy or effective control and scrutiny of prosecution services at federal and state level, coupled with the fact that no mechanism exists for ensuring independent investigations of human rights violations results in the prosecution services, frequently being both the source of human rights violations and the chief obstacle to ending impunity. Root and branch reform of these institutions is essential if substantive improvements in Mexico's human rights situation is to be achieved.

While the well-resourced National Human Rights Commission (CNDH, *Comisión Nacional de Derechos Humanos*) and State Human Rights Commissions (CEDHs, *Comisiones Estatales de Derechos Humanos*) may have contributed to improving human rights through human rights education programs, on the crucial issue of human rights violations committed by public officials these bodies act more as a government mouthpiece than a human rights watchdog. The CNDH's reluctance to publicly criticize the security forces, in particular the military, has undermined its legitimacy and credibility. When the Commissions have made recommendations, a considerable number of state and federal

authorities have failed to fully comply with them. The Commissions have taken insufficient action to follow up recommendations or overcome the problem of non-compliance; the cycle of impunity thus continues. In some instances, these Commissions, rather than assuming a pro-active defence of human rights in calling state authorities to account, have been passive bureaucratic institutions, effectively another hurdle for victims and their relatives to overcome in the struggle for justice. Turning the Commissions into authentic independent human rights watchdogs, with a moral authority that cannot be ignored lightly, is one of the key challenges facing the national and state Commissions.

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José Ramón García Gómez, a political activist, was abducted by state judicial police on 16 December 1988 in the state of Morelos.

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María Teresa Gutiérrez Hernández was abducted in Mexico City on 12 January 1982 by members of the security forces. She was a teacher and a member of the *Liga Comunista 23 de Septiembre*.

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Víctor Pineda Henestroza was abducted by soldiers on 11 July 1978 in Juchitán, Oaxaca.

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Carlos Alemán Velásquez, a student, was abducted by members of the state judicial police on 26 August 1977 in the state of Sinaloa.

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José de Jesús Corral García was abducted on 8 March 1976 by state judicial police in Puebla, state of Puebla.

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Jesús Piedra Ibarra, son of Rosario Ibarra "disappeared" on 18 April 1975.

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Photographs of some of the hundreds of people who have "disappeared" over the last three decades. This poster was made by the Comité Eureka and used during a protest held on 28 August 1997.

Investigations into past "disappearances"

"In Mexico, no one is untouchable any longer ... If truth is not followed by justice, it becomes sterile. It is reduced to mere testimony. Society has demanded to know the truth, but above all, it has demanded the justice that has not been exercised for decades".¹²

(Interior Minister Santiago Creel - March 2002)

"This has created a little ray of light in those families who have this problem ... I ask God that this not be yet another deception like so many others over the last 24 years"¹³
(Mother of Carlos Alemán Velásquez to an AI group working on this case)

On 27 November 2001, the governmental National Human Rights Commission, (CNDH, *Comisión Nacional de Derechos Humanos*) published its findings into the "disappearance" of hundreds of people during the 1970s and early 1980s.

The commissioning of the report and its publication was due in large part to domestic and international pressure on these cases. It was published shortly after the murder of Digna Ochoa, a renowned human rights lawyer on 19 October 2001 and the international outcry that ensued. The CNDH said that of the 532 cases it had investigated, 275 people "disappeared" following their detention by government agencies and evidence existed of the involvement of the authorities in another 90 cases. It was unable to reach a conclusion on a further 160 cases but said that given the evidence of the illegal activities of the security

Comité Eureka

April 2002 marked the 25th anniversary of the *Comité Eureka* (otherwise known as the Committee for the Defence of Prisoners, the Persecuted, the Disappeared and Political Exiles, *Comité Pro Defensa de Presos, Perseguidos, Desaparecidos y Exiliados Políticos*), one of the founding human rights organizations in Mexico. Under its president Rosario Ibarra whose son Jesús Piedra Ibarra "disappeared" in 1975, the organization has led the calls for truth and justice and headed the campaign to bring the cases of the "disappeared" to national and international attention.

¹² *"En México ya no hay intocables ... Y la verdad si no está seguida por la justicia, se vuelve estéril. Queda reducida a mero testimonio. La sociedad ha demandado conocer la verdad, pero sobre todo, ha demandado una justicia relegada durante décadas".*

¹³ *"Esto ha hecho nacer un rayito de luz en los familiares que tenemos este problema ... le pido a dios que no sea un engaño más como tantos que nos han hecho a lo largo de estos 24 años".*

forces at the time and the 275 "disappearance" cases, the possibility that the 160 had also "disappeared" should not be discounted in any future investigations.

According to the report, victims were arrested arbitrarily and were subjected to torture and other forms of cruel, inhuman or degrading treatment. Presenting the report to President Fox, the president of the CNDH, José Luis Soberanes, acknowledged state responsibility saying "there is responsibility by the state" in the practice of forced disappearance, which occurred "independently of the changes in the government over the course of time."¹⁴ This acknowledgement by a state institution of state responsibility for the widespread use of "disappearances" in the 1970s and 1980s was considered an important step by Mexican human rights organizations. However, the report falls short of confirming that the use of "disappearance" was sanctioned at the highest levels of the government as a "dirty war" tactic. In August, Soberanes had announced that the National Security and Investigation Centre (CISEN, *Centro de Investigación y Seguridad Nacional*) and the National Defence Secretariat had made information in their files available to the CNDH. While this access is important, it is unclear how complete the files are.

Previous investigations and reports on the "disappeared" issued by the CNDH and its predecessor the General Human Rights Directorate have been completely discredited and have prevented the full facts from emerging. In many instances, these bodies informed the United Nations Working Group on Enforced or Involuntary Disappearances (WGEID) that cases had been clarified without providing any documentary evidence to support such claims. In some cases, the CNDH provided information that completely contradicted previous reports adding to the disbelief and dismay of relatives. While this report is an advance on previous initiatives, questions remain about the methods and rigour of its investigations and serious concerns have been expressed about its failure to provide vital information to fully clarify these crimes or establish chain-of-command responsibility.

¹⁴"hay responsabilidad de Estado ... subsiste con independencia de los cambios de gobierno en el transcurso del tiempo"

Before taking office, President Fox had promised to set up a Truth Commission to examine "disappearances" and other unresolved cases of past human rights violations and crimes that occurred under previous PRI administrations. Non-governmental organizations and other international human rights organizations, including Amnesty International argued in favour of creating a Truth Commission to deal with the legacy of past human rights abuses and to provide a credible independent mechanism for establishing the truth of these events. Amnesty International wrote to President Fox setting out the fundamental principles for a Truth Commission¹⁵. Instead, with the publication of the CNDH report, President Fox ordered the creation of a *Fiscalía Especial* (Special Prosecutor's Office) to investigate these crimes, delegating the responsibility of appointing the Special Prosecutor to the Attorney General of the Republic (*Procurador General de la República*), General Macedo de la Concha, a former Attorney General of Military Justice (*Procurador General de Justicia Militar*) during part of the period under review.

1968 Tlatelolco massacre

The massacre of students on 2nd October 1968 in Tlatelolco Square was a defining moment in Mexican modern history. In December 2001 new photographic evidence emerged increasing pressure on the authorities for investigations into the case to be reopened. The authorities had always refused to investigate the case, and the Office of the Attorney General of the Republic had argued that the statute of limitations meant the case could not be investigated. In January 2002 the Supreme Court ordered the PGR to reopen investigations. In February the PGR opened an investigation and transferred the case to the Special Prosecutor's Office.

In January 2002, Ignacio Carrillo Prieto, a legal academic was appointed to the post while March saw the naming of a citizen's advisory committee (*Comité Ciudadano de*

¹⁵ In the letter Amnesty International set out the fundamental principles that must be met if a Truth Commission is to fulfil the expectations of the relatives and comply with the international obligations of the state. These principles include the need to establish institutional and individual responsibility for these violations; legal powers to allow it among other things, to compel witnesses and those allegedly involved in the cases under investigation to testify, to visit the places where the events took place and to call for all the necessary information from the state authorities; the authorization to establish mechanisms for confidentiality and any other measures that are necessary for the protection of those who testify before it. Members of a Truth Commission should be known for their objectivity and should include people with experience in the field of human rights. As a frame of reference the definitions of human rights set out in international human rights instruments and standards should be used. The results of its investigations should be public and the information collected should be placed in the hands of the courts to determine penal responsibility and appropriate punishment.

Apoyo) of five people. Three members of the committee directly participated in the political activism of the 1960s and 1970s and suffered abuses by the state while the other two are legal academics. During the ceremony at which the five-person team was announced, Interior Minister Santiago Creel stated that no one was any longer above the law and said that files that had been held in the Centre of Investigation and National Security would be handed over to the National Archives for people to consult.

The challenge of carrying out effective and independent investigations into the hundreds of "disappearances" of political opponents and others is considerable. Amnesty International believes that the *Fiscalía Especial* can only be judged to have been successful in this task if it can dismantle the wall of impunity that has protected those responsible for so long. Previous initiatives to tackle gross violations of human rights, including the appointment of special prosecutors to investigate cases such as the Aguas Blancas massacre in 1995, the murders of presidential candidate Luis Donaldo Colosio in 1994 and of Cardinal Posadas in 1993, have failed and have betrayed the hopes and expectations of the relatives of victims, human rights organizations and Mexican society.

Presenting the case of Ignacio Salas Obregón to the *Fiscalía Especial* on 21 February 2002, relatives and human rights organizations announced, "*The speed and conviction with which the Special Prosecutor on Forced Disappearances acts on the case of Ignacio Salas Obregón will be the yardstick by which the efficacy of this institution and the real publicly stated commitment of the Federal Government towards the effectiveness and observance of human rights in Mexico will be measured - particularly towards the relatives of the "disappeared" who have been campaigning for justice for nearly three decades*"(17) Ignacio Salas Obregón

Establishing the truth is the fundamental right of the victims and their relatives. If this is to be achieved then any official mechanism, such as the *Fiscalía Especial*, created to tackle this bitter legacy, must be credible and earn the confidence of the relatives of the victims. The nomination of the special prosecutor by the Attorney General of the Republic, a serving army officer and former chief military prosecutor with a record of failing to prosecute military officials accused of human rights violations, makes this new body inherently vulnerable to politically imposed limitations and manipulation, and raises serious concerns about the willingness of the authorities to truly tackle the issue of impunity¹⁶. The new

¹⁶Amnesty International and many other national and international human rights organizations expressed grave concern at the decision to appoint him to this crucial post. In a letter to senators urging them not to ratify the nomination of a military official to this vital post in the civilian judicial system, Amnesty International noted that "over the past 40 years the organization has observed that in countries where members of the military are

Fiscal Especial will have to demonstrate rapidly that his investigations are truly independent and effective. According to reports, the team of agents assigned to work with this new body were selected by the office of the Attorney General of the Republic, once again raising real concerns about the possibility of effective investigations being carried out.

Article 21 of the Constitution establishes the Attorney General's Office as solely empowered to carry out criminal investigations¹⁷. However this institution has consistently failed in its fundamental obligation to investigate past and present human rights violations. Over the years, families of the victims have tried to compel the PGR to investigate the "disappearance" of their relatives. An indication of the conduct of the PGR in these latest investigations was recently demonstrated when steps to open investigations due to mounting pressure resulted in summonses to testify being sent to 27 "disappeared" people, including the son of Rosario Ibarra, founder of the organization of relatives of the "disappeared", the *Comité Eureka*. The PGR later apologised for this grossly insensitive blunder.

In March 2002, the *Fiscal Especial* presented his work plans setting out the aims of his office and the mechanisms by which it intends to investigate and initiate legal proceedings in cases of "disappearance". The proposals are wide-ranging and if fully and effectively implemented could initiate the process of dismantling impunity. However, some areas need further clarification. For example, there are contradictory signals as to whether this new office intends to investigate "disappearance" cases that have been denounced since the new administration took office. It is clear that for the *Fiscalía Especial* to gain public confidence, it is not only important that "disappearances" from the "dirty war" period are investigated but that mechanisms are created that will ensure the rapid investigation of all "disappearance" cases denounced over the past 30 years, including those documented since December 2000. In addition, the level of real autonomy from the PGR – vital if the *Fiscalía Especial* is to be seen as a credible body able to guarantee a complete break with past practices – remains unclear. While day-to-day links with other government institutions whose activities are under scrutiny will inevitably develop, it is essential that the *Fiscalía Especial* remains independent of these institutions. It is also vital that the requirement to present a positive public image of this institution does not displace the institution's investigative role.

involved in the civilian justice system, the possibility of defeating the impunity which surrounds human rights violations is made all the more difficult. It is that same type of experience which gave rise to the international community approving international standards like the *UN Basic Principles on the Independence of the Judiciary*, in 1985."

¹⁷ The dual nature of the Attorney General as at once representing the executive and therefore the interests of the state while also being responsible for investigating abuses committed by the state has been repeatedly noted as one of the fundamental causes of impunity in cases of human rights violations.

Only when the *Fiscalía Especial* begins to produce concrete results that meet standards set out in international and domestic law will an authentic assessment of its work be possible. What is clear at this stage is that the *Fiscal Especial* must act quickly to gain the confidence of relatives of the victims and human rights organizations. It is a confidence that cannot be assumed as a right but must be earned by dint of the effectiveness of the *Fiscalía Especial*.

For more than 25 years, Amnesty International has been asking the Mexican Government to provide answers about the fate of the "disappeared" and for those responsible to be brought to justice. In light of the CNDH report, Amnesty International will continue to monitor closely progress of the investigations of the *Fiscalía General* and will continue to put pressure on the Mexican authorities to bring all those responsible to justice. Impunity will only end when victims and relatives achieve both truth and justice.

Attached to this document are a list of recommendations that Amnesty International believes are essential if this new entity is to be effective in confronting impunity for past human rights violations and preventing future cases.

Cases of "disappearance" reported since December 2000

Amnesty International has received well-documented information on four cases of "disappearance" since December 2000. However, the Human Rights Commission of the State of Guerrero in a report issued in March 2002 identified at least six cases of "disappearance" (including the case of Faustino Jiménez Alvarez - see below) in the state of Guerrero alone during the same period. The true number of enforced "disappearances" that have taken place is very difficult to establish. For example, in the state of Tamaulipas where there have been reports of cases in which the police are alleged to act directly or be complicit in criminal acts such as abductions or murders, relatives are extremely reluctant to come forward to seek justice.

As the cases included in this document demonstrate, repressive policing practices, including grave human rights violations, remain firmly entrenched¹⁸. Large numbers of people are still subjected to arbitrary arrest and incommunicado detention and continue to suffer torture and abuse at the hands of the security forces and agents of the prosecution services. Legislative amendments to the *Amparo* Law, have rendered a law that is meant to provide an effective remedy in cases of violations that occur during the criminal process increasingly ineffective. Under article 137, the authorities are obliged to bring a detainee before a judge if it is believed that the person is being held in secret custody by state agents.

¹⁸ See for example, *Justice Betrayed: torture in the judicial system* - AI Index: AMR 41/021/01.

However, according to article 117 the person submitting the *amparo* has to provide information, as a minimum, about the place of detention and the authority responsible. This is often impossible since in many cases, the authorities fail to acknowledge the detention or deny that they are holding the individual which makes it impossible for the petitioner to provide the requisite information. Such a limitation enables state agents to continue to hold a detainee in unacknowledged detention which seriously increases the risk of further abuse.

The criteria used by the National Human Rights Commission for taking up a case for investigation remains insufficiently clear. However, two of the cases in this report highlight apparent weaknesses in the criteria currently in use. In one of the cases, the CNDH apparently informed the plaintiffs that the case lay outside its jurisdiction as there was no evidence that federal agents had been involved. Amnesty International believes that the CNDH has a duty to investigate whether or not federal agencies are allegedly involved. In another case, a representative of the CNDH apparently accepted unsubstantiated rumours that the authorities were not involved in the "disappearance" without carrying out any further investigations.

Further reports of differing approaches to complaints of "disappearance" lodged with the CNDH suggest the use of inconsistent criteria. These apparent inconsistencies leave many victims and their relatives without adequate protection. One of the principle obligations relating to forced "disappearance" is the requirement on the state to act with urgency in order to follow up a case to establish the whereabouts of the victim (see for example the case of José de Jesús González Medina and Alejandro Martínez Dueñas who "disappeared" in the state of Colima). Delays in responding only serve the perpetrators and place the lives of victims at greater risk. Amnesty International believes the CNDH should work closely with the CEDH's to ensure a rapid and effective response to these grave human rights violations and vigorously insist that the competent authorities disclose information on the whereabouts of victims and bring those to justice with utmost urgency.

Despite promises by the new federal authorities to reform the administration of justice and put an end to systematic human rights violations and in spite of the measures that have been implemented so far, the cases that follow highlight the fact that there is no effective mechanism to carry out independent judicial investigations into reports of human rights violations committed by the military, the police or agents of the Attorney General's Office or the State Attorney General's Offices, (PGJE, *Procuraduría General de Justicia del Estado*). Amnesty International is concerned that unless fundamental legislative, administrative and judicial measures are taken at federal, state and municipal level to hold those responsible to account, gross human rights violations such as "disappearances", extrajudicial execution and torture will continue.

Faustino Jiménez Alvarez -

Faustino Jiménez Alvarez "disappeared" on 17 June 2001 after he was taken from his home in Tierra Colorada, municipality of Juan R. Escudero by members of the state judicial police (*policía judicial del estado*) of Guerrero.

In the early hours of 17 June 2001, Faustino Jiménez Alvarez and his wife and children were woken by the sound of banging on the door and the words, "judicial police, open the door" ("*policía judicial abran la puerta*"). Faustino Jiménez opened the door to five police officers who entered the house without a warrant, grabbed him by the hair and started kicking him and dragging him out of the house, down the street and into one of the vehicles stationed nearby. His wife ran after the men begging the police to stop beating her husband and not to take him away. The police told her to keep quiet and threatened to shoot her if she did not return to the house. Two other police agents arrived and took the family car away. The car was seen shortly after parked on the outskirts of Tierra Colorada. Since that night, the whereabouts of Faustino Jiménez Alvarez remain unknown.

It was thought at first that Faustino Jimenez might be in detention. Faustino Jiménez's wife went directly to the state judicial police station (PJE, *policía judicial del estado*) to ask whether they were holding her husband but was told that the police involved in the operation were based in Ciudad Renacimiento, Acapulco. In the weeks that followed the case was denounced before the Office of the Attorney General of the Republic and the Attorney General of the State of Guerrero. Appeals were also submitted to the First and Sixth District Courts (*Juzgados Primero y Sexto de Distrito*), the Third Criminal Court of First Instance of the Judicial District of Chilpancingo (*Juzgado Tercero de lo Penal de Primera Instancia del Distrito Judicial de Chilpancingo*) and the Sixth Penal Court (*Juzgado Sexto de lo Penal*) in Acapulco with a view to clarifying his whereabouts. All to no avail. The Attorney General's Office and the State Attorney General's Office denied that the judicial police had detained Faustino Jiménez.

Relatives also submitted the case to the Human Rights Commission of the State of Guerrero (CODDEHUM - Guerrero, *Comisión de Defensa de los Derechos Humanos del Estado de Guerrero*) and to the CNDH. In November, the CNDH said that the case did not fall within its jurisdiction as there was no evidence that a federal agent had been involved in the case, indicating that the case should be followed up with the State Human Rights Commission.

On 11 July, human rights organizations submitted a request for precautionary measures before the Inter-American Commission on Human Rights (IACHR, *Comisión Interamericana de Derechos Humanos*) on 11 July and to the United Nations Working Group on Disappearances. In its reply to the Inter-American Commission on Human Rights,

the Mexican Government stated that the Office of the Attorney General of the Republic and the State Attorney General had said that Faustino Jiménez had not been arrested by agents of these two bodies and that up until 20 July 2001 no complaint had been lodged on behalf of Faustino Jiménez.

On 25 July 2001, relatives of the victim lodged a complaint against two state judicial police officials, one of them a Regional Commander, for their alleged participation in the detention and "disappearance" of Faustino Jiménez. In September, the petitioners informed the IACHR that despite the direct accusations levelled against the two officers, the investigating attorney had refused during the preliminary investigations to bring them before a judge. In addition, the State Attorney General's Office had refused to recognise the special supporting role (*coadyuvancia*) of the lawyer acting on behalf of Faustino Jiménez's wife thereby making it impossible for the lawyer to review the activities of the prosecutor's office in its handling of the investigations.

In October, a police officer from the same force testified before the Human Rights Commission of the State of Guerrero. In his statement he gave the names of various police officials allegedly involved in the Faustino Jiménez's "disappearance" and stated that following his detention, Faustino Jiménez had been taken to the community of Quemado where, he said, the remains of other victims were buried.

Reports indicate that despite the complaints against them, the police officers continued in their posts for some weeks. On 4 October 2001, the State Attorney General's Office began legal action against the two men but it was not until 8 November that a judge finally issued arrest warrants on grounds of abduction. By this time the two police officials, one of whom reportedly has other charges pending, had fled the state. Amnesty International is not aware of any other steps taken by the authorities to detain these two men or to establish the fate and whereabouts of Faustino Jiménez.

On 12 October 2001, Amnesty International wrote to the Attorney General of the Republic, General Macedo de la Concha, expressing concern about the "disappearance" of Faustino Jimenez and requesting information regarding steps taken by the authorities to investigate the case. At the time of writing, the organization has received no response from the authorities. The letter also requested information about the cases of José de Jesús González Medina and Alejandro Martínez Dueñas (see below).

The State Human Rights Commission issued a recommendation on 14 March 2002 in which it recommended that the State Attorney General's Office prosecute a number of police officials in connection with the case. In its report, it severely criticised the State Attorney's Office for its repeated refusal to send the commission copies of the preliminary investigations (*averiguaciones previas*) initiated by offices of the Public Ministry in this

case and in others, for not allowing a member of the commission to act as *coadyuvante* during the preliminary investigations and for its refusal to transfer the case to the specialist human rights unit of the Public Ministry Specialized in Matters of Violations of Human Rights and the Forced Disappearance of Persons (*Agencia del Ministerio Público del Fuero Común Especializada en Materia de Violación a los Derechos Humanos y Desaparición Involuntaria de Personas*) linked to the State Commission. It dismissed the reasons given by the State Attorney General's Office for denying the Commission's requests which it said were subjective and lacked legal basis. The Guerrero State Attorney has left office but it is as yet unclear what impact this will have on the conduct of the prosecutor's office on this case or on many others in Guerrero.

In November, petitioners in the case asked the IACHR to extend precautionary measures to Faustino Jiménez's wife. In view of the role and attitude of state authorities, there is reasonable fear that Faustino Jiménez's wife may face reprisal and she is therefore currently being accompanied by members of Peace Brigades International.

José de Jesús González Medina, 25 years old, a driver
Alejandro Martínez Dueñas, 22, mechanic

The two men were arrested without a warrant in the afternoon of 30 June 2001 in Colonia Placetas Estadio in the city of Colima, Colima State. According to reports, the men were handcuffed, blindfolded and driven away. Several witnesses said that a number of men in uniform with what appeared to be police badges had been seen in the immediate area prior to the young men's arrest.

Over the following months, relatives went to a number of state and federal institutions in Colima, Guadalajara and Mexico City requesting information about their loved ones. On 11 July 2001 an appeal was submitted to the Public Ministry and on 20 July a *demanda de amparo* (similar to a writ of *habeas corpus*) was submitted to the First District Court. Representatives of the Colima Committee for Human Rights (*Comité de Derechos Humanos de Colima*) who visited the offices of the State Attorney General on behalf of the relatives were reportedly informed by the State Attorney General, Jesús Antonio Sam López, that the two men were in the hands of the Attorney General's Office in Guadalajara, Jalisco on charges of forging banknotes (*falsificación de billetes*). Relatives were informed by the State Attorney General that in view of the charges, the case was a federal matter.

In August a relative of José de Jesús González Medina lodged a complaint with the Specialized Unit against Organized Crime (*UEDO, Unidad Especializada contra la Delincuencia Organizada*) of the PGR which six weeks later declared itself without jurisdiction to investigate. The same month Alejandro Martínez's mother wrote to the

Attorney General of the Republic General Macedo de la Concha asking for information about the two men. A file was opened in the office of the General Directorate for the Prevention of Crime and Services to the Community (*Dirección General de Prevención del Delito y Servicios a la Comunidad*) who requested information from offices of the PGR in several states. Towards the end of the month, relatives of Alejandro Martínez Dueñas were informed by the office of the Attorney General of the Republic that he was not in custody nor were there any judicial orders pending against the two men. In spite of this, in September, the State Attorney General was reported to have said the two men were involved in acts of forgery, drug trafficking and car theft.

© private. Alejandro Martínez Dueñas

On 6 November 2001, along with other members of the *Comité Eureka*, the sister of José de Jesús González Medina accompanied Rosario Ibarra to a meeting with President Fox and Minister of the Interior, Santiago Creel in which her brother's case was raised. On 23 November the UEDO took up the case again and it was only at this point that the PGR went to Colima.

The case had been submitted to the National Commission for Human Rights in July 2001. When a relative returned to the office a month later, she was reportedly informed that the CNDH was busy working on old "disappearance" cases and would not be able to send anyone to Colima until November 2001. By May 2002, the whereabouts of the two men remain unknown.

Jerónimo Gómez López

Jerónimo Gómez López was detained in the early hours of the morning of 20 December 2000 as he was returning to his home in Simojovel, Chiapas with medicine for a sick child. The following day, members of the municipal police in Simojovel drove Jerónimo Gómez to his home and while he remained in the police vehicle, searched his home for weapons and drugs. His wife said that she was allowed to speak to him for a few minutes. In the course of their conversation, he informed her that he had been severely beaten and told her not to put up any resistance to the police. The police reportedly found a rifle in the house which they took away.

Later that day, Jerónimo Gómez's wife went to the municipal jail with her father-in-law to take her husband some food. She was informed that she was not allowed to see him. Over the following three days, she tried to see him various times but each time she was

denied access to him. Jerónimo Gómez reportedly shouted to his wife that it would be better if she went away or they would continue to beat him.

On 23 December 2000 when Jerónimo Gómez's wife went again to visit her husband, she was told by the police that they had decided to transfer him to the town of Tuxtla Gutiérrez but that during the journey, they had been ambushed by armed men whose faces were covered who had abducted Jerónimo Gómez. Since then, Jerónimo Gómez remains "disappeared".

The Fray Bartolomé de las Casas Centre for Human Rights presented the case to the National Commission for Human Rights who visited the area in March 2001. According to reports, the CNDH investigator who went to the area accepted without seeking to investigate further rumours circulating that the authorities were not involved in the "disappearance" of Jerónimo Gómez.

The commander of the municipal police reportedly responsible for detaining Jerónimo Gómez was transferred following municipal elections.

In March 2002, Jerónimo Gómez's wife went to the Public Ministry for information about the case where she was allegedly informed that there was nothing new to report

APPENDIX ONE

General recommendations for the prevention of "disappearances"

Amnesty International urges the Mexican Government and other relevant institutions to adopt and implement the following measures:

- introduce legislation making "disappearance" at the hands of all state agents whether federal, state or municipal or those acting on their behalf a criminal offence, punishable by sanctions commensurate with the gravity of the crime;
- take urgent measures to initiate prompt and thorough investigations into new cases, including the apparent complicity of the authorities in covering up these crimes, to bring to justice those responsible and ensure their relatives receive adequate reparations;
- investigate and prosecute any state agent implicated in "disappearances" no matter how much time has elapsed since the commission of the crime. Because of the persistent failure of the military justice system to hold impartial trials, all investigations and trials should be in civilian courts. The perpetrators should not benefit from any legal measures exempting them from criminal prosecution or conviction;
- ensure that all military officials suspected of involvement in "disappearance" cases and other serious human rights violations including extrajudicial executions and torture are investigated and tried by the civilian judicial authorities and that steps are taken by the authorities to recognise that these crimes cannot be considered as acts of service;
- conduct a review of all police and military practices of arbitrary detention which currently encourage "disappearance" and ensure that:
 - accurate information about the arrest of any person and about his or her place of detention, including transfers and releases be made available promptly to relatives, lawyers and the courts. Prisoners should be released in a way that allows reliable verification of their release and ensures their safety;
 - effective judicial remedies are available which enable relatives and lawyers to find out immediately where a prisoner is held and under what authority, to ensure his or her safety, and to obtain the release of anyone arbitrarily detained;
 - prisoners are only held in publicly recognised places of detention, that up-to-date registers of all prisoners are maintained in every place of detention and

centrally and that these registers are made available to relatives, lawyers, judges and official bodies trying to trace people who have been detained;

- arrest and detention are only carried out by officials who are authorized by law to do so, that they always identify themselves to the person arrested, that uniforms are clearly marked with the insignia of the battalion or detachment, that police and military vehicles are clearly identified as such and display licence plates at all times and that detainees are only taken into custody on the basis of an arrest warrant issued by a judge (except where genuinely detained *en flagrante delicto*);¹⁹

- prisoners are brought before a judicial authority without delay after being taken into custody, that relatives, lawyers and doctors have prompt and regular access to them and that regular, independent, unannounced and unrestricted visits of inspection to all places of detention are carried out;

- establish a nationwide mechanism for monitoring the movements of public officials accused of human rights violations in order to ensure that they cannot escape investigation or prosecution through transfer to another jurisdiction;

- officials suspected of responsibility for "disappearances", extrajudicial executions or torture should be suspended from active duty during the investigation and any subsequent prosecution;

- establish in investigations chain-of-command responsibility for human rights violations and investigate patterns of human rights violations as well as individual cases. Anyone found to have ordered, committed or covered up human rights violations should be brought to justice;

- ensure special efforts are taken to protect the safety and integrity of relatives, witnesses, lawyers and journalists collaborating with investigations of human rights violations;

¹⁹ It is important to note that in Mexico the definition of *en flagrante delicto* is extremely broad. For example, among the provisions of article 193 of the Federal Code of Criminal Procedure is one that allows for the suspect of a serious crime to be arrested up to 48 hours after the crime was committed. In practice this means that detentions without a judicial warrant are almost as frequent as those with one.

- victims of "disappearance" and their dependants should be entitled to fair and adequate redress from the state including financial compensation. Victims who are released should be provided with appropriate medical care or rehabilitation;
- ensure that law enforcement personnel and other agencies receive adequate training on national and international standards which protect human rights and instruction on how to enforce them properly;
- effectively implement the Inter-American Convention on Forced Disappearance of Persons, the United Nations Covenant on Civil and Political Rights and the United Nations Convention against Torture and Other Cruel, Inhuman and Degrading Treatment;
- investigate and put an end to the activities of all paramilitary groups operating in the country, bring those linked to paramilitary groups responsible for human rights violations to justice, and ensure the effective disbandment of these groups;
- the CNDH should investigate pro-actively all reports of forced "disappearance" whether state or federal agents are involved. The CNDH should collaborate with CEDHs where necessary in order to ensure a rapid and effective response to complaints of forced "disappearance".

APPENDIX TWO

Recommendations to the Mexican Government regarding the Special Prosecutor's Office (*Fiscalía Especial*)

The implementation of the following recommendations would be a practical expression of the Mexican Government's stated commitment to bringing to justice those responsible for "disappearances" over the last three decades.

1. The *Fiscalía Especial* should have structural and operational independence from any government institution. Its terms of reference, its powers and mandate should be clearly defined, and its working methods should be clarified. It should be able to select members of the *Fiscalía* team independently of the Attorney General of the Republic's office.
2. Effective mechanisms should be put in place to allow for the investigation of all the cases of "disappearances" denounced in the last three decades as well as cases that have been denounced since the new administration took office.
3. The *Fiscalía Especial* should have all the necessary resources, including adequate financial independence, to examine, thoroughly, effectively, speedily and throughout the country, the evidence and other case material relating to cases of "disappearance". It should not only rely on information provided in the report of the National Commission for Human Rights but should also seek information from relatives of the victims, witnesses and non-governmental organizations, as well as from the police and military.
4. The selection and appointment of the five members of the *Comité Ciudadano de Apoyo* should involve representatives of civil society and be carried out in a manner that is fair and transparent. The members should be selected on the basis of proven expertise, knowledge and experience in the field of human rights. They should consist of men and women known for their integrity and impartiality of judgement who shall decide on the cases before them on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences from any quarter or for any reason, for example, allegiances or strong links with the executive branch of government. The terms of appointment, tenure and removal should be clearly specified in the *fiscalía's* charter.
5. The *Fiscalía Especial* should report publicly on its activities and be held accountable for its results in order that it addresses the "disappearance" cases effectively and does not become yet another instrument of impunity.

6. The *Fiscalía Especial* should take as its frame of reference the definitions of human rights set out in international human rights instruments and standards.

7. The *Fiscalía Especial* should be given investigative powers to search unannounced and unaccompanied military, police and intelligence facilities and archives. It should also be given full and effective powers to compel the attendance of those implicated in carrying out, ordering or acquiescing in "disappearances", and the disclosure and production of documents and other items of evidence. Effective sanctions should be in place to prevent this work from being obstructed or otherwise interfered with. Institutions that fail to cooperate with the investigations should be compelled to comply.

8. The *Fiscalía Especial* should take steps to ensure that the voices of relatives and witnesses are fully taken into account and that they are treated appropriately. They should be allowed to present evidence and be kept informed of the process and progress of the investigation. In individual cases, representatives of families of victims should have full supporting status (*coadyuvancia*).

9. All those who collaborate with the *Fiscalía Especial* as witnesses or complainants should be offered effective guarantees for their safety.

10. The *Fiscalía Especial* should have access to statements, documentary evidence and other information relating to military or security force intelligence relevant to the cases and situations under investigation. Medical-legal records and existing court files should be placed at its disposal. Where the findings of the CNDH report have been inconclusive or otherwise unsatisfactory, the *Fiscalía Especial* should undertake a prompt, thorough, effective and impartial investigation and should not be hampered or otherwise inhibited by following the conclusions of the CNDH investigation. Investigations should not simply constitute an examination of existing police or other investigations files. Special measures should be put in place to collect and protect evidence uncovered during the investigations.

11. Civilian or military officials, whether retired or in active service, should be compelled to cooperate with the inquiries of the *Fiscalía Especial*.

12. The *Fiscalía Especial* should have precisely defined powers to investigate on its own initiative, without having to receive formal complaints of human rights violations.

13. Anyone the *Fiscalía Especial* identifies as responsible for committing human rights violations or to have ordered, encouraged or permitted them, were public officials or had any other links with the State should automatically be charged and brought before the civilian courts.

The decisions of the *Fiscalía General* to continue with the investigations and recommend prosecutions or not must be transparent, closely consulted with the *Comité Ciudadano de Apoyo* and ultimately be open to external evaluation.

14. The *Fiscalía Especial* should seek to establish chain-of-command responsibility, so that judicial proceedings may be initiated against superior officers or state officials for acts committed under their authority, including failure to prevent such crimes;

15. The *Fiscalía Especial* should be able to draw on the services of independent experts in the field of pathology, forensic anthropology and ballistics, in order to carry out the search, recovery and identification of human remains and to determine the cause and circumstances of death, as well as to verify allegations of torture. The methodology to be employed in exhumations, autopsies and forensic analyses should conform to the model protocols proposed by the United Nations, based on the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, on the Model Autopsy Protocol included in the UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions and the the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the "Istanbul Protocol") .

16. The full collaboration of the judiciary should be ensured. In particular, efforts should be made to ensure thorough prior training of judges who will hear the cases in terms of international law and elements of proof and judicial oversight bodies should scrutinise legal arguments and decisions made by judges.