**CONSIDERATIONS FROM THE NATIONAL COMMISSION ON HUMAN RIGHTS (CNDH) TO THE UNITED NATIONS COMMITTEE ON ENFORCED DISAPPEARANCES**

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**CONSIDERATIONS FROM THE NATIONAL COMMISSION ON HUMAN**

**RIGHTS (CNDH) TO THE UNITED NATIONS COMMITTEE**

**ON ENFORCED DISAPPEARANCES**

***1. PRELIMINARY NOTE***

**1.** Last 13th November 2014, the Mexican Senate appointed attorney at law Luis Raúl González Pérez President of the National Commission on Human Rights (CNDH for its acronym in Spanish), a position he will perform for the 2014-2019 period. González Pérez took office on 16th November.|[[1]](#footnote-1)

**2.** The working plan provided to the Mexican Senate and known by the public emphasized as one of the priority subjects working on the enforced or involuntary disappearance of persons through the proper methodology, the joint effort between the relatives of the victims and civil organizations, and requiring professional and transparent investigations subject to the principles of due process and free from any impunity, without neglecting the importance of taking care of the disappearance of persons on the hands of individuals or members of organized crime and persons whose whereabouts are unknown because they are missing or have disappeared. In this regard, based on the information collected by the National Commission on Human Rights (CNDH) and considering the interrelation with National Institutions on Human Rights included in the Committee on Enforced Disappearances, this document provides the considerations on the subject.

***II. INTRODUCTION***

**3. Today, human rights in Mexico are going through one of the most critical and challenging stages.** Although human rights had never formally reached the level of

recognition they have in Mexico since the constitutional reform of June 2011, daily happenings prove a breach or lack of conformity between the norms and our reality. The impunity perceived by society and the existing high levels of violence and insecurity make the perception of human rights more as a merely discursive or theoretical situation than a practical and real issue, questioning the validity and legitimacy of institutions, as well as the undeniable progress in human rights over the last decades.

**4.** The CNDH as a constitutional organization independent from the Mexican State and government **publicly recognizes there is a serious problem in terms of disappearances in our country**, and has the capacity to investigate those instances where there are serious violations to human rights, as the cases of enforced disappearances.[[2]](#footnote-2)

**5.** Enforced disappearance, the disappearance of persons and knowing the whereabouts of missing individuals in Mexico is a problem that has affected the country both domestically and internationally, especially for the increase in cases over the last years. **Nevertheless, there is no certainty trying to provide clear figures and reliable statistics, since the analysis does not result in an adequate classification according to international standards on the different cases that could arise.** It is therefore necessary to perform a systematization, comparison and refinement of the different existing databases through an adequate methodology and clear criteria helping to determine those instances with clear evidence of enforced disappearances on the hands of agents of the State or individuals acting with the support, approval or help from agents of the State, those where responsibility is on members

of organized crime and those of persons reported as missing, without neglecting the aforementioned assumptions beforehand. Thus the importance of a database with precise information.

***III. SOME ACTIONS BY THE CNDH ON ENFORCED DISAPPEARANCES***

**6.** Several and different conditions have given way to this crime, which is very serious according to international laws on human rights, humanitarian international law and criminal international law, because of the following reasons, among other:

**a)** It is a “multi-offensive” crime that hurts and goes against the victim himself and his relatives and the society as a whole;

**b)** The existence of a series of inconsistencies in its legal definition regarding the main international instruments on the subject;

**c)** The fact that different states in Mexico have not made it an autonomous offence;

**d)** The lack of a general law including all aspects of enforced disappearances;

**e)** The lack of a vertical and horizontal coordination between federal, state and municipal authorities to persecute and punish it;

**f)** The lack of a regulatory framework and protocols on the use of force by security groups;

**g)** The consignment of detainees in a delayed manner before the corresponding authorities;

**h)** The persistence of the figure of “house arrest” [arraigo] when a person is investigated for serious crimes or is suspect of being related to organized crime;

**i.** Shortcomings in the creation and use of person detention record;

**j.** Lack of professional teams responsible to look for missing persons;

**k.** Failure to identify human remains found in common or clandestine graves;

**l.** Lack of a centralized database for missing persons and access to the correct information connected to those cases.

**7.** This has led to conditions that do not foster the preservation of integrity, freedom and security of persons living in Mexico. Especially considering the aforesaid, over the last 40 years in our history, several cases of enforced disappearance have been documented.

**8.** Consequently, in order to comply with articles 1 and 102, section B of the Political Constitution of the United Mexican States, in connection to article 3 of the International Convention for the Protection of all Persons against Enforced Disappearances (Convention), since its creation in June 1990, the CNDH has a Program on Alleged Disappeared Persons (PREDES, for its acronym in Spanish) as an area responsible for investigating instances

where there are suspicions of enforced disappearance and has performed the following

actions, among others:

1. ***ENFORCED DISAPPEARANCES IN THE SO CALLED “DIRTY WAR”***

**9.** On 27th November 2001, the National Commission on Human Rights issued Recommendation 26/2001[[3]](#footnote-3), provided then to the President of the Republic, and connected to the 532 files on allegedly disappearances occurring in the 70´s and the beginning of the 80´s, where 275 of them were proven as cases of enforced disappearance made or tolerated by public officers of the Mexican State.[[4]](#footnote-4)

**10.** This Recommendation concluded that public officers from different offices of the Mexican State, specially members of the so called “Special Brigade” or “White Brigade”, basically integrated by elements of the Federal Security Directorate (DFS, for its acronym in Spanish), of the Office of the Attorney General of the Republic, the Office of the Attorney General of the Federal District, the General Directorate of Police and Transit in the Department of the Federal District, the Office of the Attorney General of the State of Mexico and the Mexican Army, participated in the enforced disappearance of the victims.[[5]](#footnote-5) It is also indicated that the illegal detention used for enforced disappearances was only the beginning of the series of violations to human rights occurring in the cases referred to in this Recommendation because, once under detention, the victims were generally retained, sometimes for long periods of time to finally disappear.[[6]](#footnote-6)

**11.** The specific recommendations asked to the President of the Republic, among other things, to assume the ethical and political compromise to guide the institutional performance in a framework of respect to human rights, in order to avoid by all legal means necessary, so that

events like those occurring in the 70´s and the beginning of the 80´s repeat themselves, and to instruct the Attorney General of the Republic to appoint a special prosecutor, in order to lead the investigation and persecution, if any, of crimes that could derive from the events included in the Recommendation.[[7]](#footnote-7)

**12.** As a result of this Recommendation the Office of the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP, for its acronym in Spanish) that, after several years of investigation, ceased to operate in 2006, without the expected resolutions against all people responsible.

**13.** The enforced disappearances in the 70´s and the beginning of the 80´s recorded by this National Commission in Recommendation 26/2011, show that **impunity in these cases has resulted in such serious crimes as enforced disappearances are still occurring and the guarantee of non-repetition, as shown in the unfortunate events which took place on the 26th and 27th of September 2014 in Iguala, Guerrero (Mexico), evidencing how this crime has become more serious over the last years.**

1. ***RECOMMENDATIONS ON ENFORCED DISAPPEARANCES***

**14. The CNDH has made 13 recommendations**[[8]](#footnote-8) on enforced disappearance involving 37 victims, provided to different federal, state and municipal authorities, according to the following:

**a)** Recommendation 9/2005, dated 19th May 2005, provided to the Constitutional Governor of the State of Coahuila and the Attorney General of the Republic, connected to three victims:

**b)** Recommendation 15/2005, dated on 20th June 2005, provided to the Constitutional Government of the State of Morelos (Mexico) connected to one victim;

**c)** Recommendation 7/2009, dated on 13th February 2009, provided to the Secretary of the Interior in representation of the Federal Government, pursuant to article 5, section VIII of the Bylaws of this federal office, to the Constitutional Governor of the State of Oaxaca ant the Constitutional Mayor of Oaxaca de Juárez, Oaxaca (Mexico), related to two victims.

**d)** Recommendation 44/2009, dated on 14th July 2009, provided to the Secretary of Defense, connected to two victims;

**e)** Recommendation 78/2009, dated on December 2009, provided to the Constitutional Governor of the State of Guerrero (Mexico), to the President of the Congress in the State of Guerrero and to the Constitutional Mayor of Ayutla de los Libres, Guerrero (Mexico), related to two victims;

**f)** Recommendation 34/2011, dated on 7th June 2011, provided to the Secretary of the Navy, to the Governor of the State of Nuevo León (Mexico) and to the Mayor of Santa Catarina in Nuevo León (Mexico), connected to one victim;

**g)** Recommendation 40/2011, dated on 30th June 2011, provided to the Secretary of Defense, connected to one victim;

**h)** Recommendation 43/2011, dated on 30th June 2011, provided to the Secretary of Defense, the Secretary of Federal Public Security and the Governor of the State of Chihuahua (Mexico), related to three victims;

**i)** Recommendation 34/2012, dated on 11th June 2012, provided to the Secretary of Defense, connected to six victims.

**j)** Recommendation 38/2012, dated on 16th August 2012, provided to the Secretary of Defense and to the Secretary of Federal Public Security, related to one victim;

**k)** Recommendation 39/2012, dated on 21st August 2012, provided to the Secretary of the Navy, related to six victims;

**l)** Recommendation 55/2012, dated on 28th September 2012, provided to the Constitutional Governor of the State of Nuevo León (Mexico) and to members of the Council of San Pedro Garza García, Nuevo León (Mexico), connected to one victim;

**m)** Recommendation 42/2014, dated on 24th September 2014, provided to the Constitutional Governor of the State of Zacatecas and to the members of the Council of El Plateado de Joaquín de Amaro, Zacatecas (Mexico) related to eight victims.

**15.** In brief, the 13 recommendations on enforced disappearance were provided to the following authorities:

1. **Federal authorities;** the Ministry of the Interior, the Ministry of Defense, the Ministry of the Navy, the Ministry of Federal Public Defense and the Office of the General Attorney of the Republic;

**b) State authorities:** the governments in the States of Colima, Chihuahua, Guerrero, Morelos, Nuevo León, Oaxaca and Zacatecas (Mexico); and the Congress of the State of Guerrero;

**c) Municipal authorities:** members of the councils of Oaxaca de Juárez, Oaxaca, San Pedro Garza García, Nuevo León, El Plateado de Joaquín Amaro, Zacatecas (Mexico);

and to the Mayor of Santa Catarina, Nuevo León (Mexico).

***C. UNFORTUNATE ENFORCED DISAPPEARANCES ON 26TH AND 27TH SEPTEMBER 2014 IN IGUALA, GUERRERO (MEXICO)***

**16.** The collusion of certain political and police authorities in the municipalities of Iguala and Cocula, State of Guerrero (Mexico) with organized crime dedicated to drug dealing and kidnapping, provoked that on 26th and 27th September 2014, in the Municipality of Iguala de la Independencia, Guerrero (Mexico), a group of students from the “Raúl Burgos” Normal Rural School in Ayotzinapa, and members of the football team “Los Avispones de Chilpancingo” [the “Chilpancingo Hornets”], **were attacked and as a result, six people lost their lives, 30 were injured and 43 disappeared**, an event that caused indignation, sorrow and rejection to the Mexican and international communities.

**17.** Additionally, after the investigations performed by federal law enforcement authorities, **6 clandestine graves with an unknown number of corpses were found in the municipality of Iguala, Guerrero (Mexico) on 4th October 2014**.

**18.** **Due to these unfortunate events, on 27th September 2014, the CNDH opened claim file number CNDH/1/2014/6432/Q,** and is currently doing the investigation with its constitutional and legal capacity, verifying that the corresponding governmental authorities to provide security and protection to individuals, in their area of competence, preventing these crimes to remain unpunished and knowing the truth.

**19.** From the date of appointment of the President of the CNDH, the following actions have been taken:

**a)** A detailed report was immediately requested on the progress of investigations by the National Office, on the obstacles found and the follow-up of the indicated precautionary measures. This has helped continuing the investigation of serious violations to human rights, but also changing their orientation from five basic axes: right to the truth, right to justice, full compensation for damages to the victims and their relatives; guarantees of non-repetition and, especially, getting to know the whereabouts of the schoolteacher students;

**b)** In order to give priority to the investigation of the disappearances, the **Special Office for the “Iguala Case”** was established in order to exclusively handle the case that has involved serious violations to Human Rights. Thus, the Head of the Special Office was instructed to be in direct contact with the relatives of the missing students, with their representatives, with domestic and international social organizations, and with the groups defending human rights accompanying the victims, and to strengthen tasks to determine behaviors or omissions violating human rights committed by some authorities before, during and after the events;

**c)** Communication and several meetings have been held with representatives and social organizations that accompany the relatives of missing students, which helped meeting with them;

**d)** A meeting took place with the relatives of missing students in the “Raúl Isidro Burgos” Rural Normal School. Parents and relatives accepted the presence and help from the CNDH in order to know the truth about the events, to bring to justice those who are responsible for them and to punish those individuals without retaliation for the legitimate

exercise of the social protest.

**e)** The CNDH praised that Mexico signed the Cooperation Agreement with the Inter-American Commission on Human Rights (IACHR), in order to have technical assistance in this case. It accepted the compromise to join efforts in order to track the implementation of Precautionary Measures provided by the Inter-American Organization on 3rd October 2014;

**f)** This National Organization expressed its solidarity to the families of the missing persons and the demand of justice for them. Everyone involved as mastermind and perpetrator of these crimes has to be investigated and judged severely, as well as the public officials giving way to this brutal crime; for their omissions or lack of interest;

**g)** **The Federal Executive was respectfully asked to take the necessary measures for Mexico to accept, as soon as possible, the authority of the Committee against Enforced Disappearances** to receive and examine the communications provided by persons under its jurisdiction or on their behalf, who are allegedly victims of violations to the United Nations International Convention for the Protection of Persons against Enforced Disappearances, pursuant to article 31 of this international instrument;

**h) The Legislative Power was respectfully asked to make the corresponding reforms in order to have a General Law on Enforced Disappearances**, including the adequacy of the criminal definition according to international standards, as well as the obligation to implement public policies to look for missing persons;

**i)** The Ministry of the Interior and the Government of the State of Guerrero were requested to take precautionary measures so that, in their corresponding field of competence, instructed public officers, especially those in the security forces, to refrain from expressing opinions or comments re-victimizing or putting at risk the personal security and integrity of civil defenders of human rights, victims and relatives of those involved in the Iguala Case, and to ensure that they are treated with dignity and respect.

***IV. SOME ACTIONS BY THE CNDH ON ENFORCED DISAPPEARANCES OF PERSONS OR MISSING PERSONS***

**20.** After the meeting held on 26th June 2007 with the United Nations Working Team on Enforced or Involuntary Disappearances, the CNDH made a compromise to create a Database of cases that were known at certain moment by this Domestic Organization and where it was not possible to clearly prove the direct or indirect responsibility of public officials. Likewise, **it was informed to the CNDH´s current administration** that there are two databases:

**a)** Until December 2014, a database including 3,085 records corresponding to 4,038 persons reported as missing, without certainty of the causes of disappearance. The CNDH will ask the corresponding authorities to do their search and localization job with the help of this Domestic Organization.

**b)** Until December 2012, a database including 24,809 persons reported as lost or missing before several law enforcement bodies between 1995 and 2012, whose investigation corresponds to such offices. The cause of disappearance remains also uncertain in these cases.

**21.** The information in these databases will be reviewed, analysed, systematized and refined, in order to determine the records on which there are indications on the enforced disappearance of persons according to international standards, without neglecting that there are cases of the disappearance of persons that have not been reported to law enforcement offices.

**22.** The figures referred to in the preceding paragraph b) differ from official numbers. The first quarter of 2013 a report was issued indicating that the number of disappeared persons was 26,121; at the end of 2013 a report indicated that the number amounted to 18,955 cases; in May 2014 it was indicated that between 2006 and 2014 the figure was reduced to 8,000 persons, in August of that same year it was indicated that there were 23,271 persons. Nevertheless, due to the lack of information, it is not possible to determine in how many cases there is evidence of enforced disappearance with the help or awareness of public officials, which of them can be attributable to organized crime and which correspond to missing persons.

**23.** Although the Mexican government has stated that the National Record of Disappeared or Missing Persons is a database that is dynamically updated and permanently and actively refined, and that in many cases the searching activities have helped localizing persons who were reported missing alive, a fact which, if this were the case, could explain the increase and subsequent reduction of reported figures, it is necessary to explain the criteria to feed the Record.

**24.** In this regard, it is important to note that both the National Record of Disappeared or Missing Persons, as well as the CNDH´s records are basically fed with information provided by State prosecuting and investigating offices. Thus, it is important that these institutions have clear,

approved and public criteria about the way disappearance claims are rated, the investigation they carry out and the manner in which they report cases. The professionalization of public officials responsible for processing and reporting information and those responsible for investigating the cases and performing searching activities at a federal and local level is basic to have clear figures about the reality of this phenomenon.

**25.** Consequently, the inconsistency between the figures provided by the CNDH and those from the Mexican authorities as per the number of disappeared or missing persons in the country, besides the lack of precision on the number of cases where there is evidence of enforced disappearance, proves that, today, there is not a clear analysis about the reality of this phenomenon, and thus the need to review the data of reference with the appropriate methodology and the adequate coordination between federal, state and municipal authorities, and the CNDH itself.

**26.** Besides the file connected to the enforced disappearance of 43 students of the “Raúl Isidro Burgos” Rural Normal School occurring on 26th and 27th September 2014, today the CNDH is integrating other six files on enforced disappearance involving 11 victims, where federal, state and municipal authorities are allegedly responsible for the crime.

***V. MEASURES TO BE TAKEN FOR THE INTEGRAL ATTENTION TO THE DISAPPEARANCE OF PERSONS***

**27.** The Mexican State has made efforts to preserve human rights; however, they have not been sufficiently coordinated to ensure the structural conditions to prevent the disappearance of persons, a crime as especially severe as enforced disappearance or its adequate punishment. Thus, its integral consideration is required considering the following measures, among others:

**A. AN EFFICIENT AND COMPREHENSIVE NATIONAL RECORD OF DISAPPEARED OR MISSING PERSONS AND THE NECESSARY ISSUANCE OF THE REGULATIONS OF THE LAW ON THE NATIONAL RECORD OF DISAPPEARED OR MISSING PERSONS**

**28.** On 17th April 2012 the Law of the National Record of Disappeared or Missing Persons was published in the Official Daily Gazette, whose main purpose is the following:

**a)** To create and regulate the operation, performance and management of the National Record of Disappeared or Missing Persons through the institutional coordination between federal authorities and the states;

**b)** To become an information tool to organize and concentrate information in an electronic database, for missing or disappeared persons, and those in care, custody, detention or internment centers, as well as those of unknown personal information, identification or address, in order to support the investigations for their search, location or their family location and place of residence.

**c)** To make it mandatory for all administrative or judiciary authorities that are aware of a missing person or receiving a report about his disappearance to inform the National Registry immediately, in the manner so provided by the corresponding rules:

**29.** Transitory article two of this Law provides that the corresponding authorities will enact

the laws, rules and other provisions to implement this law along the whole country in no more than six months from the date of publication.

**30.** The report provided by Mexico before the Universal Periodic Review Mechanism on 20th October 2013,[[9]](#footnote-9) indicated that in April 2012 the Law of the National Record of Disappeared or Missing Persons became effective and that “*The record shall be fully operating when its Rules are published.*” Nevertheless, when the CNDH published this document the Rules of this Law had not been published which, according to what the Mexican authorities stated, makes the full operation of the Record impossible.

**31.** Therefore, last 8th October 2013, the Chamber of Representatives of the Congress of the Union issued a point of agreement by which it instructed the Head of the Federal Executive Branch to publish the corresponding rules and, as a consequence, to ensure and implement the creation of the National Record of Disappeared or Missing Persons, pursuant to the terms of transitory article 2 of the referred law.

**32.** Thus, the Mexican State lacks an efficient, full and clear national record allowing to know with a high level of certainty the real number of disappeared persons in Mexico, for the following reasons:

**a)** Information is not classified according to international standards in this field;

**b)** There is no record of human remains found in common graves providing genetic material to help identifying the victims;

**c)** The number of claims against public officials as directly or indirectly responsible for enforced disappearances is unknown;

**d)** To the date of this document, the Rules of the Law of the Record of Missing or Disappeared Persons has not been published yet.

**33.** All the above obstructs the implementation of public policies adequate to face this issue and to improve access to justice, the search and location of victims and the due attention of their relatives. Besides publishing the referred Rules, it is necessary to check the applicability of the corresponding Law, in order to monitor its effectiveness after almost three years of enactment.

***B. NECESSARY SEARCH FOR AND RECORD OF CLANDESTINE GRAVES***

**34.** Insecurity in Mexico has resulted in serious problems related to the location of a number of clandestine graves in different Mexican states. Although there are no official figures, some media have referred to the discovery of graves with bone remains.

**35.** It is worth mentioning that after the disappearance of the 43 students of the “Raúl Isidro Burgos” Rural Normal School in Ayotzinapa, occurring on 26th and 27th September 2014, several clandestine graves were found in Guerrero.

**36.** Others have been found in the different Mexican states, making it necessary to continue searching and recording clandestine graves and, evidently, identifying persons.

***C. CREATION OF A NATIONAL SYSTEM TO SEARCH FOR DISAPPEARED OR MISSING PERSONS AND SEARCHING PROTOCOLS***

**37.** The processes to search for persons reported as disappeared or missing persons require a short, medium and long-term integral strategy, requiring an effort between different authorities collecting the information of persons reported as such to be able to carry out searching actions.

**38.** The President of the Republic announced, on 27th September 2014, the creation of a National System to Search for Disappeared or Missing Persons that, evidently, will become an institutional tool of unified information about disappeared persons, ensuring their organized and coordinated search, without neglecting the information provided by the victims or the civil society, that have been the main driving factors in the search for disappeared persons.

**39.** Organizations from civil society have played a proactive role in the issue of the disappearance of persons and the search and location of missing persons, and are interested and concerned about the increase of these cases in Mexico. With their activism, they have evidenced many of the shortcomings of the Mexican State to face the problem and have provided several points of view in order to improve the strategies implemented by the corresponding authorities;

**40.** Part of the recommendations these organizations have made to different State authorities is the follow-up of certain measures, such as an effective search; the efficient implementation of an investigation based on scientific methods; a legislative harmonization according to international standards; an integral attention service for the victims’ relatives and a sole

record of disappeared persons, without neglecting the indications made about the lack of adequate training of the agents of the Public Prosecutor and specific and required protocols helping them as guidelines to investigate instances connected to this subject, or their lack of application.

**41.** Additionally, the following issues should be considered:

**a)** Creating among law enforcement offices of groups trained and skilled in the search of disappeared or missing persons;

1. The investigation performed by law enforcement offices should not be restricted to find and punish those responsible for the disappearance of persons, but to find these latter;

**c)** Protocols to look for disappeared persons causing an immediate reaction of the authorities to find persons, whether the corresponding claim or report indicates the participation of any authority or not. In this regard, it will be necessary to consider what the Inter-American Court indicated in the resolution of the *González and other “cotton field” vs. United Mexican States* of 16th November 2009, connected to the disappearance and death of three young women, as follows:

**i.** That the Mexican State should, in a reasonable period of time, continue standardizing all its protocols, manuals, investigation ministerial procedures, expert services and law enforcement, applied to investigate all crimes connected to disappearances, sexual violence and the murder of women, according to the Istanbul Protocol, United Nations Manual on the Effective Prevention and

Investigation of Extra-Legal, Arbitrary and Summary Executions and international standards to look for disappeared persons, based on a gender perspective;

**ii.** To implement ex officio and immediate searches, in cases of disappearance, as a measure to preserve life, personal freedom and the integrity of the disappeared person;

**iii.** To perform a coordinated work between different security groups to find missing persons;

**iv.** To get rid of errors of fact or of law making the search less effective or blocking its start and demanding preliminary investigations or procedures;

**v.** To provide human, economic, logistic, scientific or other type of resources that are required for a successful search;

**vi.** To compare the disappearance report to the database of disappeared persons;

**vii.** To prioritize searches in those areas where there is a higher possibility to find the disappeared person without arbitrarily neglecting other searching possibilities or areas.

**viii.** All the above should be even more urgent and rigorous when the victim is a girl.[[10]](#footnote-10)

**d)** Identification of human remains found in mass and clandestine graves;

**e)** The implementation of a minimum required framework including an efficient inter-institutional coordination and cooperation to look for and locate disappeared or missing persons; effectively investigating the causes of disappearance and attention to victims by law enforcement authorities;

**f)** Tracking the reports from international organizations connected to the disappearance of persons in Mexico.

***D. CREATION OF A NATIONAL SYSTEM OF GENETIC INFORMATION***

**42.** On 27th November 2014, the President of the Republic also announced the creation of a National System of Genetic Information that will evidently include the following:

**a)** Integrating a record of genetic material and biological samples of the relatives of persons reported as disappeared or missing;

**b)** Ensuring the collection, storage and analysis of genetic information from human remains found in mass and clandestine graves helping to identify the dead victims and be used as evidence in such crimes.

**43.** All this without neglecting the work of the General Attorney´s Office as part of the agreements from the National Commission for the Administration of Justice, with the implementation of the Combined DNA Index System (CODIS) integrated with data of genetic

profiles and analysis of biological samples of blood, saliva, hairs, semen and bone remains found and related to a judicial or ministerial investigation, provided by different law enforcement offices within the framework of exchange of genetic information to create and update the national genetic database.

***E. STRENGTHENING AND UNIFYING THE DETENTION ADMINISTRATIVE RECORD***

**44.** It is important that the Detention Administrative Record referred to by the General Law of the National System of Public Security effectively operates with standard criteria and information from the 32 Mexican states, and to include detentions under these modalities. The unified and updated information of this Record is especially useful to be immediately compared to data related to disappeared or missing persons, and to prevent enforced disappearances.

***F. NECESSARY COMPLIANCE OF INTERNATIONAL SENTENCES***

**45.** After resolving the *Radilla Pacheco vs, United Mexican States case[[11]](#footnote-11)*, the Inter-American Commission on Human Rights indicated that the criminal type of enforced disappearances provided by article 215-A of the Federal Criminal Law does not meet international standards, since it does not refer to persons or groups of persons acting with the authorization, support or approval of the State or the rejection to recognize deprivation of liberty or to provide information about the fate or location of persons, issues that have to be considered in this type of crime.

**46.** Thus, it was resolved that the Mexican State has not fully complied with the obligations deriving from article 2 of the American Convention, in connection to articles I and III of the

Inter-American Convention on Forced Disappearances to ensure the correct investigation and eventual prosecution of offenses constituting enforced disappearance.[[12]](#footnote-12)

**47.** In the operative paragraphs of this resolution, the court instructed the State to adopt, within a reasonable period of time, the corresponding legislative amendments to make article 215-A of the Federal Criminal Code compatible with international standards on the subject and the Inter-American Convention of Forced Disappearance of Persons.

**48.** However, although this resolution was issued in November 2009; that is, over five years ago, the amendments to the referred code have not been made yet, to harmonize it to international standards on human rights. It is worth mentioning that on 22nd October 2013 the President of the Republic sent to the Chamber of Representatives a Decree initiative to amend articles 215-A, 215-B and 215-C and an addition to article 215-E of the Federal Criminal Code,[[13]](#footnote-13) to harmonize the crime of enforced disappearance with international standards. Nevertheless, to the date of presentation of this report, the initiative has not been passed yet.

**G. *ENACTMENT OF A GENERAL LAW ON ENFORCED DISAPPEARANCES***

**49.** The crime of enforced disappearance is defined at a federal level and in certain Mexican states, as follows:

**a)** The Federal Criminal Code defines a type of enforced disappearance, but it does not meet international standards;

**b)** In the state legislative level, 24 Mexican states have integrated enforced disappearance as an autonomous offence in their corresponding criminal crimes and three more (Chiapas, Guerrero and Querétaro) have passed specific laws to prevent and punish this offence. However, not all of them meet international standards of enforced disappearance.

**c)** The remaining states consider enforced disappearance in some of the criminal types of kidnapping, illegal deprivation of the liberty, organized crime or conspiracy.

**50.** Aside from all the above, the resolution in the *Radilla Pacheco vs. United Mexican states case*, the Inter-American Court on Human Rights pointed out that in 2009 the Mexican government announced that it “*was supporting*” a project of law on the enforced disappearance of persons helping to overcome any deficiency in harmonizing the Mexican legislation with international standards.[[14]](#footnote-14)

**51.** As it occurred with the amendments to the Federal Criminal Code indicated by the Inter-American Court in November 2009, and that have not been passed yet, the same occurs with the Law on enforced disappearances that the Mexican government indicated it was “fostering” that same year.

**52.** Although there have been initiatives in the Federal Legislative Branch to regulate and punish this misconduct, there is still not a special legislation, and this why this National Organization, in December 2014, made a respectful request to this legislative body to make the corresponding amendments to have a General Law on Enforced Disappearance including the adjustment of the criminal type according to international standards, and the obligation to implement public polices to search for disappeared persons.

***H. DEFINITION OF THE ENFORCED DISAPPEARANCE OF PERSONS AND THE GENERAL STATEMENT OF ENFORCED DISAPPEARANCES***

**53.** It is necessary to federally and domestically define the crime of the disappearance of persons on the hands of individuals without the authorization, support and approval of agents of the State and who deprive one or more persons of their liberty, in any form, followed by the lack of information or the refusal to recognize such deprivation of liberty or to inform about the location of the person.

**54.** Likewise, it is convenient to federally and domestically establish the declaration of absence by the disappearance of persons in order to recognize and ensure the right to identity and legal personality of the victim of disappearance and to provide the broadest protection to the relatives or any person with an immediate and daily close relationship with the victim.

***I. USING THE ARMED FORCES IN SECURITY OPERATIONS***

**55.** Mexico is facing a serious situation in terms of security. In this regard, the participation of the armed forces in public security has increased considerably in recent years. A call has been made in different national and international forums to stop this trend and to strengthen the participation of civil authorities in security operations.

**56.** In the proposal titled *Elementos para la Construcción de una Política de Estado para la Seguridad y la Justicia en Democracia* [Elements to create a State policy for security and justice in democracy], published in 2011 by the Universidad Nacional Autónoma de México and the Instituto Iberoamericano de Derecho Constitucional, this subject was discussed and one of the recommendations to the government was: “*Creating a plan to have the armed forces back*

*to their natural activities as soon as possible*”.[[15]](#footnote-15) Likewise, both the Inter-American Court[[16]](#footnote-16) and the Inter-American Commission of Human Rights[[17]](#footnote-17) have pointed out the need to make police responsible for public security operations, since they are efficiently trained for the protection and security of civilians.

**57.** The complicated environment of insecurity in Mexico requires skilled police groups to deal with and resolve this problem. In this regard, the training and professionalization of police corps must be adequate to meet the requirements of public safety, from an objective diagnosis of the current situation about security in the country. This should be accompanied by a system to monitor when and how the armed forces will stop participating in security operations, thus complying with the referred international criteria, resolutions and standards.

***J. NECESSARY ADOPTION OF GOOD INTERNATIONAL PRACTICES ON HUMAN RIGHTS***

**58.** The position of the Mexican State regarding good international practices on human rights has been uncertain and ambiguous. The International Convention for the Protection of all

Persons against Enforced Disappearances[[18]](#footnote-18) in force in Mexico since 23rd December 2010, provides in article 31, paragraph 1 that each member will accept, at the moment of ratification or afterwards, that it recognizes the capacity of the Committee against Enforced Disappearance to receive and analyse communications from persons under its jurisdiction or on their behalf, who are allegedly victims by the member state, of the Convention provisions (individual requests in the future).

**59.** The Mexican State did not accept the competition of the Committee when the Convention was ratified and has not done it already, although it has been one of the recommendations made to Mexico in different documents from international organizations, such as the Report of the Working Group on Enforced or Involuntary Disappearances, of 20th December 2011,[[19]](#footnote-19) and the Preliminary Report of the Working Group on the Periodical Universal Analysis, of 25th October 2013.[[20]](#footnote-20)

**60.** To point out the ambiguity of the Mexican State position in this regard, it is worth mentioning that in response to the specific recommendation of the Working Group on the Periodical Universal Analysis, --that suggested to accept the Committee competition-- , the government stated: “*Mexico takes note and is considering the possibility of accepting the competition for individual communications (…)*.”

**61.** The 2014-2018 National Program on Human Rights[[21]](#footnote-21) --document where the strategies and lines of action of public administration on human rights are established--, a mention is made as a State strategy: “*to resolve human right issues mostly referred to by international organizations*”, and as a line of action: “*To promote the recognition of the competence of the*

*Committee against Disappearances to receive individual claims*.”

**62.** Several months after the publication of the National Program of Human Rights, the Mexican government has still not accepted the competence of the Committee, evidencing, in the facts, a delay to be subject to the full analysis of its actions on enforced disappearances by this international organization.

**63.** Due to this omission, on 16th December 2014 the CNDH asked the Mexican government to accept the aforesaid competence, which will represent an act of congruence between Mexico´s internal and external policies, and a necessary step to create conditions that ensure the effective investigation and prosecution of this offense, and a way to make a reality the inalienable right to the truth, justice and integral compensation required by these cases.

***K. ENFORCED DISAPPEARANCES AND VULNERABLE GROUPS***

**64.** The recent cases of enforced disappearances indicate that among the victims of this offense there are some especially vulnerable groups such as women, migrants, human rights defenders and journalists.

**65.** In the case of the enforced disappearance of women, it is necessary to challenge gender stereotypes and the discrimination that sometimes involves the authorities responsible for investigating this crime. On the other hand, it is necessary that the migrant population has specific protection programs, considering that their migrating status, legal defenselessness and the dangers posed by their transit routes during their stay in the Mexican territory puts them at risk. Finally, it is necessary to strengthen the means to protect journalists and human right defenders who, for their activities, can suffer aggressions, violence and enforced disappearance.

***VI. FINAL COMMENTS***

**66.** The CNDH recognizes that Mexico suffers the disappearance of persons and, evidently, enforced disappearances, making it necessary to analyze and attack the issue in an integral manner. It is, therefore, necessary to have clear criteria and adequate public policies, as well as well as guidelines involving all measures to be implemented by authorities at different governmental levels. Lacking these guidelines, a national program to look for missing persons and without serious state actions to put an end to this issue and get rid of its impunity, the enforced disappearance and the disappearance of persons will keep occurring, with serious emotional consequences to many families and clear repercussions in harming the social fabric.

**67.** Enforced disappearance is a serious, complex and multi-offensive crime, for it generally requires the participation of several individuals and represents the commission of different offenses. For its nature, it has been labelled as a continuous or permanent crime by different

national and international courts, such as the Inter-American Court of Human Rights and Mexico´s Supreme Court.

**68.** Several fundamental rights can be violated in an enforced disappearance, such as: recognition of the legal personality, personal liberty and security; not to suffer torture or other cruel treatment or punishment; to identity; an impartial trial and the due judiciary guarantees; to an effective integral remedy, and to know the truth about the circumstances of the disappearance.

**69.** After the enforced disappearance of 43 teaching students in Ayotzinapa, and the legitimate request of truth and justice from the victim relatives, Mexican society as a whole and the international community, in order to resolve this disgraceful case, as well as other enforced

disappearances occurring in different states in Mexico, this National Commission points out the obligation of the Mexican State to fully and integrally comply with the international commitments it has made on human rights.

**70.** In this regard, Mexico has not served a recommendation made my international organizations of human rights that have requested to immediately accept the competence of the Committee against Enforced Disappearance, as the Working Group on Enforced and Involuntary Disappearances and the Universal Periodic Review Mechanism.

**71.** Consequently, the CNDH is respectfully requesting this Honorable Committee to consider in its analysis and proposals, the following measures, among other, to integrally resolve the issue of the disappearance of persons:

**a)** The need to have an efficient and complete National Record of Missing or Disappeared Persons. It is necessary that all law enforcement authorities have clear, approved and public criteria for the manner to classify reports on disappearances, the investigations they make and the way they report cases.

**b)** The professionalization of public officers responsible for processing and reporting information, as well as those responsible for investigating the cases and federally and locally doing the searches is key to having clear figures about the reality of this phenomenon.

**c)** The publication of the Rules of the Law of the National Record of Missing or Disappeared Persons and the revision of the corresponding Law, in order to check its effectiveness after almost three years of its enactment.

**d)** The need to continue searching and registering clandestine graves and, evidently, the identification of persons.

**e)** The creation of a National System to Look for Disappeared or Missing Persons.

**f)** The creation among law enforcement offices, of skilled groups specializing in searching for missing or disappeared persons.

**g)** The investigation by law enforcement offices will not be limited to find and prosecute those responsible for disappearing persons, but to find these latter.

**h)** The establishment of protocols to look for disappeared persons generating an immediate response by authorities to find persons.

**i)** The creation of a National System of Genetic Information including genetic material and biological samples of relatives of persons reported as disappeared or missing, and the analysis of genetic information of human remains found in mass and clandestine graves.

**j)** To strengthen and unify the Detention Administrative Record referred to by the General Law of the National System of Public Security, including information of detainments under the modes of apprehension, flagrance, urgent ministerial order, home arrest search warrant and provisional for extradition.

**k)** The enactment of the General Law of Enforced Disappearance.

**l)** The definition of disappearance on the hands of individuals and the declaration of missing by reason of disappearance.

**m)** The training and professionalization of police groups should be adequate to ensure the requirements of citizen safety, from an objective diagnosis of the current conditions of security in Mexico. This should include a description of how and when the armed forces will cease to take part in security operations, complying with international criteria, resolutions and standards.

**n)** The need that the Mexican State accept the competence of the Committee against Disappearances to receive individual petitions.

**o)** To pay special attention to cases of disappearance of persons in a particular status of vulnerability, such as women, migrants, human rights defenders and journalists.

**NATIONAL COMMISSION ON HUMAN RIGHTS, AUTONOMOUS PUBLIC AGENCY**

**FEBRUARY 2015**

1. This is based on paragraphs sixth, seventh and eighth, section B of article 102 of the Political Constitution of the United Mexican States and articles 9, 10 and 11 of the Law of the National Commission on Human Rights. [↑](#footnote-ref-1)
2. These capacities derive from articles 1, paragraph one, two and three; 102 section B, of the Political Constitution of the United Mexican States; 1, 3, 6, sections I, II, III, VII, VIII and XV, 15 section VIII; 24 section IV the Law of the National Commission on Human Rights. [↑](#footnote-ref-2)
3. See Recommendation 26/2001:

   <http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2001/REC_2001_026.pdf> [↑](#footnote-ref-3)
4. Recommendation 26/2001, p.24. [↑](#footnote-ref-4)
5. Recommendation 26/2001, p.30. [↑](#footnote-ref-5)
6. Recommendation 26/2001, p.31 [↑](#footnote-ref-6)
7. Recommendation 26/2001, p.45. [↑](#footnote-ref-7)
8. See the recommendations in:

   <http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2001/REC_2001_026.pdf> [↑](#footnote-ref-8)
9. See Mexico´s report in:

   <http://www.sre.gob.mx/index.php/component/content/article/69-canal-de-noticias-de-la-sre/1547-> segundo-informe-de-mexico-ante-el-mecanismo-de-examen-periodico-universal-del-consejo-de- derechos-humanos [↑](#footnote-ref-9)
10. *González and other “cotton field” vs. United Mexican States case*. Resolutions 18 and 19. See the full resolution at: https://[www.cjf.gob.mx/Reformas/articulosInteres/Caso%20Campo%20Algodonero.pdf](http://www.cjf.gob.mx/Reformas/articulosInteres/Caso%20Campo%20Algodonero.pdf) [↑](#footnote-ref-10)
11. The resolution was issued on 23rd November 2009 and can be seen in:

    <http://www.cndh.org.mx/sites/all/fuentes/documentos/internacional/casos/5.pdf> [↑](#footnote-ref-11)
12. *Radilla Pacheco vs. United Mexican States case*, paragraph 322-324. [↑](#footnote-ref-12)
13. See the initiative in the Senate´s Gazette:

    <http://www.cndh.org.mx/sites/all/fuentes/documentos/internacional/casos/5.pdf> [↑](#footnote-ref-13)
14. *Radilla Pacheco vs. United Mexican States case*, paragraph 344. [↑](#footnote-ref-14)
15. *Elementos para la Construcción de una Política de Estado para la Seguridad y la Justicia en Democracia*. México: UNAM-Instituto Iberoamericano de Derecho Constitucional, 2011, p. 36. [↑](#footnote-ref-15)
16. *Montero Aranguren “Retén de Catia” vs. Venezuela case*. Resolution of 5th July 2006, paragraph 78: “*States should limit as much as possible the use of armed forces to control internal disturbances, since their training is intended to defeat the enemy, not to protect and control civilians, a training intended to police groups.*” [↑](#footnote-ref-16)
17. *Report on Citizen Security and Human Rights*, Inter-American Commission of Human Rights, 31st December 2009, paragraph 100-102. “*A public policy on citizen security, becoming an efficient tool so that the State Members adequately comply with their obligations to respect and ensure the human rights of all persons living in their territories, should have adequate institutions and professional operating structures for such purposes. The difference between the responsibilities of the armed forces, limited to preserve national sovereignty, and those of police groups, as solely responsible for citizen security, is an essential starting point that has to be considered in the design and implementation of this public policy.”* [↑](#footnote-ref-17)
18. See the full Convention document in:

    <http://proteo2.sre.gob.mx/tratados/ARCHIVOS/DESAPARICIONES%20FORZADAS.pdf> [↑](#footnote-ref-18)
19. Report from the Working Group on Enforced or Involuntary Disappearances [↑](#footnote-ref-19)
20. See the report: : [http://cmdpdh.org/wp-content/uploads/2013/12/A\_HRC\_WG-6\_17\_L-](http://cmdpdh.org/wp-content/uploads/2013/12/A_HRC_WG-6_17_L-5_Mexicoss-1.pdf)

    [5\_Mexicoss-1.pdf](http://cmdpdh.org/wp-content/uploads/2013/12/A_HRC_WG-6_17_L-5_Mexicoss-1.pdf) [↑](#footnote-ref-20)
21. The 2014-2018 National Program on Human Rights was published on 30th April 2014. [↑](#footnote-ref-21)