

**Before the
Inter-American Court of Human Rights**

Case of Alvarado Espinoza et al

v.

Mexico

***Amicus curiae* brief**

Submitted by

Amnesty International

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**AMNESTY
INTERNATIONAL**



I. INTRODUCTION

Amnesty International hereby addresses the Inter-American Court of Human Rights (hereinafter the “Inter-American Court” or “Court”) to submit this *amicus curiae* brief, pursuant to Article 44 of the Court’s Rules of Procedure, in the case of Alvarado Espinoza et al v. Mexico.

Amnesty International is a global movement of more than seven million supporters, members and activists in over 150 countries and territories who campaign to end human rights violations and abuses. The organization’s vision is of a world in which all people enjoy the human rights set out in the Universal Declaration and other international human rights standards.

As part of this human rights work, the organization approaches national and international courts, as a friend of the court, to submit factual and legal arguments on issues relevant to human rights.

The Inter-American Commission on Human Rights (hereinafter the “IACHR” or “Commission”) referred this case to the Court on 9 November 2016.¹ This case involves events that happened to the Alvarado family (hereinafter “the victims”²) from 29 December 2009 onwards, in which Nitza Paola Alvarado Espinoza, José Ángel Alvarado Herrera and Rocío Irene Alvarado Reyes were the likely victims of enforced disappearance at the hands of the Mexican military in Ejido Benito Juárez, Chihuahua State, Mexico, and whose fate or whereabouts remain unknown.

Amnesty International is submitting this *amicus curiae* brief to provide the Court with reasoned arguments regarding the factual background to the case and legal considerations regarding the proceedings, in particular with regard to Mexico’s public security policy based on deployment of the armed forces. In the first section, the organization provides further information on the impact that use of the armed forces has had on human rights in Mexico as well as information on the recently approved Internal Security Law. The organization then sets out the different international standards on human rights and use of force in relation to use of the armed forces, including the strict exceptional circumstances imposed by international law on the limited use of the armed forces in tasks of public security; the need to establish adequate civilian limits and controls on this work and to ensure accountability for human rights violations and crimes under international law committed during its implementation; the need for a sufficient legal and administrative framework governing the proper use of force and firearms; along with appropriate training and evaluation mechanisms to ensure that military elements are able to perform the role of law enforcement officials. It is Amnesty International’s opinion that if states are unable to guarantee compliance with such requirements then the armed forces should not be deployed for tasks of public

¹ IACHR. [Merits Report 3/16](#). Case 12.916 Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Ángel Alvarado Herrera et al (Mexico) OEA/Ser.L/V/II.157, Doc. 7, 13 April 2016. IACHR. [Nota de remisión](#) referring the case to the Inter-American Court of Human Rights, signed by Dr. Elizabeth Abi-Mershed, Deputy Executive Secretary of the Inter-American Commission, 9 November 2016 (available only in Spanish).

² See those considered victims according to the determination of the Inter-American Commission in its merits report. IACHR. [Merits Report 3/16](#). Case 12.916 Nitza Paola Alvarado Espinoza, Rocío Irene Alvarado Reyes, José Ángel Alvarado Herrera et al (Mexico), *Op. cit.*

security. Finally, the organization presents arguments on the admissibility of the Internal Security Law as a supervening fact in this case.³

II. MEXICO'S PUBLIC SECURITY STRATEGY AND APPROVAL OF THE INTERNAL SECURITY LAW

The details of this case relate to the so-called “war on organized crime”, which has formed the focus of Mexico’s public security policy in its response to organized crime and drug trafficking. This policy has been promoted by the federal government since the start of then President Felipe Calderón Hinojosa’s administration in 2006.⁴ This policy has been based on a massive deployment of the armed forces (both by the Ministry of Defence and the Ministry of the Navy) to undertake public security tasks that would normally be the responsibility of the police force, with significant autonomy on their part and without the need for coordination with or direct subordination to the civilian authorities. Actions undertaken as part of this policy include patrols, checkpoints, detentions, raids, crime scene interventions and so on.⁵ The police and other law enforcement agencies have also been provided with military techniques, training and equipment or have had active or retired soldiers placed under their command.⁶

The Inter-American Commission itself has noted “[...] with extreme concern that the involvement of the armed forces in citizen security activities continues, and there is no expected date for its conclusion”⁷ and that a crisis has developed within this context that has resulted in serious human rights violations, such as displacements of people and enforced disappearances.⁸

³ It has come to Amnesty International’s attention that the victims’ representation has submitted the Internal Security Law to the Court as a supervening fact under Article 57.2 of the Inter-American Court’s Rules of Procedure. Women’s Human Rights Centre (CEDEHM). Written communication to Amnesty International, 9 April 2018. See also CEDEHM. [Por primera vez la Corte Interamericana de Derechos Humanos juzgará a México por desaparición forzada de personas dentro de la fallida estrategia de seguridad militarizada](#), 24 April 2018. (only available in Spanish). Inter-American Court. *Case of Alvarado Espinoza et al. v. Mexico*. Public hearing on merits and possible reparations. Closing arguments San José de Costa Rica, 27 April 2018.

⁴ President Felipe Calderón Hinojosa used the concept of “war on crime” for the first time in a speech on 4 December 2006. On 11 December 2006, Joint Operation Michoacán was publicly announced, being the initial roll-out of this strategy. Mexico. Office of the Presidency. [Palabras del presidente de los Estados Unidos Mexicanos, Lic. Felipe Calderón, durante la ceremonia de inauguración del Foro de inversiones y cooperación empresarial hispano-mexicano](#). 4 December 2006. Mexico (available only in Spanish). Office of the Presidency. [Anuncio sobre la Operación Conjunta Michoacán](#), 11 December 2006 (available only in Spanish).

⁵ This is a continuation, on a larger scale, of the policy already being implemented by the Mexican government with regard to national and public security in some territorial districts. See in this regard IACHR. [Situation of Human Rights in Mexico](#), 31 December 2015, OEA/Ser.LV/II. Doc. 44/15, para. 37 and Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 26 November 2010. Series C No. 220, para. 82.

⁶ United Nations. *Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico*, 20 December 2011, A/HRC/19/58/Add.2, para. 24.

⁷ IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* para. 40.

⁸ IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* para. 27. Also, United Nations. *Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico*, *Op. cit.* paras. 23 to 26.

Implementation of the “war on crime” policy has included large-scale deployments of the armed forces (acting alone or in joint operations)⁹, the appointment of military personnel to head up civilian security institutions¹⁰ and a transfer of knowledge and arms from the military to these institutions. This strategy has been financially supported by the so-called “Merida Initiative”, an agreement by which financial and material resources have been transferred from the United States of America to Mexico to support security strategies.¹¹

This public security policy has not reduced crime in the country, which has instead been increasing since 2006. The murder rate, for example, increased from 8 per 100,000 inhabitants in 2007 to 20 per 100,000 in 2016.¹² Since the start of this strategy, two phenomena have emerged in Mexico that are unprecedented in their scale and geographic scope:¹³ the disappearance of individuals and forced displacements.¹⁴ Official records of those who have disappeared or been reported missing indicate that there are now more than 35,000 people whose whereabouts are unknown,¹⁵ many of whom may have been subject to enforced disappearance.¹⁶ In addition, thousands of people have been forced to leave their communities due to the security situation, because it was placing them in serious danger. The

⁹ Mexico. Office of the Presidency. [Sexto informe de gobierno](#), 1 September 2012, p. 41 (available only in Spanish); Office of the President. [Quinto informe de gobierno 2016-2017](#), August 2017, pp. 66 and following (available only in Spanish); and Office of the Presidency. Alejandro Poiré Romero. [Los operativos conjuntos](#), 16 May 2011 (available only in Spanish).

¹⁰ United Nations. *Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico*, *Op. cit.* para. 24.

¹¹ The Merida Initiative or the “Security Cooperation Programme [of] the United States, Mexico, Central America, Dominican Republic and Haiti” was officially announced on 22 October 2007 with an initial budget of USD 1,400 million for its first three years. Armando Rodríguez Luna “La Iniciativa Mérida y la guerra contra las drogas: Pasado y presente”, in Colectivo de Análisis de la Seguridad con Democracia A.C. (CASEDE) *Crímen organizado e Iniciativa Mérida en las Relaciones México-Estados Unidos* Mexico City: 2010, p. 44 (available only in Spanish). As of 2017, some USD 2,800 million had been channelled to Mexico via the Mérida Initiative. Clare Ribando Seelke and Kristin Finklea, “U.S.-Mexican Security Cooperation: The Merida Initiative and Beyond”, Congressional Research Service, Washington DC, February 2016.

¹² Mexico. National Institute for Geography and Statistics (INGE). [Estadísticas vitales](#) (available only in Spanish). When calculating rates, data from the National Population Council (CONAPO) has been used. Mexico. CONAPO. [Estimaciones y proyecciones de población por entidad federativa](#) (available only in Spanish). There are no figures for 2017 but the Executive Secretariat of the National Public Security System (SNSP) has publicly stated in this regard, on the basis of investigations into possible murders, that the rate for that year was likely to have been 20.52 per 100,000 inhabitants. Mexico. Ministry of the Interior. [Tasas por cada 100 mil habitantes 1997-2017](#), 31 December 2017 (available only in Spanish).

¹³ Forced disappearances and displacements were recorded prior to 2006 but not on the scale that they have been reported since the start of the “war on crime” strategy.

¹⁴ IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* paras. 27 and 285 to 291.

¹⁵ The National Registry of Missing or Disappeared Persons (RNPED) indicates that there are currently 35,437 people (8,987 women and 26,437 men) disappeared or missing. Mexico. Ministry of the Interior, Executive Secretariat of the National Public Security System [RNPED: Estadísticas y notas metodológicas](#) (available only in Spanish).

¹⁶ United Nations. *Report of the Working Group on Enforced or Involuntary Disappearances, Mission to Mexico*, *Op. cit.* United Nations. *Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention*, 5 March 2015, CED/C/MEX/CO/1, para. 10. Human Rights Watch. [Mexico's Disappeared: The Enduring Cost of a Crisis Ignored](#), 2013. Amnesty International. [Treated with indolence: the State's response to disappearances in Mexico](#), 14 January 2016, (Index: AMR 41/3150/2016).

National Human Rights Commission (CNDH) considers in this regard that “in most cases, displacement is a consequence of a lack of State protection and subsequent violation of different human rights”.¹⁷

Implementation of Mexico’s current security policy has resulted in a wide public debate on the legal basis for the armed forces’ involvement in tasks of public security.¹⁸ As part of this public policy, Mexico’s Congress of the Union approved the Internal Security Law in December 2017, a legislative text that extends the armed forces’ power to undertake tasks of public security. This law was published in the Official Journal of the Federation on 21 December 2017 and came into force the next day.¹⁹

The law was approved despite serious opposition during the legislative process from Mexican academics and civil society,²⁰ as well as international human rights bodies²¹ and organizations, including the Inter-American Commission,²² the UN High Commissioner for Human Rights²³ and seven of the United Nations’ special human rights procedures.²⁴

The law is intended to regulate the president’s powers to use the armed forces for national security issues,²⁵ as contained in Article 89, subsection VI of the Constitution, which indicates:

¹⁷ National Human Rights Commission (CNDH). [Informe especial sobre desplazado forzado interno \(FDI\) en México](#), Mexico City, May 2016, para. 389 (available only in Spanish).

¹⁸ Ana Paula Ordorica. [El Ejército y la ley](#), in *Nexos*, 1 December 2011 (available only in Spanish); Marcos Pablo Moloeznik and María Eugenia Suárez de Garay. [El proceso de militarización de la seguridad pública en México \(2006–2010\)](#), in *Frontera norte* vol.24 no.48 Mexico Jul./Dec. 2012; Mexico (available only in Spanish). Chamber of Deputies, LXIII Legislature. [Actualizar marco jurídico para fortalecer a las fuerzas armadas en su apoyo en tareas de seguridad pública, plantean diputados](#). Bulletin No. 0235, Mexico City, San Lázaro Parliamentary Building, 15 October 2015; Mexico (available only in Spanish). Speech by the Divisional General, Salvado Cienfuegos Zepeda, Minister of National Defence. Carried by various press media. [Militares no estudiamos para perseguir delincuentes: Cienfuegos \(Video\)](#), in *Aristegui Noticias*, 8 December 2016 (available only in Spanish), and in Jesús Aranda. [Exige Cienfuegos regularizar función de las fuerzas armadas](#), in *La Jornada*, 9 December 2016 (available only in Spanish); and, Mexico. Office of the Presidency. [Palabras del Presidente. licenciado Enrique Peña Nieto, durante la Ceremonia Conmemorativa del Día de la Armada de México 2017](#), 23 November 2017 (available only in Spanish).

¹⁹ Mexico. [Ley de Seguridad Interior](#). *Official Journal of the Federation* (evening edition), 21 December 2017 (available only in Spanish).

²⁰ See the [Pronunciamiento conjunto](#) of the “Seguridad sin Guerra” collective, 27 November 2017 (available only in Spanish).

²¹ International Observatory on Mexico. [In Response to Internal Security Law, International Organizations Form New Coalition to Draw Global Attention to Rampant Impunity in Mexico](#), Washington DC, New York, Stuttgart and Geneva, 18 December 2017. Amnesty International. [Open letter to Mexican President: veto the Law on Interior Security](#), 18 December 2017 (Index: AMR 41/7616/2017).

²² IACHR. [IACHR Expresses Concern regarding Draft Law on Internal Security in Mexico](#), Washington DC, 4 December 2017.

²³ OHCHR. [Zeid urges Mexico not to pass proposed internal security law](#), Geneva and Mexico City, 5 December 2017.

²⁴ OHCHR. [Mexico draft security law threatens rights and should be rejected, UN rights experts warn](#), Geneva, 14 December 2017.

²⁵ This is established in both Article 1 of the law and in the preamble to the opinion issued by the Chamber of Deputies with regard to this law during the corresponding legislative process. Mexico. Chamber of Deputies, LXIII Legislature. [Dictamen de la Comisión de Gobernación con proyecto de](#)

Article 89. The powers and duties of the President are as follows:

[...] VI. To maintain national security, under the terms of the respective law, and to dispose of all the permanent Armed Forces whether Army, Navy or Air Force, for the internal security and external defence of the Federation. [...].²⁶

The Internal Security Law lays out powers that enable the security forces, including the military, to take whatever action necessary to identify, prevent and address “threats to the internal security” of Mexico. Some of the law’s regulations are activated by means of a Declaration of Internal Security Protection, issued by the President of the Republic, while others are generic and ongoing and require no such Declaration.

The main effect of the law is to perpetuate the Mexican armed forces’ involvement in tasks of public security.²⁷ The central objective of the law is not to coordinate the different authorities but rather to provide a legal framework for the military’s involvement in security tasks, as confirmed by the President of Mexico:

One area pending legislative initiative was that of regulating the intervention of our military and naval personnel in the fight against criminal organizations. [...] The lack of any secondary legislation has resulted in uncertainty, both for members of the Armed Forces participating in security tasks and for the public more generally. In order to fill this legal vacuum, the Congress of the Union has sent me this decree issuing the Internal Security Law.²⁸

It can thus be concluded that the aim of the Internal Security Law is to enshrine in legislation the public security strategy, in place since 2006, of deploying the Mexican Armed Forces, and that its central objective is specifically to provide regulations governing the continuation of this military presence.

III. INTERNATIONAL HUMAN RIGHTS STANDARDS AND USE OF FORCE IN RELATION TO THE USE OF THE ARMED FORCES IN TASKS OF PUBLIC SECURITY

Exceptional nature of the use of the armed forces in tasks of public security

The Court has established that although States Parties to the American Convention can deploy the armed forces in situations other than armed conflicts, for example, to tackle exceptional problems of crime or internal violence, they must always “limit the use of the Armed Forces to the maximum”.²⁹

[decreto por el que se expide la Ley de Seguridad Interior](#). Parliamentary Gazette, Year XXI, Number 4917-VI, Mexico City, San Lázaro Parliamentary Building, 30 November 2017, p. 24 (available only in Spanish).

²⁶ Mexico. [Constitución Política de los Estados Unidos Mexicanos](#), *Official Journal of the Federation*, 5 February 1917, last reform 15 September 2017 (available only in Spanish).

²⁷ The law establishes the legal fiction that no activity exercised pursuant to this legislation will have the nature of an act of public security. The second paragraph of Article 18 thus establishes, “In no case shall Actions of Internal Security undertaken by the Armed Forces be considered as or have the status of public security”. However, the definition of internal security established in the law itself is so ambiguous that it covers aspects of both national and public security. See in this regard the comments on Article 2 of the law in this document.

²⁸ Mexico. Office of the Presidency. [Palabras del presidente, licenciado Enrique Peña Nieto, durante la 43 Sesión del Consejo Nacional de Seguridad Pública](#), 21 December 2017 (available only in Spanish).

²⁹ Inter-American Court. *Case of Montero Aranguren et al (Catia Detention Centre) v. Venezuela*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 5 July 2006. Series C No. 150,

The Court has furthermore established strict limits on the use of armed forces in actions that affect the right to personal liberty (Article 7 of the Convention), such as the detention or arrest of persons. In this regard, the Court established that: “The possibility of assigning the Armed Forces tasks aimed at restricting the personal liberty of civilians, in addition to meeting the requirements of strict proportionality in the restriction of a right, must respond, in turn, to strict exceptional criteria and due diligence in the protection of treaty guarantees”.³⁰

To reach such a conclusion, the Inter-American Court took into account the fact that military personnel undergo specific training aimed at their involvement in armed conflicts, and so “they are trained to fight against enemies and not to protect and control civilians, a task that is typical of police forces”,³¹ and that “the system of the armed forces, from which it is difficult for members to remove themselves, is not compatible with the functions of civilian authorities”.³²

For these very reasons, and bearing in mind the seriousness of the violations that can occur during deployment of the armed forces (and which have in fact been documented in Mexico),³³ Amnesty International considers that the exceptional requirement for deploying the armed forces must also be extended to actions that put the right to life (Article 4 of the Convention) and to personal integrity (Article 5 of the Convention) at risk.

Despite Inter-American case law being available in this regard, Mexico’s security policy for dealing with organized crime and other related phenomena has not taken into account the exceptional circumstances that must precede the use of the armed forces for such duties. Furthermore, the Internal Security Law, which enshrines this policy in legislation, extends the role of the armed forces in public security yet further.

This can clearly be seen in the fact that this policy is being applied generally, across wide areas of the country, even though no specific evaluation has been forthcoming that would justify the deployment of armed forces in specific places or contexts,

para. 78; *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. Judgment of 4 July 2007. Series C No. 166. Para. 51; *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 88.

³⁰ Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 88. See also: Inter-American Court. *Case of Osorio Rivera and family v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 26 November 2013. Series C No. 274, para. 122.

³¹ Inter-American Court. *Case of Montero Aranguren et al (Catia Detention Centre) v. Venezuela*. *Op. cit.* para. 78; *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 88; *Case of Zambrano Vélez et al v. Ecuador*. *Op. cit.* para. 51.

³² Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 89.

³³ The Inter-American Commission established that “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.” IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* paras. 87 and 88. For its part, Amnesty International has documented numerous cases of human rights violations committed by the armed forces during their deployment as law enforcement officials. For example, in the case of Claudia Medina, who was arrested and tortured by navy marines in 2012 (Amnesty International. [Out of control: Torture and other ill-treatment in Mexico](#), 4 September 2014, Index: AMR 41/020/2014); in the extrajudicial execution, at the hands of a soldier, of a man lying face down on the floor and who appeared to represent no threat, in Palmarito, Puebla, in 2017 (Amnesty International). Mexico: [Open letter to the President on a possible extrajudicial execution](#), 25 May 2017, Index: AMR 41/6347/2017); and in the case of Armando del Bosque Villareal, who was found murdered in 2013 days after being forcibly disappeared by Mexican marines, Amnesty International. [Mexico: body of disappeared man found](#), December 2013 (Index: AMR 41/076/2013).

and the armed forces have not been responding solely to a reasoned and justified request from a civilian authority in each case. The Internal Security Law does not address this situation as it does not restrict the use of the armed forces to the most serious or urgent situations but holds to an ambiguous definition that is not in line with the principles of need and proportionality and which thus empowers the armed forces to intervene in an indeterminate number of cases. More specifically, the law defines “internal security” in the following terms:

Article 2. Internal Security is the condition provided by the Mexican State that enables the permanence and continuity of its government orders and institutions, as well as national development, to be safeguarded by maintaining the constitutional order, the rule of law and democratic governance throughout the national territory. It includes the set of bodies, procedures and actions needed for these purposes, respecting human rights throughout the national territory, as well as providing assistance and protection to states and municipalities from risks and threats that may compromise or affect national security under the terms of this Law.

The extremely open texture of this provision is incompatible with Mexico’s obligation, as State Party to the American Convention, to take the necessary measures - including legislative - to guarantee free and full exercise of the rights contained therein (Articles 1 and 2 of the Convention). This is because this definition means that instead of being subject to a clear system of restrictions - strict limitations relating to a clearly established and legitimate objective³⁴ - people under Mexican jurisdiction are open to potential discretionary and arbitrary decisions.³⁵

As previously noted, the law stipulates when a Declaration of Internal Security Protection must be issued before some of its mechanisms can be triggered (such as the authorities’ duty to coordinate under a single command structure, to maintain a necessary level of financial investment to face up to the threat, or to create a specific protocol for action³⁶). This Declaration is only compulsory, however, in cases where the “threat” is considered to exceed the capacities of the relevant authorities or when the “threat” arises from a problem of cooperation between different authorities,³⁷ without assessing the severity of the situation for which the respective Declaration might be required.

Moreover, a Declaration is not needed, and nor is a reasoned and justified written decision, for the armed forces to undertake tasks of “identifying, preventing and addressing” the risks envisaged in the National Risks Agenda or in the National Security Program.³⁸ These are classified documents in Mexico, and access is therefore restricted to a few authorities,³⁹ thus preventing sufficient information

³⁴ See, in this regard, *mutatis mutandis*, Inter-American Court. *Case of Zambrano Vélez et al v. Ecuador*. Merits, Reparations and Costs. *Op. cit.* para. 52.

³⁵ Office of the United Nations High Commissioner for Human Rights in Mexico. [Observaciones Preliminares de la ONU-DH al Proyecto de Decreto por el que se expide la Ley de Seguridad Interior](#). Anexo a la Carta remitida al Senado el pasado lunes 4 de diciembre sobre el Proyecto de Decreto por el que se expide la Ley de Seguridad Interior, 4 December 2017, OACNUDH/REP203/2017, p. 1 (available only in Spanish).

³⁶ Internal Security Law. *Op. cit.* Articles 19, 20 and 23 respectively.

³⁷ Internal Security Law. *Op. cit.* Article 11.

³⁸ Internal Security Law. *Op. cit.* Articles 6, 16 and 26.

³⁹ This classification derives from Articles 4, 104 and 113 subsection 1 of the General Transparency and Access to Public Information Act, and from Articles 50 to 52 of the Internal Security Law. The

from being obtained with which to assess the possible reasons for an action based on the Internal Security Law.

With the enactment of the Internal Security Law, the Mexican state is standardizing and expanding its policy of deploying armed forces for public security actions, a policy that it has been implementing in the country since 2006. It is Amnesty International's opinion that this state practice contradicts the standards of exceptionality deriving from the American Convention and further developed by the Inter-American Court. These standards include a requirement for strict proportionality when restricting a right due to strictly exceptional criteria and due diligence in the safeguarding of treaty guarantees, as a minimum, when the rights to life, personal integrity and personal liberty are under threat.

Limits and controls in the use of the armed forces

As established by this Court, if the deployment of the armed forces for tasks of public security is to be genuinely exceptional and limited to the maximum,⁴⁰ this deployment must be subject to limitations in both time and place. Otherwise, there is a risk that allegedly extraordinary measures will be perpetuated and become normal daily practice.

There are no limitations to the deployment of the armed forces for tasks of public security in Mexico, either in terms of time or place. The armed forces have been used to differing extents for decades, at least since the 1960s⁴¹ and to a far greater extent since President Felipe Calderón launched the so-called "war on organized crime" in 2006.⁴² Throughout this time, the Mexican authorities have publicly maintained that use of the armed forces for tasks of public security was a temporary measure, geographically limited, and subordinate to the civilian authorities.⁴³

Centre for National Research and Security (CISEN) has, in fact, classified the National Risk Agenda as privileged information for the last 12 years. Mexico. [Ley General de Transparencia y Acceso a la Información Pública](#), *Official Journal of the Federation*, 4 May 2015 (available only in Spanish); [Ley de Seguridad Nacional](#), *Op. cit.* (available only in Spanish); and, Ministry of the Interior, Centre for National Research and Security, [Acta CT/098/16](#) of the Transparency Committee, 11 July 2016 (available only in Spanish).

⁴⁰ Inter-American Court. *Case of Montero Aranguren et al (Catia Detention Centre) v. Venezuela*. *Op. cit.* para. 78; *Case of Zambrano Vélez et al v. Ecuador*. Merits, *Op. cit.* para. 51; *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 88.

⁴¹ IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* para. 37.

⁴² Initiated through "Joint Operation Michoacán" announced on 11 December 2006. Mexico. Office of the Presidency. [Anuncio sobre la Operación Conjunta Michoacán](#). 11 December 2006 (available only in Spanish).

⁴³ Inter-American Commission on Human Rights *Impacto de las políticas de seguridad pública sobre los derechos humanos en México*. Thematic hearing. Speech by Mr Alejandro Negrín M., Director General of Human Rights and Democracy, Ministry of Foreign Affairs, 22 October 2008, minute 34 and following (available only in Spanish). Inter-American Court. *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 78. United Nations. *Report of the Working Group on Enforced or Involuntary Disappearances, Addendum, Mission to Mexico*. 20 December 2011, A/HRC/19/58/Add.2, para. 23. Mexico. Office of the Presidency. [\[Palabras del\] presidente Calderón en la ceremonia del Día del Ejército Mexicano](#), 19 February 2011 (available only in Spanish). IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* para. 90. Mexico. Office of the Presidency. [Palabras del Presidente \[Enrique Peña Nieto\], durante Ceremonia de Entrega de Menciones Honoríficas a Unidades y Personal del Ejército, Armada y Fuerza Aérea](#), 26 July 2017 (available only in Spanish).

Nevertheless, the deployment of the armed forces across the national territory thus far has been given no expected date for its conclusion.⁴⁴ Moreover, the Internal Security Law contains no provisions that would provide a clear and appropriate limit to the armed forces' involvement in tasks of public security. This is because, as previously noted, this law empowers the armed forces to undertake different tasks on an ongoing basis and, moreover, with no time limit. Article 26 of the law provides in this regard that:

Art. 26

[...]

Actions taken to identify, prevent and address risks to Internal Security are ongoing and do not require the issuing of a Declaration of Internal Security Protection, it being possible to sign any necessary agreements.⁴⁵

Faced with this extremely wide-ranging optional provision, a Declaration of Internal Security Protection would offer very few restrictions. Despite the regulations governing such Declarations indicating that both the geographical scope and timeframe of the actions must be specified,⁴⁶ there is no limitation prohibiting the armed forces from simultaneously applying their powers derived both from a Declaration and from Article 26 of the Act.

Furthermore, although the law establishes that the measures deriving from a Declaration may last no longer than one year, it grants the President of the Republic the power to extend these measures and to renew their implementation through an agreement published in the Official Journal of the Federation.⁴⁷ As the Office of the UN High Commissioner for Human Rights aptly noted, "The law does not establish how many extensions would be permitted nor the length of time these would last, and so internal security measures could be of indefinite duration".⁴⁸

As the Inter-American Commission and Court have acknowledged, neither the training nor the nature of the armed forces prepares them for the challenges of public security work.⁴⁹ Given nature of the armed forces, the purpose for which they were created and their training and preparation, states must clearly and accurately distinguish between public security as a police task and national defence as a task of the armed forces. In exceptional circumstances where states need to call upon the armed forces to undertake tasks of public security, they must be subordinated to and placed under the command of the civilian authorities, and their staff must have sufficient and ongoing training in the international human rights law and standards they will need to follow and obey, particularly the UN Code of Conduct

⁴⁴ IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* paras. 40.

⁴⁵ Internal Security Law. *Op. cit.* Article 26.

⁴⁶ Internal Security Law. *Op. cit.* Article 14, subsections IV and VIII.

⁴⁷ Internal Security Law. *Op. cit.* Article 15.

⁴⁸ Office of the United Nations High Commissioner for Human Rights in Mexico. [Observaciones Preliminares de la ONU-DH al Proyecto de Decreto por el que se expide la Ley de Seguridad Interior](#). *Op. cit.* p. 4 (available only in Spanish).

⁴⁹ IACHR. [Report on Citizen Security and Human Rights](#), 31 December 2009, OEA/Ser.L.V/II, para. 100. Inter-American Court. *Case of Montero Aranguren et al (Catia Detention Centre) v. Venezuela*. *Op. cit.* para. 78; *Case of Zambrano Vélez et al v. Ecuador*. *Op. cit.* para. 51; *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 88. In the same sense, see, for the Mexican case: United Nations. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Follow up to country recommendations. Mexico*. 6 May 2016, A/HRC/32/39/Add.2, para. 11.

for Law Enforcement Officials and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁵⁰

This civilian control can on the one hand be expressed through the command to which the armed forces are subject. In Mexico, the highest command of the armed forces falls to the President of the Republic, who has the whole of the armed forces at his disposal.⁵¹ The Supreme Court of Justice of the Nation has also established that when the armed forces are used for matters of public security, this must be at the express request of the civilian authorities and under their command:

It is constitutionally possible that the Army, Air Force and Navy could act to support the civilian authorities in different tasks of public security when a suspension of guarantees has not been decreed. However, this can in no way take place “by and of itself” but should instead be at the express, reasoned and justified request of the civilian authorities and for these tasks they should be subordinate to the latter and, fundamentally, to the legal order set out in the Constitution, in the resulting laws and in relevant treaties, pursuant to Article 133.⁵²

Despite this precedent from the Supreme Court of Justice of the Nation, Mexican armed forces’ operations are not in fact always coordinated or mandated by a civilian authority.⁵³ This situation is exacerbated by the Internal Security Law, which establishes that a member of the armed forces shall command all operations resulting from a Declaration of Internal Security Protection:

Article 20.

I. At the proposal of the Ministers of National Defence and the Navy, the President of the Republic shall designate a commander for the participating Armed Forces, who will direct the inter-institutional groups involved pursuant to Article 21.⁵⁴

Furthermore, under the new law, it will be this coordinating commander who “draws up the protocol for action to establish responsibilities, channels of communication and coordination for the participating military and civilian authorities”.⁵⁵ Both

⁵⁰ United Nations. *Code of Conduct for Law Enforcement Officials*, 17 December 1979, Res. 34/169; and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, Havana, 27 August to 7 September 1990.

⁵¹ Mexico. [Constitución Política de los Estados Unidos Mexicanos](#), *Op. cit.* Article 89 (available only in Spanish); [Ley Orgánica del Ejército y Fuerza Aérea Mexicanos](#), *Official Journal of the Federation*, 26 December 1986, last reform 30 November 2017, Article 11 (available only in Spanish); and, [Ley Orgánica de la Armada de México](#), *Official Journal of the Federation*, 30 December 2002, last reform 19 May 2017, Article 5 (available only in Spanish).

⁵² Mexico. Supreme Court of Justice of the Nation. [Ejército, Fuerza Aérea y Armada. Si bien pueden participar en acciones civiles en favor de la seguridad pública, en situaciones en que no se requiera suspender las garantías, ello debe obedecer a la solicitud expresa de las autoridades civiles a las que deberán estar sujetos, con estricto acatamiento a la constitución y a las leyes](#). Unconstitutionality Action 1/96. *Semanario Judicial de la Federación y su Gaceta, Novena Época*, Vol. XI, April 2000, page 552, Plenary, thesis P./J. 36/2000 (available only in Spanish).

⁵³ For example, the military actions that culminated in the Tlatlaya massacre, in Mexico State, were based on a written military order to bring down (or kill) criminals. Miguel Agustín Pro Juárez Human Rights Centre (Prodh Centre). [Tlatlaya a un año: La Orden fue abatir](#), Mexico, D.F., June 2015 (available only in Spanish). Also, Amnesty International. [Mexico: Investigate new evidence that a military order may have provoked massacre](#), 3 July 2015.

⁵⁴ Internal Security Law. *Op. cit.* Article 20, see also Articles 21 and 22.

⁵⁵ Internal Security Law. *Op. cit.* Article 20.

strategic and operational decisions therefore fall to the armed forces, and the civilian authorities will be required to obey this command structure.⁵⁶

The law also establishes a dangerous subordination of other civilian authorities in the implementation of internal security actions. For example, Article 31 stipulates that the federal authorities and autonomous bodies must provide whatever information required of them.⁵⁷

The constitutionally autonomous bodies covered by this provision include the National Electoral Institute (INE), the National Institute for Transparency, Access to Information and Personal Data Protection (INTAPDP) and the National Human Rights Commission (CNDH).⁵⁸ Such a stipulation is a violation of the necessary independence of these institutions and is of particular concern in this present case given the impact this will have on a national human rights institution.⁵⁹ This provision is one of the articles being contested by the CNDH through Unconstitutionality Action 11/18, whereby:

The National Human Rights Commission believes that by stipulating in a generic and absolute manner that all information generated by the application of this Law will be considered a matter of National Security, without considering issues of personal data protection (including that inherent to victims of crimes and human rights violations), Article 31 is an excessive and disproportionate measure.⁶⁰

In addition, the fact that actions to identify, prevent and address risks to internal security are considered ongoing⁶¹ means that the armed forces can act according to their own assessment of the situation, without requiring an express request from the civilian authorities.

As specified in international standards, all public security systems should have an accountability mechanism that includes external, independent and impartial supervision.⁶² In the case of actions taken by the armed forces, it is important that this control is civilian given that such supervision, investigation and evaluation cannot remain in the hands of the military authorities themselves as it would be

⁵⁶ Article 23 subsection III of the law establishes that the authorities of the federal entities, municipalities and territorial divisions have a responsibility to provide whatever support and cooperation is requested of them by the coordinating federal authority in order to address the threat to internal security. Internal Security Law. *Op. cit.* Article 23.

⁵⁷ Internal Security Law. *Op. cit.* Article 31.

⁵⁸ These institutions are autonomous bodies created by the Political Constitution, Articles 102 section B, 41, subsection III, paragraph A and 6, paragraph A, subsection VIII, respectively. Mexico. [Constitución Política de los Estados Unidos Mexicanos](#), *Op. cit.* (available only in Spanish).

⁵⁹ United Nations. *Principles relating to the status of national institutions (Paris Principles)*, 20 December 1993, A/RES/48/134/, "Composition and guarantees of independence and pluralism" Principles 2 and 3.

⁶⁰ Mexico. National Human Rights Commission (CNDH) [Demanda de acción de inconstitucionalidad](#). Unconstitutionality Action 11/18, date, p. 256 (available only in Spanish).

⁶¹ Internal Security Law. *Op. cit.* Article 26.

⁶² Amnesty International, Dutch section [Use of force: guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). Amsterdam, 2015, pp. 79 and following.

difficult to ensure their independence and impartiality when evaluating acts committed by their own members.⁶³

Such an accountability mechanism is lacking in the Internal Security Law. The law only envisages that the authority coordinating internal security actions should inform the President of the Republic, through the Minister of the Interior, and that they will in turn inform a Cross-Chamber Commission of the Congress of the Union formed of three senators and three deputies.⁶⁴

The law establishes neither the frequency of this exercise nor the measures that can be taken to evaluate or correct the security forces' action. Nor does it establish the possibility of the supervisory civilian authorities requesting specific information or further reports from the armed forces. It furthermore does not envisage involving any organization with clear responsibility for guaranteeing rights, such as for example the National Human Rights Commission (CNDH). It is of great concern that these reports are only required if there is a Declaration of Internal Security Protection but not in the case of "ongoing actions" under Article 26 of the law.

The law also includes a generic reference to the constitutional accountability and anticorruption systems.⁶⁵ These systems, however, are designed to monitor the performance of all public servants and state officials in Mexico and they are therefore not sufficiently specific to adequately assess security actions and the use of force.

The above is of particular concern given the impunity with which the armed forces commit serious human rights violations and crimes under international law in the country. Most cases of human rights violations involving military elements in Mexico are neither adequately investigated nor brought before a competent judicial authority. Moreover, in the few cases that have been progressed, these have generally not included those individuals with command responsibility who may have been criminally responsible for the crimes committed.⁶⁶

Mexico's public security policy, based on a deployment of the armed forces, lacks any geographic or time constraints consistent with the exceptional circumstances that such a measure requires under international law. It also lacks any effective control and accountability mechanisms, something that has not been remedied with the enactment of the Internal Security Law.

⁶³ In this regard see, *mutatis mutandis*, Inter-American Court. *Case of Durand and Ugarte v. Peru*. Merits. Judgment of 16 August 2000. Series C No. 68, para. 125 and 126; and, *Case of Osorio Rivera and family v. Peru*. *Op. cit.* para. 188.

⁶⁴ Internal Security Law. *Op. cit.* Articles 32 and 33. With regard to the [Ley de Seguridad Nacional](#), *Official Journal of the Federation*, 31 January 2005, last reform 26 December 2005. Article 15, subsection VII, and 56 (available only in Spanish).

⁶⁵ Internal Security Law. *Op. cit.* Article 34.

⁶⁶ Washington Office on Latin America (WOLA). [Overlooking justice: Human Rights Violations Committed by Mexican Soldiers against Civilians are Met with Impunity](#), Washington DC, November 2017. IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* para. 492. [Undeniable atrocities: confronting crimes against humanity in Mexico](#), Open Society Foundations, New York, 2016; Human Rights Watch. [Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operation](#), New York, 2009; and Amnesty International. [Mexico: new reports of human rights violations by the military](#), March 2009 (Index: AMR 41/058/2009).

Use of force and firearms

The way in which force and firearms are being used in the current security strategy has been documented by multiple experts.⁶⁷ Now that the Internal Security Law has been enacted, empowering the armed forces to undertake ongoing public security tasks, it is likely that a substantial number of these tasks will require the use of force, including the use of firearms.

There are, however, insufficient regulations governing the use of force and firearms in Mexico, and there is no federal or general law clearly defining the conditions for their use, or restricting their use only to protection from imminent threat of death or serious injury, as established in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.⁶⁸ Furthermore, many police bodies lack specific rules on the use of force and, where they do exist, as in the case of the federal police and armed forces, they tend to be in the form of regulations or protocols. This is despite a requirement, established in international standards, that the power to use force and firearms, as well as the circumstances in which they can be used, must be set out in legislation that meets international standards.⁶⁹ As the Office of the United Nations High Commissioner for Human Rights in Mexico has noted:

There is no all-encompassing legal framework in Mexico governing the use of force by institutions. What does exist are some local laws and protocols that do not cover all institutions, are not necessarily compatible with international standards and the level of enforceability and accountability of which, in the case of protocols, is less than that of a legislative text.⁷⁰

The Internal Security Law does not rectify this omission. Its single express provision on the use of force indicates:

Legitimate use of force: The rational and proportional use of techniques, tactics, methods, arms and protocols by the personnel of the federal forces and, where appropriate, the armed forces, to control, repel or neutralize acts of resistance, according to their characteristics and methods of implementation.⁷¹

This provision diverges from international standards as it does not cover the principles of legality, unavailability and proportionality set out, among others, in

⁶⁷ For an analysis of the use of lethal force in security operations, see: Carlos Silva Forné, Catalina Pérez Correa and Rodrigo Gutiérrez Rivas. [Índice de letalidad 2008-2014: menos enfrentamientos, misma letalidad, más opacidad](#), in *Perfiles Latinoamericanos*, 25(50) 2017 | pp. 331-359 (available only in Spanish); IACHR. [Situation of Human Rights in Mexico](#), *Op. cit.* paras. 93 and 94; and United Nations. *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Follow up to country recommendations. Mexico. Op. cit.* para. 13.

⁶⁸ United Nations. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, *Op. cit.* Principle 5.

⁶⁹ Amnesty International. [False suspicions: arbitrary detentions by police in Mexico](#), 13 July 2017 (Index: AMR 41/5340/2017).

⁷⁰ Office of the United Nations High Commissioner for Human Rights in Mexico. [Observaciones Preliminares de la ONU-DH al Proyecto de Decreto por el que se expide la Ley de Seguridad Interior](#). *Op. cit.* p. 6 (available only in Spanish).

⁷¹ Internal Security Law. *Op. cit.* Article 4, subsection X.

the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁷² and this Court's case law.⁷³

There also remains the concern that the armed forces do not have adequate training to deal with issues of public security as law enforcement officials. Moreover, the Internal Security Law does not provide any mechanism for ensuring that these bodies, which follow a military logic of neutralizing an "enemy" in an armed conflict scenario, are able to handle issues of public security.

In fact, the law establishes that the armed forces "will undertake actions of Internal Security with their organization, resources and training, without overlooking a strengthening of their capacities".⁷⁴ The Minister for National Defence himself stated that the soldiers have no specific preparation to handle crime. In a speech to the media, he indicated:

I would be the first to raise not one but both hands to ensure that we fulfil our constitutional tasks. We are not asking, I mean, you know it but I have to say it, we are not asking to be there, we would not feel comfortable. **None of us here have the necessary training to pursue criminals.** Our idea and our profession is different and it is being denatured.⁷⁵ [Our emphasis].

Mexico still has no normative provisions to ensure that the use of force and firearms takes place in line with international standards on human rights and the use of force. The Internal Security Law perpetuates only errors in the public security policy with regard to this crucial aspect of guaranteeing the rights recognized in the American Convention.

IV. THE INTERNAL SECURITY LAW AS A SUPERVENING FACT IN THE CASE

The Inter-American Court has determined that it can be made aware of new facts related to the case which have occurred, or been discovered, subsequent to the submission to the Court of the briefs of submission; pleadings, motions, and evidence; or state's answer in the case.⁷⁶

⁷² United Nations. *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, *Op. cit.* Principles 1, 4 and 5 respectively. See also Amnesty International, Netherlands section. [Use of force: guidelines for implementation of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#). *Op. cit.*

⁷³ Inter-American Court. *Case of Nadege Dorzema et al v. Dominican Republic*. Merits, Reparations and Costs. Judgment of 24 October 2012. Series C No. 251, para. 85; *Case of Landaeta Mejías brothers et al v. Venezuela*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 27 August 2014. Series C No. 281, para. 134; and, *Case of Cruz Sánchez et al v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 17 April 2015. Series C No. 292, para. 265.

⁷⁴ Internal Security Law. *Op. cit.* Article 34.

⁷⁵ Speech by the Divisional General, Salvado Cienfuegos Zepeda, Minister of National Defence. Carried by various press media. [Militares no estudiamos para perseguir delincuentes: Cienfuegos \(Video\)](#), *Op. cit.* (available only in Spanish) and Jesús Aranda. [Exige Cienfuegos regularizar función de las fuerzas armadas](#), *Op. cit.* (available only in Spanish).

⁷⁶ Inter-American Court. *Case of the "Five Pensioners" v. Peru*. Merits, Reparations and Costs. Judgment of 28 February 2003. Series C No. 98, para. 153 and 154; *Case of Cabrera García and Montiel Flores v. Mexico*. *Op. cit.* para. 56; and; *Case of Dismissed Employees of Petroperú et al v. Peru*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 23 November 2017. Series C No. 344, para. 65. See also: Inter-American Court. *Case of Castillo Petruzzi et al v. Peru*. Merits, Reparations and Costs. Judgment of 30 May 1999. Series C No. 52, para. 59 and *Case of Cesti Hurtado v. Peru*. Merits. Judgment of 29 September 1999. Series C No. 56, para. 47.

This practice has been clearly consolidated in the current Rules of Procedure, Article 57.2 of which provides:

Exceptionally and having heard the views of all parties to the proceedings, the Court may admit evidence if the person submitting it adequately justifies that due to force majeure or serious impediment they did not present or offer such evidence at the procedural moments established in Articles 35.1, 36.1, 40.2 and 41.1 of this Regulation. **The Court may also admit evidence that refers to an event occurring after the aforementioned procedural moments.** [Own emphasis].

In an important development in its case law, the Court has interpreted that a new fact is related to a case when it provides an interpretation of norms relevant to the situation of the victims or it involves a policy that may affect their enjoyment of their human rights. In such cases, it is appropriate for the Court to analyse the legal consequences of the supervening fact.⁷⁷

In this case, the enactment and entry into force of the Internal Security Law creates a regulatory framework and sets out a public policy that may have an impact on the exercise of the victims' human rights.

The Internal Security Law is a legal regulation that extends the powers of the Mexican armed forces and enables them to operate throughout the country as law enforcement officials. As previously explained, under this regulation the armed forces have the discretionary power to decide in which situations and in what form they will act, and they can do so in all secrecy.

In this case, there is therefore a solid relationship between a possible effect on the victims and the supervening fact, particularly as the case relates to a permanent or ongoing violation of human rights, namely enforced disappearance,⁷⁸ in which the likely perpetrators are members of the precise institution whose powers have been extended by the Internal Security Law.

The alleged perpetrators in this case, and the institution to which they belong, could therefore exercise the new powers provided under this legislation, allowing them to act permanently and secretly throughout the national territory, and do so (as will be explained later) in the absence of effective mechanisms of civilian supervision and accountability. These powers could even be used to continue to commit the alleged enforced disappearances.

The secrecy provided by the law also means that information the armed forces may hold on the case could be withheld from the bodies responsible for investigating crimes or human rights violations or may not be passed on to the families of the disappeared persons, claiming it to be classified information pertaining to national security. This law thus establishes an additional barrier to the appropriate investigation and determination of the fate or whereabouts of the victims and, consequently, to obtaining truth, justice and reparations in this case.

⁷⁷ Inter-American Court. *Case of Expelled Dominican and Haitian People v. Dominican Republic*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 28 August 2014. Series C No. 282, para. 310.

⁷⁸ Inter-American Court. *Case of Velásquez Rodríguez v. Honduras*. Merits. Judgment of 29 July 1988. Series C No. 4, para. 155; *Case of Gomes Lund et al ("Guerrilha do Araguaia") v. Brazil*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 24 November 2010. Series C No. 219, para. 17; and *Case of Vereda La Esperanza v. Colombia*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 31 August 2017. Series C No. 341, para. 149.

Moreover, the law contains serious shortcomings in terms of regulating the use of force and firearms, meaning that any action involving use of force that may have occurred or that may occur in the future against the victims as determined by the Inter-American Commission in its merits report would not be governed by an instrument that adheres to international human rights standards and there would be no external control mechanism for its verification.

When he enacted the law, the President of Mexico publicly undertook not to issue any Declaration of Internal Security Protection until the Supreme Court of Justice of the Nation had ruled on the cases in which the constitutionality of the law was being questioned⁷⁹ but this statement is not an adequate mechanism to guarantee the victims' rights and, in particular, offers no guarantee that this law will not be applied to their detriment. On the one hand, the President's statement is a political position not a legal act and therefore lacks any binding effect on state officials.⁸⁰ On the other, the Internal Security Law grants the armed forces an important and substantive set of powers that they can exercise at any time, even in the absence of a Declaration on Internal Security Protection.

The law only requires in this regard that a Declaration of Internal Security Protection is issued in two cases where there is a threat to internal security: i) when said threat exceeds the capacity of the authorities; and ii) when it is the result of a lack of cooperation between the authorities. All other threats to internal security can be addressed without a respective Declaration.⁸¹

In addition, as noted above, the law stipulates that the armed forces can act permanently without the need for a Declaration in order to identify, prevent and address the risks envisaged in the National Risks Agenda or in the National Security Program, both classified documents in Mexico.

While the Court's case law does not mention the need for the regulation or public policy alleged as supervening fact to have been effectively applied to the victims,⁸² it should be noted that it would be materially impossible to prove that the Internal Security Law had in fact been applied. This is because the law provides for a strong principle of secrecy whereby all information on the law's application is considered as pertaining to national security and therefore classified information pursuant to

⁷⁹ Unconstitutionality Actions 6/2018, 8/2018, 9/2018, 10/2018, 11/2018, 16/2018, and 21/2018 are currently before the Supreme Court of Justice of the Nation. During the public event at which President Peña Nieto announced the enactment of the law, he indicated: "I am aware this legislation being enacted this afternoon is particularly sensitive for the country's public life. / For this reason, I will not issue any Declarations of Internal Security Protection under the terms of this law until the Supreme Court has ruled on its constitutionality." Mexico. Office of the Presidency. [Palabras del presidente, Enrique Peña Nieto, durante la 43 Sesión del Consejo Nacional de Seguridad Pública](#), 21 December 2017 (available only in Spanish). See also the speech by Dr. Erasmo Lara Cabrera, Human Rights Director in the Mexican Foreign Office during the public hearing of the case of Alvarado Espinoza et al: "Application of this Internal Security Law is for the moment suspended until the Supreme Court of Justice of the Nation has considered its constitutionality and, thereby, its compliance with the human rights conventions". Inter-American Court. *Case of Alvarado Espinoza et al v. Mexico*. Public hearing on merits and possible reparations. Final pleadings of the State. San José de Costa Rica, 27 April 2018.

⁸⁰ Amnesty International is unaware of any act of authority that could give validity to or enforce the President of Mexico's statement on the alleged suspension of the Internal Security Law.

⁸¹ Internal Security Law. *Op. cit.* Article 11.

⁸² Inter-American Court. *Case of Expelled Dominican and Haitian People v. Dominican Republic*. *Op. cit.* para. 310.

Article 113, subsection I, of the General Law on Transparency and Access to Public Information, which indicates:

Article 113. The following is classified information. Where its publication:
I. Compromises national security, public security or national defence and has a genuine purpose and a demonstrable effect;

Given that it would therefore be impossible for the victims to know and be able to prove that the Internal Security Law had been applied to their particular case, it is relevant to consider the Court's consistent case law in the sense that "the State cannot rely on the defence that the complainant has failed to present evidence when it cannot be obtained without the State's cooperation".⁸³

The European Court of Human Rights has, in this regard, applied the principle of *effet utile* of the human rights treaties to admit cases in which the victims could not prove that legislation with a strong secrecy component had been applied to them. In *Klass and others v. Germany* it stated: "The Court therefore accepts that an individual may, under certain conditions, claim to be the victim of a violation occasioned by the mere existence of secret measures or of legislation permitting secret measures, without having to allege that such measures were in fact applied to him".⁸⁴

The above is supported by the case law of the Inter-American Court itself given that, in Inter-American litigation, it is not necessary to have complete certainty of the alleged facts but simply sufficient probability of the existence of these facts.⁸⁵

In conclusion, the Internal Security Law enables the armed forces, to which the alleged perpetrators belong, to permanently and secretly undertake tasks of public security. This new scenario creates a clear risk that the victims in this case will see enjoyment of their human rights, as recognized by the American Convention, affected. Moreover, the right to life and integrity of the three victims of enforced disappearance, and whose fate and whereabouts remain unknown, are now at greater risk. It is therefore Amnesty International's opinion that the enactment of this law is a supervening fact in this case, thereby enabling the Inter-American Court to consider the legal scope of this law.

V. CONCLUSIONS

In light of the above, Amnesty International considers that international human rights law prevents states from deploying the armed forces for tasks of public security unless they can guarantee that such deployment will only take place in exceptionally serious circumstances where it would be impossible for the authorities to rely purely on civilian agencies, when the time and place of their use is restricted, when said use is under strict civilian controls, and only once civilian accountability

⁸³ Inter-American Court. *Case of Velásquez Rodríguez v. Honduras*. *Op. cit.* para. 135; *Case of Rosendo Cantú et al v. Mexico*. Preliminary Objection, Merits, Reparations and Costs. Judgment of 31 August 2010. Series C No. 216, para. 102; and *Case of Gutiérrez Hernández et al v. Guatemala*. Preliminary Objections, Merits, Reparations and Costs. Judgment of 24 August 2017. Series C No. 339, para. 125.

⁸⁴ European Court of Human Rights. (Plenary) *Case of Klass and others v. Germany*. Judgment of 6 September 1978, para. 34.

⁸⁵ Inter-American Court. *Case of Escher et al v. Brazil*. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs. Judgment of 20 November 2009. Series C No. 208, para. 128.

mechanisms have been established. The organization finds that Mexico's public security policy has not met this standard.

Amnesty International considers that the Internal Security Law is a supervening fact in the case of Alvarado Espinoza et al v. Mexico because it is endangering the rights of the victims in this case by unduly extending the powers of the alleged perpetrators of the enforced disappearance of José Ángel Alvarado Herrera, Nitza Paola Alvarado Espinoza and Rocío Irene Alvarado Reyes, a crime under international law that will continue to be permanently committed until the fate or whereabouts of the victims is established.

It is further the opinion of this organization that the Internal Security Law contravenes the Mexican state's obligations with regard, among other things, to the right to life (Article 4), personal integrity (Article 5) and personal liberty (Article 7) under the American Convention, all in relation to Articles 1 and 2 of the same instrument.

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