



**International Convention for
the Protection of All Persons
from Enforced Disappearance**

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Committee on Enforced Disappearances

**Consideration of reports submitted by States
parties under article 29, paragraph 1, of the
Convention**

Reports of States parties due in 2012

Mexico*

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** The annexes are available for consultation in the secretariat files.

Introduction

1. The Government of Mexico hereby submits its report on the implementation within its territory of the International Convention for the Protection of All Persons from Enforced Disappearance, pursuant to article 29, paragraph 1, of the Convention.
2. Mexico is complying with this international obligation at a time when there has been significant progress in the advancement and protection of and respect for human rights in the country, thanks to a process of structural transformation and modernization of the constitution and legislation to strengthen and reinforce the policies of the State in that area.
3. This progress has been achieved thanks to agreement and support from a variety of political actors, international and national civil-society bodies and human-rights advocates. The efforts of all those involved have led to a shared agenda for the rights of all Mexicans.
4. In a number of forums, Mexico has recognized the major challenges it faces in the area of human rights. The State party is fully aware of its obligations and of the impacts and implications of enforced disappearance. It acknowledges the seriousness of such offences and the fact that they violate multiple legal norms, infringing upon personal freedom, physical integrity and sometimes the right to life itself and impeding access to justice for the victims and their families. Increased efforts have therefore been made to combat enforced disappearances.
5. Enforced disappearance, together with the delicate task of providing support to victims' families and organizations of victims, is one of the most significant challenges facing Mexico. This requires the construction of integrated policies to do what is needed in the area of public policy and implement the legislative changes needed to tackle the problem. This is a subject of deliberation and analysis in the National Public Security System.
6. In April 2012 the executive branch of the federal Government promulgated an Act to establish a national register of data on missing or disappeared persons and regulate its operation, functioning and administration.
7. One of the goals of the National Development Plan 2013–2018 is to generate information to help locate persons who have disappeared. It is a priority policy area for the Government to adopt public policies and programmes of action to provide comprehensive assistance and support to the families of disappeared persons and help to search for, locate and identify such persons.
8. In February 2013, in the context of the Government's cooperation with international bodies, the Ministry of the Interior signed an agreement with the International Committee of the Red Cross (ICRC), providing a basis for the integration and promotion of international human rights law and humanitarian principles in the preparation of studies, protocols and technical advice regarding searches for missing persons and dissemination and training in related fields.
9. In October 2013, in the area of legislative harmonization, the Senate considered a presidential initiative to bring the definition of the offence of enforced disappearance into line with international standards. Under the Constitution, the legislative branch is responsible for preparing the draft legislation.
10. In response to an initiative of the executive branch of the federal Government dated 4 February 2014, the Senate agreed to withdraw its reservation to the Inter-American Convention on Forced Disappearance of Persons in order to bring Mexican law more closely into line with international norms.

11. These efforts would be incomplete without a model to support the families of disappeared persons based on assistance and information management, to ensure that they are treated with respect and dignity and uphold their right to truth and integral reparation. Efforts are in hand to standardize the actions of Government bodies and municipal authorities in the investigation of cases of disappeared persons. Progress has been made in that area, in accordance with the principles enshrined in the Victims Act. The principles enshrined in the Act include treatment with dignity, good faith, a differentiated and specialized approach, non-criminalization, maximum protection, joint participation, prevention of secondary victimization and due diligence.

12. A National Victims Support System was created on 15 January 2014. Its main objective is to ensure full reparation of the damage sustained by those who have been the victims of crimes and human rights violations. Its central body is the Executive Commission For Victim Support, which is tasked with establishing a national victims registry, setting out the operating rules of an aid, assistance and comprehensive redress fund and defining the legal assistance to be provided by the relevant authorities in the three branches of government.

13. In accordance with the implicit commitment contained in the law to observe international standards and best practices, the Government is determined to comply with the recommendations contained in the 2011 report of the Working Group on Enforced or Involuntary Disappearances, recognizing that such disappearances are among the most serious and painful offences against personal dignity and also infringe other fundamental rights.

14. The current Mexican legal system provides greater protection for human rights than ever before, with public policies based on international standards and a Government that has the will and desire to take preventive and punitive measures in relation to the offence of enforced disappearance in accordance with international law.

I. General legal framework

1. Constitutional, criminal and administrative provisions regarding the prohibition of enforced disappearance

15. The Constitution of the United Mexican States recognizes and protects the right of all persons not to be arbitrarily deprived of their liberty and, in case of detention, sets out a series of basic safeguards which must be complied with.

16. Article 14 of the Constitution provides that no person may be deprived of his or her liberty or rights in any circumstance which does not involve a prior judgement by an established court of law with due regard for the procedure established by law.

17. Article 16 states that no one may be subjected to interference with his or her person, family, domicile, documents or possessions, except by virtue of a written order from the competent authority substantiating the legal grounds for the proceeding.

18. Articles 18 and 19 set out the conditions for detention, based on the premise that no person may be deprived of his or her liberty unless there is evidence that an offence has been committed and a reasonable ground for believing that the suspect has committed or participated in the offence. These articles establish legal and judicial safeguards to protect the rights of the detainee.

19. Article 17 establishes the right of access to justice in Mexico. It provides that every person has the right to justice administered expeditiously through the courts within

the time limits and under the terms established by law and that the courts are to hand down their decisions in a timely, complete and impartial manner.

20. As for the criminal law, the offence of enforced disappearance is listed as an offence at the federal level in article 215-A of the Federal Criminal Code, in the criminal codes of 17 of the country's states¹ and in special laws in two of the states.² Detailed information on the definition of the offence in the criminal law of the states can be found in the section relating to article 2 of the Convention.

2. International treaties dealing with enforced disappearance to which Mexico is a party

21. Mexico is a State party to the following international agreements which enshrine the protection of persons from the practice of enforced disappearance:

- The International Covenant on Civil and Political Rights, opened for signature on 16 December 1966 and signed and ratified by Mexico on 23 June 1981.
- The Declaration on the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations on 18 December 1992.
- The Inter-American Convention on Forced Disappearance of Persons, opened for signature on 9 June 1994 and ratified by Mexico on 9 April 2002.
- The International Convention for the Protection of All Persons from Enforced Disappearance, adopted by the General Assembly of the United Nations by resolution 61/177 of 20 December 2006 and ratified by Mexico on 18 March 2008.
- The Rome Statute of the International Criminal Court, ratified by Mexico in August 2005. Article 7(1)(i) of the Statute defines enforced disappearance as a crime against humanity when it is committed as part of a widespread or systematic attack directed at a civilian population.

3. Status of the Convention in the domestic legal order

22. Thanks to the constitutional amendment in the area of human rights, the text of article 1 gives constitutional status in the Mexican legal system to all human rights standards contained in treaties by recognizing the right of all persons to enjoy the human rights recognized in the Constitution and the international human rights treaties to which Mexico is a party.³

23. The Convention, together with other international human rights treaties, is therefore an integral part of the country's legal framework and its provisions have constitutional status.

24. Article 133 states that the Constitution, laws adopted by Congress based on the Constitution and any treaties that are in conformity with it and have been or will be

¹ Aguascalientes, Baja California, Campeche, Chihuahua, Coahuila, Colima, Durango, Federal District, Guanajuato, Hidalgo, Michoacán, Nayarit, Nuevo León, Oaxaca, Puebla, San Luis Potosí and Zacatecas.

² Guerrero and Chiapas.

³ On the constitutional reform in the area of human rights, see core document, paras. 3, 92, 93 and 100–103.

concluded by the President of the Republic with the approval of the Senate shall be the supreme law of Mexico.⁴

25. On 18 December 2007, the adoption of the International Convention for the Protection of All Persons from Enforced Disappearance was published in the Official Gazette.⁵

26. The decree on the entry into force of the Convention was published in the Official Gazette on 22 June 2011.⁶

4. How domestic laws ensure the non-derogability of the prohibition of enforced disappearance

27. The non-derogability of the prohibition of enforced disappearance is addressed under article 1.

5. How the provisions of the Convention are enforced by the courts or administrative authorities

28. All the provisions of the Convention may be invoked in court because it is part of the internal legal order. Furthermore, all the country's judges are required to ensure compatibility with treaties; that is, they must consider national legislation in the light of the treaties to which Mexico is a party, including the Convention.

29. The Supreme Court of Justice meeting in plenary examined the obligations communicated to the judiciary by the Inter-American Court of Human Rights following its verdict in the *Rosendo Radilla* case.⁷ On the basis of those deliberations it was decided that judges, both federal and local, must ensure compatibility with treaties *ex officio*.⁸

30. The Supreme Court of Justice set out applicability criteria for ensuring that compatibility and decided that the following should be taken into account:

- All human rights provided for in the Constitution (based on articles 1 and 133);
- All human rights provided for by international treaties to which Mexico is a party (based on article 1 of the Constitution);
- Binding rulings of the Inter-American Court of Human Rights contained in verdicts applicable to Mexico.

6. How the provisions of the Convention apply to all parts of federal States

31. The application of the provisions of the Convention and of international human rights treaties in all parts of the State are covered in the core document which is submitted together with this report.

⁴ Constitution of Mexico, art. 133.

⁵ See http://www.dof.gob.mx/nota_detalle.php?codigo=5010695&fecha=18/12/2007.

⁶ See http://www.dof.gob.mx/nota_detalle.php?codigo=5197494&fecha=22/06/2011.

⁷ Inter-American Court of Human Rights, case of *Radilla Pacheco v. Mexico*. Preliminary objections, merits, reparation and costs. Judgment of 23 November 2009. Series C No. 209.

⁸ Miscellaneous file 99/2010 of the Supreme Court of Justice, June 2011.

7. Competent authorities with jurisdiction or mandate over matters dealt with in the Convention

32. Concerning the competence of Mexican authorities over matters dealt with in the Convention, it should first be noted that, for federal offences, the justice system comes under the authority of the Office of the Attorney General of the Republic, whereas the attorneys general of the federal entities have jurisdiction over offences at the state level and also investigate offences and act as prosecutors in criminal trials.

33. The Office of the Attorney General of the Republic incorporates the Office of the Special Prosecutor for Violence against Women and Human Trafficking, which was established in order to investigate and prosecute federal offences involving violence against women and human trafficking.⁹

34. Among other things, that Office is responsible for investigating and prosecuting offences covered by the Act to Prevent and Punish Human Trafficking, published in the Official Gazette on 27 November 2007, and any acts of violence against women which come under federal jurisdiction.

35. Article 1 of the Agreement gives the Office of the Special Prosecutor the authority to investigate and prosecute acts of violence against women under the jurisdiction of the federal authorities and offences under the Act to Prevent and Punish Human Trafficking, published in the Official Gazette on 27 November 2007,¹⁰ except offences committed by members of organized criminal groups as defined by articles 2 and 8 of the Federal Act on Combating Organized Crime.

36. Article 3 of the same Agreement gives the Special Prosecutor for Violence against Women and Human Trafficking the authority of a federal public prosecutor and defines his or her jurisdiction, stating that in the course of his or her duties the Special Prosecutor is entitled to investigate and prosecute federal offences related to acts of violence against women and human trafficking in accordance with the applicable legal provisions.

37. Under article 10, paragraph 2, of the Federal Code of Criminal Procedure, in the case of concurrent offences, the Federal Prosecution Service has jurisdiction over offences under the states' jurisdiction when they are connected to offences which fall under federal jurisdiction; federal courts are competent to try such cases. Consequently, the jurisdiction of the Office of the Special Prosecutor for Violence against Women and Human Trafficking may extend to any related offence in connection with an offence of human trafficking or violence against women without having specific jurisdiction in such an offence; it is therefore inferred that it extends to all offences.

38. The Special Prosecutor's Office for Crimes against Freedom of Expression, which also comes under the Office of the Attorney General, is conducting a subprogramme to organize information relating to killings and disappearances of journalists. Its purpose is to

⁹ The Office of the Special Prosecutor for Violent Crimes against Women and Trafficking in Persons was created by Agreement A/024/08 of the Attorney General of the Republic, published in *the Official Gazette* on 31 January 2008.

¹⁰ Article 5. Anyone who promotes, solicits, offers, facilitates, procures, transfers, delivers or receives, for himself or herself or for a third party, a person by means of physical or psychological violence, deceit or abuse of power in order to submit that person to sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, or the removal of organs, tissue or their components shall be deemed to have committed the offence of trafficking of persons.

When this offence is committed against persons under the age of 18 or persons who are not capable of understanding the significance of the act or of offering resistance, no verification of commissive means shall be required.

identify, locate, classify, process and systematize data, within an automated system, on killings and disappearances of journalists reported by bodies which protect and defend human rights and by journalists' trade unions.

39. Agreement A/01/02, published in the Official Gazette on 27 November 2001, created the office of the special prosecutor for acts likely to constitute federal offences committed directly or indirectly by government officials against persons with links to past social and political movements, known more briefly as the Office of the Special Prosecutor for Past Social and Political Movements, as an agency of the Office of the Attorney General.

40. In order to elucidate cases of disappearance, particularly those which took place during the campaign against subversive groups in the 1970s and early 1980s, the federal Government is declassifying the files of security agencies so that information relating to that period can be examined.

41. Thanks to progress in investigations conducted by the Office of the Special Prosecutor for Past Social and Political Movements, it was decided that any pending preliminary inquiries and criminal trials should be placed under the authority of the General Coordinator for Investigations of the Office of the Attorney General. Nonetheless, this does not entail the cancellation of investigations or neglect of criminal trials falling within the authority of the Special Prosecutor; they will be conducted with the same dedication as before.

42. Agreement A/317/2006 of 30 November 2006,¹¹ announced by the Office of the Attorney General, announced the closure of the Office of the Special Prosecutor for Past Social and Political Movements. Cases which had already been referred to it were transferred to the General Coordinator for Investigations.¹²

43. Pursuant to the Agreement published by the executive branch of the federal Government and printed in the Official Gazette of 27 November 2001, the Ministry of the Interior created an interdisciplinary committee to compensate victims or complainants for violations of human rights of individuals associated with social and political movements in the 1960s and 1970s. Its functions are to study, analyse and present proposals to determine the means, procedures and terms for the provision of fair administrative reparations, where appropriate, to victims and complainants of the events of the past.

44. The committee comprises representatives of the Ministries of the Interior, Foreign Affairs, Social Development, Finance and Public Credit and Communications and Transport and of the Office of the Attorney General, the National Archive and the Institute for Historical Studies of the Revolutions of Mexico, as well as guests and the Mexico Office of the United Nations High Commissioner for Human Rights, serving as an external advisor.

¹¹ In Agreement A/317/16 of the Office of the Attorney General, published in *the Official Gazette* on 26 March 2007, it was stated in the preambular paragraphs that the office of the Special Prosecutor for Past Social and Political Movements had conducted historical and documentary investigations and collected evidence which had supported lines of inquiry; these in turn had led to the prosecution of individuals who had probably committed offences associated with social and political movements in the 1960s and 1970s.

¹² In 2007, the Office of the General Coordinator for Investigations of the Office of the Attorney General received only preliminary inquiries under consideration from the former Office of the Special Prosecutor for Past Social and Political Movements. In these inquiries, totalling 569, the staff of the Attorney General's office is pursuing the inquiries that are appropriate and necessary in order to finalize and, where possible, decide the cases.

45. In addition to its plenary sessions, the Committee has created working groups tasked with analysing and proposing administrative and legal mechanisms for comprehensive reparation, taking account of both national and international standards and considering the three areas of reparation, which are guarantees of non-repetition, material reparation and social and moral compensation.

46. The Committee is currently engaged in determining the criteria, means, procedures and terms for the reparation of harm in the 275 cases reported by the National Human Rights Commission in its Recommendation 26/2001.

47. As for the local justice system, the government of the Federal District has a Missing and Absent Persons Support Centre with jurisdiction over cases of missing and absent persons in the Federal District. The Centre comes under the victim support system of the Assistant Attorney General for Victim Assistance and Community Services of the Office of the Attorney General of the Federal District.

48. In the area of administrative institutions, an Office for Victims of Crime was established by presidential decree on 6 September 2011 as a decentralized agency of the federal administration.¹³ Its purpose is to provide timely and comprehensive support to the victims of crime, to contribute to the effective performance of the functions of the authorities responsible for such matters, and to formulate and execute policies, programmes and plans for inter-agency cooperation and coordination for the provision of that support. Its varied tasks include the provision of timely, appropriate and comprehensive support to families attempting to locate missing persons.

49. The staff of the Office for Victims of Crime provides support to victims and complainants of crime and to the families of disappeared or missing persons, following the principles of free service, sensitivity, empathy and fair treatment that their particular situation demands and always endeavouring to contribute to their physical, psychological and emotional well-being. The Office provides assistance to people who are searching for disappeared or missing persons and to the victims of offences such as homicide, kidnapping, extortion and human trafficking.

50. The services provided to victims and complainants of crime are mostly medical care, specialized psychological support, guidance and legal advice.

51. A programme of social support for the families of lost, abducted or missing persons was created in 1994 under the authority of the Office of the Attorney General, to provide assistance to the families of missing persons and help in trying to locate them, as well as offering legal assistance and psychological support.

52. As for the system of administration of justice, federal justice is exercised by the Supreme Court of Justice, collegiate and single-judge circuit courts and district courts. There are currently 32 judicial circuits, which cover the territory of one or two of the country's federal states. Each state has a High Court of Justice, which has jurisdiction in a number of fields including criminal justice.

53. Penalties are determined at the local level for offences committed in each of the federal entities. Should the legal authority fail to comply with the constitutional precepts of due process, a remedy of amparo may be invoked in order to request the federal justice system to intervene.

54. Lastly, the National Human Rights Commission, established in 1990 by presidential decree, is a national public body responsible for receiving complaints and hearing and investigating alleged human rights violations, *ex officio* or on application by a party, and

¹³ It formally began work on 10 October 2011.

formulating non-binding public recommendations as well as submitting complaints and grievances to the relevant authorities.

55. There are also 32 public bodies for the protection of human rights, one in each of the federal entities, which can review complaints relating to violations of those rights.

56. The most recent constitutional amendment in the area of human rights gave the National Human Rights Commission the following new powers:¹⁴

- The authority to investigate serious human rights violations on its own initiative or if requested to do so by the executive branch of the federal Government, one of the chambers of the federal Congress, the governor of one of the states, the Head of Government of the Federal District or the legislature of one of the federal states; and the authority to submit complaints arising out of its investigations (article 102, paragraph B, of the Constitution);¹⁵
- The authority to challenge the constitutionality of legislation at the federal, state and Federal District levels, or of international treaties, which may conflict with the human rights enshrined in the Constitution or in international treaties to which Mexico is a party (article 105, section II (g), of the Constitution).

8. International case law where the provisions of the Convention have been enforced

57. The cases of *Rosendo Radilla Pacheco v. United Mexican States* before the Inter-American Court of Human Rights and of *Jesús Ángel Gutiérrez Olvera* before the Inter-American Commission on Human Rights are among the most prominent cases of enforced disappearance which have been reviewed in judicial or quasi-judicial proceedings by international bodies.

(a) The case of *Rosendo Radilla Pacheco v. United Mexican States*

58. This case concerns the enforced disappearance of Rosendo Radilla Pacheco, committed by military personnel in August 1974 in the state of Guerrero.

59. Following lengthy proceedings at the national and international levels, this case was submitted to the Inter-American Court of Human Rights, which decided in 2009 that Mexico was internationally responsible for violations of the human rights of the victim and his family. The judgement involved three fundamental issues: enforced disappearance, the jurisdiction of military courts and conformity with treaties.

60. Mexico is currently complying with that judgement and most of the reparation measures have already been implemented. These include the public recognition of the State's responsibility,¹⁶ the publication of the judgement in the media, the holding of ongoing courses and programmes to analyse the jurisprudence of the inter-American system of protection of human rights in relation to the limits of military jurisdiction, the publication of a brief biography of Rosendo Radilla Pacheco and the payment of compensation.

¹⁴ See core document.

¹⁵ Before the reform of 10 June 2011, that authority belonged to the Supreme Court of Justice. It was provided for in article 97, paragraph 3, of the Constitution, a provision which was repealed.

¹⁶ This took place on 17 November 2012.

61. That judgement has served as a model for Mexico, providing the basis for structural reforms both to combat enforced disappearances and to limit military courts strictly to offences against military discipline not involving civilians.

(b) The case of *Jesús Ángel Gutiérrez Olvera*

62. Jesús Ángel Gutiérrez Olvera was arrested on 14 March 2002 and his whereabouts are still unknown. The case was submitted to the Inter-American Commission on Human Rights in 2003.

63. The national authorities continued to investigate the case in parallel with the international proceedings and on 30 June 2010 a person was proved to be criminally responsible for the enforced disappearance of Jesús Ángel Gutiérrez Olvera.

64. It is noteworthy that the criterion used by the national judge in considering the criminal offence of enforced disappearance in this case was that, regardless of the legality or illegality of the detention, the truly important aspect was that the offender intended to conceal the victim's fate or whereabouts.

65. On 4 May 2012, when the merits of the case were being considered by the Commission following discussions with the petitioners, an amicable settlement was reached. Mexico undertook to provide reparations to the victim's family in accordance with international standards. The actions which have been carried out by Mexico include the public recognition of its responsibility,¹⁷ the provision to the victims of prompt and free access to health programmes and State programmes of psychological support and the payment of compensation.

9. Examples of case law where violations of the Convention were identified, the reasons for such violations and the measures taken to remedy the situation

66. Through statements of case-law doctrine (*tesis jurisprudenciales*), the Supreme Court of Justice has established that, in accordance with article 8 of the Convention, the offence of enforced disappearance is a continuing or permanent offence as long as the whereabouts of the victim remain unknown.¹⁸ It has also decided that the period during which the prescription of the offence may occur begins once the victim has reappeared or his or her fate has been established.¹⁹

67. The Court has decided that the appropriate criminal proceedings and the penalty to be imposed on the perpetrator shall not be subject to prescription. In other words, in cases of enforced disappearance, no authority may decide that the period during which the offender may be brought to trial or certain proceedings may take place has expired.²⁰

68. Regarding the deprivation of liberty as a component of the definition of the offence of enforced disappearance, the Supreme Court of Justice has stated that this offence is committed at the moment when the victim is illegally detained and throughout the period

¹⁷ This was announced on 1 October 2012.

¹⁸ Opinion P./J. 48/2004 of the Supreme Court of Justice in plenary session, p. 968 of *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), vol. XX, July 2004, ninth edition.

¹⁹ Opinion P./J. 87/2004 (9^a), source: *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), vol. XX, September 2004, p. 1121.

²⁰ Opinion of the Second Collegiate Criminal and Administrative Court of the Eighth Circuit: VIII.2º.P.A.3 P (10º), source: *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), book XII, September 2012, tenth edition.

during which the detention continues. This was also in accordance with the provisions of the Convention.

69. The Supreme Court of Justice has reaffirmed the jurisprudence of the Inter-American Court of Human Rights, stating that the offence of enforced disappearance constitutes a manifold human rights violation which makes the victim totally defenceless and that it is a particularly serious offence when committed as part of a systematic pattern or is a practice tolerated by the State. The Court further established that, since it is a serious violation of human rights, family members must be given access to the results of preliminary inquiries and that the confidential nature of the information may not be invoked to prevent this.²¹

70. It has also been established that the victim or complainant is entitled to bring amparo proceedings against any final not-guilty verdict in favour of the accused. The purpose of this is to enable the victim or complainant to contest the constitutionality of the decision.

71. In considering the *Radilla Pacheco* case, the Supreme Court of Justice undertook to analyse the obligations arising out of the verdict of the Inter-American Court of Human Rights and decided that federal courts are required to ensure compatibility with treaties *ex officio*. It also decided to implement administrative measures, including the training of officials, to ensure that cases of enforced disappearance are dealt with appropriately, with particular emphasis on the legal, technical and scientific elements necessary for the comprehensive assessment of the phenomenon of enforced disappearance and in the use and assessment of certain forms of evidence.

72. Subsequently, the Supreme Court of Justice stated that the offence of enforced disappearance affects not only the person deprived of his or her liberty but also the victim's family. It thereby complied with international standards in this area, recognizing the legitimate interests of the family of the disappeared person.²²

10. Statistical data on complaints and verdicts in cases of enforced disappearance

73. At the federal level, the Office of the Attorney General of the Republic began a total of 99 preliminary inquiries into cases of enforced disappearance between 2006 and 2013.

74. Attorney Generals' offices at the state level initiated a total of 192 preliminary inquiries during the same period.

²¹ Amparo review No. 168/2011, First Chamber of the Supreme Court of Justice. Isolated excerpts T 1^a IX/2012 (10^a), 1^a X/2012 (10^a), 1^a XI/2012 (10^a), 1^a XII/2012 (10^a), source: *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), book V, February 2012, vol. 1, tenth edition, pp. 650, 652, 654 and 667 respectively.

²² Isolated excerpt P. I/2013 (10^a), source: p. 368 of *Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), book XVII, March 2013, vol. 1, tenth edition.

II. Information in relation to each substantive article of the Convention

Article 1

Absolute prohibition of enforced disappearance

75. In Mexico, enforced disappearance is defined as a serious offence in the Federal Criminal Code and in the codes or special legislation of 19 of the country's federal entities. Furthermore, the prohibition of enforced disappearance is provided for in the Constitution, where it is listed as one of the circumstances in which the State may in no case suspend guarantees.

76. Article 29 of the Constitution provides that in the event of invasion, serious disturbance of public order or any other circumstances in which society is placed in serious danger or conflict, only the President of the United Mexican States, with the agreement of the Ministers, heads of administrative departments and the Office of the Attorney General of the Republic, and with the approval of Congress or, if it is not in session, the Permanent Commission, may suspend throughout the country or in a particular place the exercise of any rights or guarantees which may prevent the situation from rapidly and easily being brought under control. He or she may do so for only a limited period, by means of general measures not limited to a particular individual.

77. Nonetheless, the Constitution further states that in no situation may there be any restriction or suspension of the exercise of the rights to non-discrimination, to recognition as a person before the law, to life, to personal integrity, to the protection of the family and to name and nationality; the rights of the child, political rights, freedom of thought and conscience and the right to profess any religious belief; the principles of legality and retroactivity; and the prohibition of the death penalty, of slavery and forced labour and of enforced disappearance and torture, together with the judicial safeguards essential for the protection of such rights.

78. Any decrees issued by the executive power during the restriction or suspension are to be immediately reviewed *ex officio* by the Supreme Court of Justice, which is to rule as soon as possible on their constitutionality and validity, in accordance with the terms of the constitutional reform in the area of human rights dated June 2011.

Article 2

Definition of enforced disappearance in the internal legal order

79. Since 2001, the offence of enforced disappearance has been defined in article 215A, title X, chapter III *bis*, entitled "Offences committed by public servants", of part II of the Federal Criminal Code, as follows:

"Any public servant who, regardless of whether he or she has been involved in the legal or illegal detention of a person or persons, abets or wrongfully maintains their concealment under any form of detention shall be guilty of the offence of enforced disappearance."

80. That definition reflects the terms used in the Convention:

(a) "The arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State"; the aforementioned article 215A includes as part of

the definition the legal or illegal detention of a person, that is, the deprivation of liberty carried out by an agent of the State.²³

81. Regarding the involvement of a persons or groups of persons acting with the authorization, support or acquiescence of the State, article 215A defines as the perpetrator a public servant who commits the offence of enforced disappearance.²⁴

82. Article 212 of the Federal Criminal Code defines as the perpetrator not only a person who is a public servant but also someone who, although not a public servant, takes part in the perpetration of offences committed by public servants.²⁵

83. This status of perpetrator, as well as the types of involvement provided for in the legal definition (perpetrator, co-perpetrator, perpetrator-by-means, instigator and direct or indirect accomplice), bring the definition of the offence into line with the definition of “enforced disappearance” in article 2 of the Convention, which states that the offence is committed “by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State”.

(b) “Concealment of the fate or whereabouts of the disappeared person, thereby placing a person outside the protection of the law”; article 215A of the Criminal Code includes “abets or wrongfully maintains their concealment under any form of detention” as part of the definition of the offence.

84. In this case, the wrongful intent lies in the fact that the perpetrator is aware that he or she is abetting or wrongfully maintaining the victim’s concealment under some form of detention and nonetheless intends to do so.

85. The crucial aspect of the offence is that the perpetrator wrongfully abets or maintains the victim’s concealment under some form of detention, thereby placing such a person outside the protection of the law.

86. Enforced disappearance is classified as a serious offence under article 194 of the Federal Code of Criminal Procedure and the Criminal Code provides for a prison sentence of 5 to 50 years for the perpetrator of this offence.

Definition of the offence in the federal entities

87. The offence of enforced disappearance is currently defined in 19 of the federal entities.²⁶ It is included in the Criminal Codes of Aguascalientes, Baja California, Campeche, Chihuahua, Colima, Coahuila, Durango, the Federal District, Guanajuato,

²³ Mexican criminal law makes a distinction between legal and illegal detention. Since the Constitution sets out the necessary conditions for carrying out any detention, any detention which fails to comply with those requirements is considered to be illegal. Article 16 of the Constitution states that any detention must be carried out on the orders of a competent court, with appropriate legal grounds and reasons, and only after a complaint has been received of an act determined by law to be a crime punishable by deprivation of liberty. The authority which enforces an arrest warrant is required to bring the accused before the court without delay.

²⁴ Under article 108 of the Constitution and article 212 del Federal Criminal Code, a public servant is defined as a person holding employment, office or commission within the structure of the State, performing functions which may be legislative, executive, judicial or of any other type, whether he or she serves the federal Government or a territorial unit of the State.

²⁵ The same penalties applicable to the offence in question are applicable to any person participating in the commission of one of the offences provided for in this title or the following one.

²⁶ See annex entitled *Tipificación del delito de desaparición forzada en las entidades federativas*.

Hidalgo, Nayarit, Nuevo León, Michoacán, Oaxaca, Puebla, San Luis Potosí and Zacatecas. The states of Chiapas and Guerrero have special legislation.²⁷

88. The special legislation of the states of Chiapas and Guerrero comply not only with the obligation to ensure that enforced disappearance constitutes an offence but also with the requirement to establish a mechanism for its eradication.

89. For example, the law in the state of Chiapas explicitly penalizes persons acting with the authorization, support or acquiescence of public servants and provides for attenuating circumstances (for example if the accused has provided information which helps to find the victim alive) and aggravating circumstances (in cases where the impact on the victim becomes increasingly serious).

90. The same law provides for measures for dealing with particularly vulnerable groups. For example, where children are involved it provides for measures to protect the best interests of the child. It also provides for measures to protect migrants, such as helping the families of migrants who are victims of enforced disappearance to have access to justice and ensuring that the necessary actions are taken to locate the person or his or her remains, as well as cooperating with the authorities in the migrants' country of origin in seeking, identifying, locating and returning any minors who may have been removed to Chiapas as a result of the enforced disappearance of their parents or guardians.

91. Lastly, it incorporates a special paragraph on reparations for the harm done to the victims of enforced disappearance.

92. Under the law in the state of Guerrero, the offence of enforced disappearance may not be the object of pardon, amnesty or similar measures, nor is it considered as a political offence for the purpose of extradition. Furthermore, since it is considered as a continuing offence as long as the victim is not found, criminal proceedings are not subject to prescription.

93. In that special law, the state of Guerrero establishes that removing the disappeared person from his or her social unit and keeping him or her in concealment constitutes torture.

Article 3

Acts of the nature of enforced disappearance

94. In order to prevent enforced disappearance in Mexico and mitigate its serious consequences, the Mexican legal framework includes criminal offences designed to prevent, investigate and penalize other forms of behaviour defined in article 2 of the Convention which may take place without the authorization, support or acquiescence of the State, such as kidnapping, human trafficking and procuring prostitution.

(a) Kidnapping

95. Article 9 of the Act for the Prevention and Punishment of Kidnapping Offences states that any person who deprives another person of his or her liberty in order to obtain, for him- or herself or for another, a ransom or any benefit; to hold a person as a hostage and threaten to take that person's life or harm him or her, to force the victim's family or another person to carry out or refrain from carrying out a particular act; to cause harm or damage to the person deprived of liberty or to third parties; or to commit "express kidnapping", from the moment when the act is committed, that is, any person who deprives another person of

²⁷ Enforced Disappearance Acts in the state of Guerrero (10 October 2005) and in the state of Chiapas (11 September 2009).

his or her liberty in order to rob or extort, shall receive a prison sentence of 20 to 40 years and a fine of 500 to 2,000 times the minimum daily wage.

96. Articles 10 and 11 of the same Act set out the aggravating circumstances for the offence.²⁸

(b) Unlawful deprivation of liberty

97. Article 364 of the Federal Criminal Code sets out a sentence of imprisonment of six months to three years and a fine of 25 times the minimum daily wage for any person guilty of the offence of unlawful deprivation of liberty. If the duration of the deprivation of liberty exceeds 24 hours, the prison sentence is increased by a further month for each additional day.

(c) Procuring prostitution

98. The Federal Criminal Code states that a person is guilty of the offence of procuring prostitution (pimping) if he or she exploits the body of another by means of sexual trade, lives off this trade or obtains from it any profit or induces or solicits a person to conduct sexual trade with that person's body or provides the means for the person to engage in prostitution.

99. The law provides for a penalty of two to nine years' imprisonment and a fine of 50 to 500 times the minimum daily wage for those convicted of this offence. If the victim is a minor or a person lacking the ability to understand the meaning of the act, the prison

²⁸ Article 10. The penalties provided for in article 9 of this Act shall be increased:

I. From 25 to 45 years' imprisonment and a fine of 2,000 to 4,000 times the minimum daily wage if the deprivation of liberty is associated with one or more of the following circumstances:

- (a) If it occurs on the public highway or in an exposed or isolated place;
- (b) If the perpetrators act in a group of two or more persons;
- (c) If it is committed with violence;

(d) If, in order to deprive a person of his or her liberty, the perpetrators break into the building where the victim is located;

(e) If the victim is aged under 18 years or over 60 or if, owing to any other circumstance, he or she is unable to understand the significance of the act or to resist it;

(f) If the victim is a pregnant woman.

II. From 25 to 50 years' imprisonment and a fine of 4,000 to 8,000 times the minimum daily wage if the deprivation of liberty is associated with one or more of the following circumstances:

(a) If the perpetrator or perpetrators are or have been members of any body involved in public security or the administration of justice or of the armed forces, or if they impersonate such officials;

(b) If the perpetrator or perpetrators have any connection to the victim, whether through family, friendship, gratitude, trust or employment or to a person related to the victim;

(c) If, during the victim's captivity, the perpetrator or perpetrators inflict any of the injuries provided for in articles 291–293 of the Federal Criminal Code;

(d) If the victim is subjected to acts of torture or sexual violence;

(e) If the victim dies during his or her captivity owing to a deterioration in his or her health which is a consequence of the deprivation of liberty or owing to a previously existing condition for which appropriate care has not been provided by the perpetrators or participants in the offence.

The penalties provided for in this article shall be imposed without prejudice to and separately from any penalties relating to other offences resulting from the conduct to which they apply.

sentence is between 8 and 15 years and the fine is between 1,000 and 2,500 times the minimum daily wage, and the establishment concerned is shut down permanently.

(d) **Human trafficking**

100. Article 10 of the General Act for the Prevention, Punishment and Eradication of Crimes of Human Trafficking and for the Protection and Assistance of Victims states that the offence of human trafficking includes any wrongful act or omission by one or more persons in order to capture, recruit, transport, transfer, retain, hand over, receive or house one or more persons for purposes of exploitation. The corresponding penalties are prison sentences of 5 to 15 years and a fine of 1,000 to 20,000 times the minimum daily wage.

101. Under article 11, anyone who holds or maintains another person in slavery is liable to 15 to 30 years' imprisonment.²⁹

Article 4
Enforced disappearance as a specific offence

102. As mentioned above, enforced disappearance as a specific offence is penalized under article 215A, title X, chapter III *bis*, of part II of the Federal Criminal Code, entitled "Offences committed by public servants".

103. Nonetheless, in an effort by Mexico to bring its internal legislation into line with international standards and comply with the verdict of the Inter-American Court of Human Rights in the *Radilla Pacheco* case, a proposed amendment to article 215 of the Federal Criminal Code has been introduced.

104. In its order of 19 May 2011³⁰ on compliance with its judgement in the case of *Rosendo Radilla Pacheco v. United Mexican States*, the Inter-American Court of Human Rights stated that the proposed reform submitted by the executive branch of the federal Government would be compatible with international standards provided that it incorporated the elements indicated by the Court and in the Inter-American Convention on Forced Disappearance of Persons for an adequate definition of the offence.

Proposed amendment to article 215 of the Federal Criminal Code

105. On 22 October 2013, the executive branch of the federal Government submitted to Congress a proposed decree to amend article 215, paragraphs A, B and C, of the Federal Criminal Code and add a new paragraph E.³¹

106. The proposal was to amend those paragraphs, which contain the definition of the offence of enforced disappearance, bringing them into line with the relevant international standards. It was proposed that the amended article should read as follows.³²

²⁹ Slavery is defined as a person having control over another person, leaving him or her without the ability to freely dispose of his or her person and property, and the de facto exercise over him or her of the powers attaching to the right of ownership.

³⁰ Inter-American Court of Human Rights, *Radilla Pacheco v. Mexico*, monitoring of enforcement of verdict, 19 May 2011, resolution 11, paras. 343 and 344.

³¹ See http://www.senado.gob.mx/sgsp/gaceta/62/2/2013-10-22-1/assets/documentos/Ley_art.215-A_CPF.pdf.

³² See annex entitled *Cuadro comparativo de la propuesta de reforma al Código Penal Federal*.

Article 215A

107. Any public servant who, regardless of whether he or she has been involved in the legal or illegal detention of a person, abets or wrongfully maintains his or her concealment under any form, or refuses to acknowledge the deprivation of liberty of the person or provide information regarding his or her whereabouts in order to continue his or her concealment shall be guilty of the offence of enforced disappearance.

108. A person shall also be guilty of enforced disappearance if he or she is involved in any of the activities described in the previous paragraph by order of or with the consent or backing of a public servant or in his or her support.

Article 215B

109. A person convicted of enforced disappearance shall receive a prison sentence of 20 to 50 years, a fine of 4,000 to 8,000 times the minimum daily wage, and shall be disqualified from holding any public employment, office or function.

Article 215C

110. Any public servant convicted of enforced disappearance shall be dismissed from his or her employment and shall be disqualified from holding any public employment, office or function for a period between 20 years and life.

Article 215E

111. In respect of this offence, prosecution shall not be subject to prescription nor shall the person convicted be eligible for amnesty, pardon, parole or any alternative to imprisonment.

112. The proposal submitted by the executive branch was referred for approval by the Senate's Joint Commission on Justice, Internal Affairs and Legislative Studies.

113. The purpose of the reform was to ensure that the offence of enforced disappearance is also applicable when the perpetrator refuses to acknowledge the deprivation of liberty of the person or provide information regarding his or her whereabouts and when the offence is committed by individuals contributing to carrying out the offence or with the consent of a public servant. The proposed reform is also designed to raise the minimum term of imprisonment from 5 to 20 years and the maximum term from 40 to 50 years; to extend to life the maximum period of disqualification from public office; and to establish that prosecution shall not be subject to prescription nor shall the person convicted be eligible for amnesty, pardon, parole or alternatives to imprisonment.

Article 5**Definition of enforced disappearance as a crime against humanity**

114. Among the outstanding challenges for Mexico is the need to bring national criminal law into line with the international crimes described in the Rome Statute of the International Criminal Court and other instruments of international humanitarian law to which Mexico is a party. These include the crime against humanity of enforced disappearance, recognized in article 5 of the Convention.

115. Congress has considered a number of initiatives for the incorporation of international crimes into Mexican criminal law.

116. In 2011, the Interministerial Commission on International Humanitarian Law, an advisory technical agency of the executive branch of the federal Government, prepared

draft proposals for the incorporation of international crimes into federal criminal legislation. Participants in this process included the four government departments represented on the Commission, the Ministries of Foreign Affairs, of Defence, of the Navy and of the Interior, together with the Ministry of Public Security and the Office of the Attorney General of the Republic as guests.

117. In accordance with international standards, the draft proposals would harmonize the codification of war crimes, crimes against humanity and genocide in federal criminal legislation. As for the crime against humanity of enforced disappearance, it would be codified in a manner consistent with the proposed reforms submitted to Congress by the executive branch of the federal Government on 22 October 2013.

Article 6

Criminal responsibility

118. The proposed amendment to article 215 of the Federal Criminal Code submitted to Congress on 22 October 2013 would codify the criminal responsibility of superior officials who fail to use their authority to prevent the offence of enforced disappearance. This would penalize government officials who are aware that their subordinates have committed the offence, regardless of whether they themselves have been active participants.

119. It would also provide for the criminal responsibility of any person taking part in the enforced disappearance with the consent or backing of a public servant or in his or her support.

120. Mexican criminal law does not provide for the principle of due obedience to exempt from punishment a subordinate who receives an order from a superior official. Both perpetrators and accomplices are criminally responsible.

121. Lastly, the initiative recently submitted to the Senate provides for the addition to article 215 of a paragraph stating that prosecution for this offence shall not be subject to prescription nor shall the person convicted be eligible for amnesty, pardon, parole or any alternative to imprisonment. This is consistent with the jurisprudence of the Inter-American Court of Human Rights, which states that in the case of serious violations of human rights, as with enforced disappearance, all amnesty provisions, provisions on prescription and grounds for exemption from criminal responsibility are inadmissible.³³

Article 7

Appropriate penalties for acts of enforced disappearance

122. The offence of enforced disappearance is classified as a serious offence in Mexico under article 194 of the Federal Code of Criminal Procedure. Article 215B of the Code provides for terms of imprisonment ranging from 5 to 40 years.

123. The proposal submitted to Congress on 22 October 2013 by the executive branch of the federal Government would raise the penalty currently provided for in the Federal Criminal Code from 20 to 50 years' imprisonment and a fine of 4,000 to 8,000 times the

³³ Inter-American Court of Human Rights, case of *Barrios Altos v. Peru*. Interpretation of the judgment on the merits. Judgment dated 3 September 2001. Series C No. 83, para. 41; Inter-American Court of Human Rights, case of *Gomes Lund and others (Guerrilha do Araguaia) v. Brazil*. Preliminary objections, merits, reparation and costs. Judgment of 24 November 2010. Series C No. 219, para. 154. Inter-American Court of Human Rights, case of *Almonacid Arellano and others v. Chile*. Preliminary objections, merits, reparation and costs. Judgment of 26 September 2006. Series C No. 154, para. 114.

minimum daily wage. Also, any public official guilty of the offence of enforced disappearance would be disqualified from holding any public employment, office or function.

124. This is the most severe penalty provided for in the Code and is applicable to the most serious crimes, such as genocide.

Attenuating circumstances

125. If the victim is spontaneously released within the three days following his or her detention, the penalty is eight months' to four years' imprisonment; nonetheless, other penalties may still be imposed for acts committed or omitted which constitute offences in themselves.

126. If the victim is released within ten days of the detention, the penalty is two to eight years' imprisonment; again, however, further penalties may be imposed for acts committed or omitted which constitute offences in themselves.

127. These penalties may be reduced by up to one third for a person having been involved in committing the offence if he or she has provided information which helps to establish the facts, and by up to one half if the person has contributed to the victim being found alive.

Administrative penalties

128. In addition to criminal penalties, federal law provides that any public servant convicted of the offence of enforced disappearance is to be dismissed from his or her post and disqualified from holding any public employment, office or function.

Article 8

Right to an effective remedy during the term of limitation

129. Pursuant to article 8, paragraph 1(b) of the Convention, the term of limitation applicable to enforced disappearance in federal legislation commences from the moment when the offence ceases. This was determined by the Supreme Court of Justice when it established that the offence of enforced disappearance is of a continuous or permanent nature since it takes place continually and does not come to an end until the whereabouts of the victim are known.

130. The offence of enforced disappearance is of a continuous or permanent nature, as referred to in article II of the Inter-American Convention on Forced Disappearance of Persons, and defined in Mexican positive law as being of a continuous or permanent nature because, while the offence is committed when the perpetrator deprives a person or persons of liberty with the authorization, support or acquiescence of the State, followed by the absence of information on the victim's whereabouts, the offence continues to take place and remains current until the victims' whereabouts or fate are determined.³⁴

131. The prescription period begins to run from the time when the victim appears or his or her fate is determined. In accordance with the provisions of article 102, section IV and article 7 of the Federal Criminal Code, in the case of continuous or permanent offences, which are offences committed over a period of time, the prescription period begins to run from the time when the commission of the offence ceases. Thus, if the offence of enforced

³⁴ Opinion P./J. 48/2004. Supreme Court of Justice in plenary session. Constitutional challenge 33/2002. Head of Government of the Federal District. record No. 181147. ninth edition. *source: Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), book XX, July 2004, p. 968.

disappearance provided for in article II of the Inter-American Convention on Forced Disappearance of Persons, adopted at Belém do Pará, Brazil, on 9 June 1994 (which is consistent with the provisions of article 215A of the Federal Criminal Code and article 168 of the Federal District Criminal Code) is of that type, inasmuch as it is committed from moment to moment throughout the period during which the victim is disappeared, it must be concluded that the period for prescription, in accordance with the articles quoted initially, begins to run from the time when the illegal behaviour ceases to be committed, that is, when the victim appears, alive or dead, or his or her whereabouts are determined.³⁵

132. In some of the federal entities it is expressly established that the offence is not subject to prescription. This is the case in the criminal law of Chiapas, the Federal District, Durango, Guerrero and Puebla. The special legislation in force in the states of Chiapas and Guerrero also expressly establishes the continuing or permanent nature of the offence.

Article 9

Jurisdiction for acts of enforced disappearance

133. As mentioned in section I of this report, the system of administration of justice consists of federal justice, exercised by the Supreme Court of Justice, collegiate and single-judge circuit courts and district courts, and local justice, applied by the High Courts of Justice of the federal entities.

134. Articles 2 to 6 of the Federal Criminal Code determine the jurisdiction of the country's various courts, stating that they are to exercise their jurisdiction in relation to the offence of enforced disappearance in the following cases.

(a) Territorial jurisdiction: when the offence is committed in Mexican territory

135. Offences are deemed to be committed in Mexican territory if they are committed by Mexican or foreign nationals on the high seas when aboard Mexican vessels or aboard a Mexican warship at anchor in port or in the territorial waters of another nation. This also applies to offences committed aboard merchant ships if the offender has not been tried in the country to which the port belongs and to those committed aboard a foreign vessel anchored in a Mexican port or Mexican territorial waters, where the public peace has been disturbed or where the criminal or injured party was not a crew member.

136. Similarly, Mexican courts have territorial jurisdiction to consider offences committed aboard national or foreign aircraft in Mexican or foreign territory, airspace or territorial waters, in similar cases to those mentioned concerning vessels in the previous paragraph, and offences committed in Mexican embassies and legations.

137. In accordance with the provisions of articles 1, 20 and 33 of the Mexican Constitution and of article 128 of the Federal Code of Criminal Procedure, any foreign national who commits an offence in territory under Mexican jurisdiction shall enjoy the same rights as a Mexican national.

138. An example of how compliance with due process in criminal law is ensured can be found in the recent decision of the First Division of the Supreme Court of Justice in amparo review case 517/2011, brought by Florence Cassez, who was granted amparo by the federal courts, which ordered her immediate release. This was because, during her detention, her right to be notified and to communicate with and receive assistance from her country's

³⁵ Opinion P./J. 87/2004. Supreme Court of Justice in plenary session. Constitutional challenge 33/2002. Head of Government of the Federal District. Record No. 180653, ninth edition. *source: Semanario Judicial de la Federación y su Gaceta* (Judicial Weekly Gazette), book XX, September 2004, p. 1121.

consulate had been infringed and also because of infringements of her right to due process. These rights are recognized as fundamental by the Government of Mexico in strict accordance with the provisions of the Constitution.

(b) Personal jurisdiction

139. Mexican courts have personal jurisdiction if the offence is committed in foreign territory by a Mexican national or by a foreign national against Mexican nationals, provided that the accused is present in Mexican territory or has not been tried in the country in which the offence was committed and that enforced disappearance is a criminal offence in that country.

140. The Mexican authorities also have jurisdiction over offences committed in Mexican consulates or against their staff if the accused have not been tried in the country where the offence took place.

(c) Jurisdiction over possible effects in Mexican territory

141. This relates to offences which are initiated, prepared or committed in foreign territory if they create or are alleged to create effects in Mexican territory.

142. Under article 6 of the Federal Criminal Code, if an offence covered not in the Code but in special legislation or an international treaty binding upon Mexico is committed, that legislation or treaty shall be applied.

Articles 10 to 12

Investigation of cases of enforced disappearance

Prosecutions and procedural guarantees

143. All persons have the right to receive prompt and accessible justice from the State as well as legal and public safeguards of the full exercise of their rights. The right to access to justice in Mexico, enshrined in article 17 of the Constitution, is exercised initially through the system of administration of justice and, in the last instance, through the enforcement system. Every person, regardless of social, ethnic, financial or gender status, has the fundamental right of recourse to the system of administration of justice if he or she believes that his or her rights have been infringed, especially if he or she is the victim of an offence.

144. Articles 1 to 6 of the Federal Criminal Code establish the legal framework enabling Mexican courts to consider all offences coming under federal jurisdiction, including enforced disappearance, committed by any Mexican or foreign national in territory under Mexican jurisdiction. This framework also extends the jurisdiction of Mexican courts to offences committed by Mexican nationals in foreign territory.

145. Article 2 of the Federal Code of Criminal Procedure requires officers of the Public Prosecutor's Office to receive complaints or accusations submitted to it orally or in writing concerning acts that may constitute an offence and to carry out and order all measures leading to verification of the substance of the offence and the probable responsibility of the accused, as well as compensation for damage.

146. If the accused, the victim, the plaintiff, witnesses or expert witnesses do not speak or understand Spanish sufficiently well, the court shall appoint, either of its own motion or on application, one or more interpreters who shall faithfully translate the questions and answers to be communicated. If any of the parties so requests, a statement may be written in the witness's language, and this shall be no impediment to translation.

147. Under article 113 of the Federal Code of Criminal Procedure, the Public Prosecutor's Office and its personnel are required to proceed *ex officio* to investigate offences of which they are informed. Enforced disappearance is to be investigated *ex officio*, given the seriousness of the offence.

148. Under article 123 of the Code, as soon as the Public Prosecutor's Office, police officers or officials responsible for carrying out preliminary enquiries on their behalf are aware of the probable existence of an offence that should be prosecuted *ex officio* (as is the case for enforced disappearance), they shall take all necessary measures and precautions to provide security and assistance to victims and witnesses, prevent the loss, destruction or alteration of any prints, traces, instruments and evidence as to the purpose and effect of the offence, establish the identity of witnesses, ensure that the offence does not continue to be committed and, in general, prevent any interference with the investigation, detaining those involved in committing the crime in cases of *flagrante delicto* and making an immediate record of any arrests.

149. Under article 103 of the Constitution, should the investigating authority refuse to conduct the appropriate enquiries, any person may appeal to a federal court for amparo on grounds of omission by the administrative authorities.³⁶

150. There are also specialized bodies to hear complaints against administrative acts or omissions which violate human rights, so that applicants may appeal to these specialized bodies in cases of harassment or revictimization by the investigating authority.

Missing Persons Search Unit

151. The Office of the Assistant Attorney General for Organized Crime Investigations, under the authority of the Attorney General of the Republic, has jurisdiction for investigating any suspected case of enforced disappearance at the federal level.

152. Pursuant to Decision No. A/066/13 of the Attorney General, dated 21 June 2013, which set up the Missing Persons Search Unit, the Office of the Assistant Attorney General for Organized Crime Investigations is responsible for implementing an action checklist and submitting a report to the Missing Persons Search Unit, which comes under the authority of the Office of the Assistant Attorney General for Human Rights, Crime Prevention and Community Services of the Office of the Attorney General of the Republic, so that the Unit can take action in accordance with its functions and powers. Thus, two separate investigations take place consecutively, one on the disappearance of the victim and the other on the suspected offence of enforced disappearance.

153. Under that Decision, the Unit is authorized to direct, coordinate and supervise investigations to search for and locate disappeared persons, performing their forensic identification when necessary, and to prosecute offences in connection with such disappearances.

154. If investigations by the Missing Persons Search Unit reveal a variety of offences related to those under its authority which are or might be investigated by one of the administrative units or decentralized bodies of the Office of the Attorney General of the Republic, the Unit will so inform the competent body immediately so that the appropriate investigations can take place.

155. When a complaint is received, it is vitally important to identify the public authority allegedly responsible for the victim's disappearance, such as a municipal, state or federal police force or a member of the Mexican army or navy. A list must be made of the public servants who were on duty at the date and time of the alleged disappearance. If there are

³⁶ On the constitutional reform in relation to amparo, see core document.

witnesses, they should be shown photographs of those public servants in order to identify those involved; if not, circumstantial evidence will be used to help determine criminal liability.

156. Forensic and criminal investigation, fingerprinting, computing, planimetry, photography, video and DNA sampling play a vital role in determining the causes and circumstances which led to a disappearance and, in some cases, an execution.

157. The means available for challenging the decisions of the investigating authority are remedy of complaint, remedy of objection and application for indirect amparo. When the court has issued its decision, the parties can challenge it by means of appeal or direct amparo.

Procedures to ensure access to consular assistance for a person suspected of an enforced disappearance

158. Mexico has been a party to the Vienna Convention on Consular Relations since 16 June 1965 and the standards on consular access are therefore complied with. Pursuant to article 36 of that Convention, Mexico will inform the consular office of another State if a national of that State is arrested, detained or placed in pretrial detention. Consular officials have the right to visit the person, to converse with him or her and to arrange for his or her legal representation.

The *Cavallo* case as an example of compliance with the principle of *aut dedere aut judicare*

159. An example of how the Mexican authorities apply the principle of *aut dedere aut judicare* (the obligation of the State to extradite or exercise its own jurisdiction) is the case of *Miguel Ángel Cavallo*. Although this is not a case involving enforced disappearance, it shows how Mexican judicial and administrative authorities, desirous of promoting cooperation with a view to ending impunity for the most serious human rights violations, decided to extradite Miguel Ángel Cavallo for the crimes of genocide and terrorism, at the request of the Government of Spain, for offences committed on Argentine territory.

160. Cavallo was arrested in Mexico on 25 August 2000. Examining Court No. 5 of the National High Court (*Audiencia Nacional*) of Spain had initiated criminal proceedings against Cavallo for genocide, torture and terrorism committed at the Navy School of Engineering in Argentina. On 11 January 2001, the Sixth District Criminal Court of the First Circuit, a Mexican federal court, handed down a decision recommending the extradition of Cavallo to Spain.

161. On 2 February 2001, in light of the favourable decision of the Mexican criminal court, the Ministry of Foreign Affairs decided to extradite Cavallo for the offences of genocide, terrorism and torture.

162. In response to this decision, Cavallo's defence counsel lodged an application for amparo with another federal court. In Mexico, amparo is applicable to any decision by an administrative authority which may infringe upon a constitutional right.

163. On 28 June 2003, an appeals judge in a criminal court denied Cavallo's amparo application and decided that the Ministry's extradition decision was constitutional except for the accusation of torture. During the night of the same date, Cavallo was extradited to Spain.

Convictions

164. At the federal level, there are records of six convictions for the offence of enforced disappearance:

- On 30 September 2009, in criminal trial 179/2006, the Ninth District Court in the state of Sinaloa found Esteban Guzmán Salgado guilty of enforced disappearance under article 215A of the Federal Criminal Code, imposing a penalty provided for in article 215B. The trial followed the submission on 7 December 2006, by the former Office of the Special Prosecutor for Social and Political Movements of the Past, of preliminary inquiry report PGR/FEMOSPP/018/2006 relating to Salgado, in his position as the head of federal services at the former Federal Security Directorate, for the offence of enforced disappearance against Miguel Ángel Hernández Valerio, who had been detained and concealed in September 1977.
- On 30 June 2010, in criminal trial 20/2005-I, the First District Criminal Court of the Federal District found Roberto Galarza Hernández, a former official of the Federal Investigation Agency, guilty of the offence of enforced disappearance against Jesús Ángel Gutiérrez Olvera, committed in March 2002. The trial followed the submission on 4 October 2004 of preliminary inquiry report No. 313/FESPI/02 by the department in charge of dealing with offences committed by public servants, which is attached to the Inspectorate General.
- On 10 May 2006, in criminal trial 27/2005, the Sixth District Criminal Court of the state of Jalisco found Gustavo Montiel Rizo, a former official of the Federal Investigation Agency, guilty of the offence of enforced disappearance against José Luis Ruiz Castellanos and Manuel Gómez Mendoza, committed in January 2005. The trial followed the submission on 4 October 2004 of preliminary inquiry report No. 67/DGDCSPI/2005 by the department in charge of dealing with offences committed by public servants, which is attached to the Inspectorate General.
- On 11 May 2005, in criminal trial 142/2003, the Sixth District Court in the state of Guanajuato found José Antonio Guerrero Domínguez, a former official of the Office of the Attorney General of the Republic, guilty of the offence of enforced disappearance against José Rocha Guzmán, committed in July 2003. The trial followed the submission of preliminary inquiry report No. 325/DGDCSPI/2003 by the department in charge of dealing with offences committed by public servants, which is attached to the Inspectorate General.
- On 14 December 2005, in criminal trial 72/2005, the First District Court in the state of Michoacán found an official of the Federal Investigation Agency guilty of the offence of enforced disappearance, committed in July 2005. The trial followed the submission by the Office of the Special Prosecutor against Corruption of preliminary inquiry report No. 73/FECCI/2005. It should be noted that the verdict was made public, which is why confidential details are not shown here.
- On 14 November 2006, in trial 159/2005, the Fifth District Court in the state of Chihuahua found Víctor Alberto Guerrero Acevedo, an official of the Federal Investigation Agency, guilty of the offence of enforced disappearance against Salvador Lira Ayala, committed in September 2005. The trial followed the submission of preliminary inquiry report No. 267/DGDCSPI/2005 by the department in charge of dealing with offences committed by public servants, which is attached to the Inspectorate General.

Article 13

Extradition of persons suspected, accused or convicted of enforced disappearance

165. A person accused or convicted of the offence of enforced disappearance may be subject to extradition. The extradition process is conducted by the Directorate for

International Procedures, which has been authorized to conduct the relevant formalities in accordance with article 52 of the regulations governing the Office of the Attorney General of the Republic, which states as follows:

“Article 52. The Directorate for International Procedures shall be headed by a Director General who shall be authorized to:

- I. Conduct cases of international extradition in accordance with article 119 of the Constitution, international treaties to which Mexico is a party, the International Extraditions Act and other applicable provisions (...).
- V. Carry out legal analysis of foreign legislation in the fields of criminal law and criminal procedure and of international agreements in areas such as extradition, international assistance, asset recovery coming under the authority of the Office of the Attorney General (...).
- VII. Collaborate in the implementation of international treaties and agreements relating to international legal assistance, extradition, return of property, asset recovery, enforcement of criminal convictions and other international matters coming under the authority of the Office of the Attorney General (...).”

166. Pursuant to article 119 of the Constitution, extraditions shall take place only towards countries with which an extradition treaty is in force and in which the acts in question are legally defined as offences.

167. The International Extraditions Act was published in the Official Gazette on 29 December 1975, setting out the cases and conditions in which persons charged with or convicted of offences under ordinary law by the courts of foreign States may be handed over to such States if no international treaty is in force.

168. Under articles 29 and 30 of the Act, the Ministry of Foreign Affairs shall decide whether extradition is to take place, taking account of treaties, criminal records, legal advice from Mexican courts and other considerations.

169. The offence of enforced disappearance defined in article 215 of the Federal Criminal Code is therefore extraditable. As regards possible obstacles to the application of treaties, the Act provides for certain conditions in which extradition shall be denied:

“Article 7. Extradition shall not be granted if:

- I. The person sought has been the subject of an acquittal, pardon or amnesty or when he or she has served a sentence relating to the offence that motivates the request;
- II. There is no legitimate party to the accusation, if under Mexican law the offence requires such a party;
- III. The action or sentence is subject to a prescription limit under Mexican law or that applicable in the requesting State; and
- IV. The offence has been committed within the jurisdiction of a Mexican court.

Article 8. A person who may be subjected to political persecution by the requesting State or who has been a slave in the country where the offence was committed may not be extradited to that country in any circumstances.

Article 9. Mexico shall not extradite a person if the offence for which the request has been made comes under military jurisdiction.”

170. Mexico has adopted an open approach to determining whether an extradition request is to be granted, based on the existence of double criminality, in order not to subordinate the granting of extradition to a “catalogue” of offences which would restrict the applicability of bilateral extradition treaties. Consequently, if a State which is a party to a bilateral extradition treaty requests the extradition of a person suspected of the offence of enforced disappearance, regardless of whether the treaty came into force before the Convention, that State may make its request even if there is no express provision stating that extradition will be granted for the offence of enforced disappearance. The 33 bilateral extradition treaties to which Mexico is party incorporate this open approach to the admissibility of extradition requests.³⁷

Articles 14 and 15

International agreements on mutual legal assistance and assistance to victims

171. Mexico has ratified 28 international treaties on mutual legal assistance in the area of criminal law which provide for judicial cooperation mechanisms in the area of extradition, for the enforcement of arrest warrants and the handing over of suspects to be prosecuted for the relevant offence.³⁸

172. Those treaties also establish that States parties are to cooperate and provide all possible assistance for the provision of support to victims of enforced disappearances in seeking, locating and freeing disappeared persons. If the disappeared person is deceased, support will be provided for exhuming and identifying the victim and for the recovery of his or her remains.

Article 16

Prohibition of the expulsion, return (*refoulement*), surrender or extradition of persons who may be victims of enforced disappearance

173. Under article 16 of the Convention, no State party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance.

174. The International Extraditions Act sets out the following reasons for refusing an extradition request:

“Article 7. Extradition shall not be granted if:

- I. The person sought has been the subject of an acquittal, pardon or amnesty or when he or she has served the sentence relating to the offence that motivates the request;

³⁷ Australia, Argentina, Bahamas, Belize, Belgium, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, France, Greece, Guatemala, India, Italy, Netherlands, Nicaragua, Panama, Paraguay, Peru, Portugal, Republic of Korea, Spain, United Kingdom, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

³⁸ Australia, Argentina, Bolivia (Plurinational State of), Brazil, Canada, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, El Salvador, Germany, Greece, Guatemala, Honduras, India, Nicaragua, Panama, Paraguay, Peru, Portugal, Republic of Korea, Spain, United States of America, Uruguay and Venezuela (Bolivarian Republic of).

- II. There is no legitimate party to the accusation, if under Mexican law the offence requires such a party;
- III. The action or sentence is subject to a prescription limit under Mexican law or that applicable in the requesting State; and
- IV. The offence has been committed within the jurisdiction of a Mexican Court.

Article 8. A person who may be subjected to political persecution by the requesting State or who has been a slave in the country where the offence was committed may not be extradited to that country in any circumstances.

Article 9. Mexico shall not extradite a person if the offence for which the request has been made comes under military jurisdiction.”

175. The Directorate for International Cooperation refers to articles 1 and 15 of the Constitution, which provide as follows:

“1. All persons shall enjoy the human rights recognized in the Constitution and in international treaties to which Mexico is a party, as well as the safeguards for their protection, the exercise of which may not be restricted or suspended except in the cases and under the conditions set out in this Constitution.”

“15. No treaty may be entered into for the extradition of political prisoners or of offenders under ordinary law who have been slaves in the country where the offence was committed; nor may any convention or treaty be entered into if it would adversely affect the human rights recognized by this Constitution and by international treaties to which Mexico is a party.”

176. Thus, if it is known that the person to be extradited or returned to a State where his or her life is in danger because one of the aforementioned premises is realized, it would be sufficient to draw attention to the endangerment or infringement of the person’s human rights in order to invoke the relevant constitutional safeguards; thus, it would not be possible for the person to be expelled, returned, surrendered or extradited.

Article 17

Prohibition of secret detention

(a) Detention procedures and the rights of detained persons

177. The Constitution recognizes minimal safeguards to protect persons during their detention. One of the major safeguards providing legal guarantees to detained persons is reflected in article 14, which provides that no person may be deprived of liberty or of his or her property, possessions or rights, except following a trial before a court previously established by law, complying with essential procedural formalities and in accordance with laws enacted before the date of the alleged offence.

178. It further establishes that any arrest warrant shall be issued by a court if there is a complaint or accusation of an act defined as an offence by law and there is sufficient evidence to show that an offence has been committed and a reasonable ground for believing that the suspect committed or participated in the offence.

179. Under article 16 of the Constitution, the authority which enforces an arrest warrant is enjoined, under the strictest of terms, to bring the accused before the court without delay.

180. Only in pressing cases involving serious crimes as defined by law where there is a serious risk that the suspect may evade justice is the Public Prosecutor’s office empowered

to order the detention of the suspect on its own authority, stating what evidence prompted it to do so.

181. Under article 18 of the Constitution, pretrial detention may be applied only to custodial offences and the place where persons subject to pretrial detention are held must be completely separate from that for those serving a prison sentence.

182. Article 19, section XIX, of the Federal Police Act states that members of the Federal Police are required to record detentions in the administrative register of detentions as required by article 112 of the General Act on the National Public Security System. That article states that police officers who detain any person must give immediate administrative notice to the National Information Centre using the standard police report.

183. Under article 128 of the Federal Code of Criminal Procedure, when a suspect is detained or appears voluntarily before the Federal Prosecution Service, the following formalities must be carried out:

- The person who made the arrest or the person before whom the accused appeared shall record the date, time and place of the arrest or appearance and, as appropriate, the name and function of the person who ordered it. If the arrest was made by an authority which is not part of the Public Prosecutor's Office, the detailed report signed by whoever made the arrest or took charge of the detainee shall be entered or added, as appropriate.
- The accused shall be informed of the charge against him or her and the name of the accuser or the complainant.
- The accused shall be informed of his or her rights under the Constitution of the United Mexican States:
 - The right not to make a statement, if he or she so wishes, or to make a statement with the assistance of defence counsel.
 - The right to be defended appropriately by counsel, whom he or she may appoint freely, even at the time of his or her arrest. If he or she does not wish to appoint defence counsel or cannot do so, court-appointed counsel shall automatically be assigned.
 - The right to have his or her defence counsel present during the presentation of all evidence in connection with the investigation.
 - The right to be provided with any information which he or she may request for his or her defence and which is recorded during the investigation; to this end, he or she and his or her defence counsel shall be permitted to consult the preliminary inquiry file in the Public Prosecutor's Office and in the presence of its staff.
 - The right to have any witnesses and other evidence he or she may produce accepted and taken into account in the decision handed down; he or she shall be given as much time as necessary for this purpose, provided that this does not hamper the investigation and the persons whose testimony he or she puts forward are present where the investigation is being conducted; when evidence proposed by the accused or his or her defence counsel cannot be produced, the court shall rule on the admissibility and examination thereof.
 - The right to be granted release on bail as soon as he or she requests it, in accordance with article 20, paragraph I, of the Constitution and article 35, second paragraph, of the Code of Criminal Procedure.

- If the detainee is indigenous or foreign and does not speak or understand Spanish well enough, he or she shall be assigned an interpreter who shall inform him or her of the rights referred to in the paragraph above. If he or she is indigenous, the interpreter and the defence counsel must also have sufficient knowledge of his or her language and culture. If the detainee is a foreign national, notice of his or her detention shall immediately be given to the appropriate diplomatic or consular office.
- Men and women shall in all cases be held separately in places of detention and imprisonment.
- From the time of his or her detention until he or she appears before the appropriate prosecuting authority, the detainee's fundamental rights must be respected.

(b) Circular C003/12, issued by the Office of the Attorney General of the Republic, on the transfer of detainees

184. Pursuant to recommendation 64/2011 of the National Human Rights Commission, the Office of the Attorney General issued a circular on the transfer of detainees, reminding staff that each person detained must be brought without delay before the appropriate judicial authority.³⁹

185. In cases where the detention takes place in locations which are relatively inaccessible owing to circumstances such as distance or transport difficulties, or where there are other issues which make it physically impossible to transfer the detainee immediately, this should be made known immediately to an official of the Federal Public Prosecutor's Office so that proceedings may begin according to law and include those circumstances in the record of the detention.

186. Should such a detention take place in response to a court order, the official of the Federal Public Prosecutor's Office attached to the court which issued the order must be informed immediately so that proceedings may begin according to law and those circumstances may be included in the record of the detention.

187. Officials of the federal judicial police who are involved in any type of detention are accountable for any failure to comply with the provisions described in the circular in terms of the organization Act of the Office of the Attorney General of the Republic, the Federal Act on the Administrative Responsibilities of Public Servants and other applicable provisions, without prejudice to any criminal responsibility that may arise.

(c) The institution of arraigo⁴⁰

188. The institution of arraigo (pre-charge detention) in Mexico is a precautionary, and therefore temporary, procedure, applicable in cases of serious offences and those committed by organized crime. It is employed in exceptional cases and restricted to cases where it is needed to safeguard values which are of utmost public interest or where there is a well-founded risk that the suspect may evade justice.

³⁹ The Circular entered into force on 3 February 2012.

⁴⁰ The legal framework applicable to arraigo is as follows: article 16 of the Constitution, article 2, section III; articles 133 *bis*, 205, 256 and 367, section VII, of the Federal Code of Criminal Procedure, article 12 of the Federal Organized Crime Act, article 3 and article 4, section I, paragraph A (n), of the organization Act of the Office of the Attorney General of the Republic, article 28 of the Regulations implementing the organization Act of the Office of the Attorney General of the Republic and Agreement 75/2008 of the Plenary of the Federal Judicial Council, creating federal criminal courts specializing in searches, preventive custody and interception of communications.

189. The constitutional regulation of arraigo, following the reforms of 2008, limits its sphere of application specifically to offences committed by organized crime, which come under federal jurisdiction, and makes it subject to strict legal controls. It may be decided only by an appropriate specialized federal judicial authority, at the request of the Federal Public Prosecutor's Office, when it is strictly necessary for the success of the investigation, giving the Federal Public Prosecutor's Office the opportunity to build a fully grounded case. This is because, in the area of organized crime, prosecution evidence is complex and difficult to obtain for reasons which include the transnational nature of the offence; hence the need to keep suspects in custody.

190. The constitutional reform created the position of "control judge", an independent and specialized federal judicial authority responsible for the immediate processing of requests for arraigo. The responsibilities of the control judge include ascertaining that the rights of the indicted person, the victims and/or the injured parties are not violated during the proceeding and verifying the legality of the actions of all involved.

191. Under the terms of the Constitution, the duration of arraigo may not exceed 40 days in cases involving serious offences, although this period may be extended in cases involving organized crime if the prosecuting authority demonstrates that the situation justifying the measure still exists, in which event the total duration of such custody may not exceed 80 days.

192. In the application of this practice there may be no incommunicado detention, intimidation or torture. Suspects must be informed of the charges against them and the rights available to them; and full access to a lawyer must be guaranteed in order to ensure an adequate defence, in addition to the safeguards enshrined in article 20 of the Constitution and in the International Covenant on Civil and Political Rights.

193. During arraigo, suspects may approach the judicial authority at any time to apply for amparo and to challenge the legality of the conditions to which they are subjected and the duration of their custody. Between January 2009 and 30 September 2013, 140 court decisions against arraigo orders were granted through indirect amparo proceedings.

194. In April 2013, the Chamber of Deputies approved a proposed constitutional reform reaffirming that arraigo may be used only in cases of organized crime. It would establish stricter limits and controls as well as making a significant reduction in its duration and requiring scrutiny by human rights bodies.⁴¹ This initiative was adopted by the Chamber of Deputies and is currently being reviewed by the Senate.

195. Mexico has significantly cut back on the use of arraigo. The current administration has recorded a record low number of arraios compared with previous years.⁴²

196. The Office of the Attorney General is working to improve the availability of information on cases subject to this precautionary measure. There is an Assistant Attorney General specializing in human rights, who will investigate any violation of those rights, including violations resulting from the use of arraigo.⁴³

⁴¹ The National Code of Criminal Procedure, promulgated on 4 March 2014, regulates new precautionary measures not involving a deprivation of liberty and promotes their application in preference to those which restrict personal liberty.

⁴² In 2013, a total of 617 cases of arraigo were recorded, with a monthly average of 77. There were 1,676 in 2009, 1,766 in 2010, 2,069 in 2011 and 1,167 in 2012.

⁴³ In order to ensure that the legality of detentions is always complied with, the Office of the Attorney General of the Republic has entered into legal agreements to train its staff in human rights and promote their observance and dissemination.

(d) Penalties for failure to comply with the rules relating to detention

197. To prevent and penalize any irregular behaviour by a public servant responsible for the detention or custody of persons, the criminal law penalizes “misuse of public position”, “offences against the administration of justice” and “abuse of authority”. The category of offences against the administration of justice penalizes the following: failure to duly bring before the court a person who is detained and suspected of having committed an offence; detaining a person during the preliminary inquiry, except in the cases provided for by law; retaining a detainee for a period longer than that provided for in the Constitution; failure to grant bail where the law requires it; compelling a detainee to testify by means of incommunicado detention, intimidation or torture; undue delay in releasing a detainee following a court order; ordering the detention of a person for an offence which is not punishable by deprivation of liberty; detaining a person without bringing him or her before the court within the period set in article 16, paragraph 3, of the Constitution; and holding a detainee without fulfilling the requirements established in the Constitution and the relevant laws.⁴⁴

(e) Official registers of persons deprived of liberty

198. On 24 May 2010, a system was created, under the authority of the Office of the Attorney General of the Republic, to register detainees and their offences and ensure close administrative monitoring of detentions made on the basis of arrest warrants or in cases of *flagrante delicto*, prosecution in urgent cases, arraigo, search warrants and temporary detention for the purpose of extradition, in relation to persons transferred to the custody of the federal prosecutor or transferred to or detained by the federal judicial police.

199. The registration system is administered by the National Planning, Analysis and Coordination Centre on Information to Combat Criminality.

200. Officials of the federal judicial police, when they detain a person or a detainee is transferred to them, are required immediately to enter information on the detainee into the system and, if the detention relates to an offence which comes under federal jurisdiction, pass on the information to the federal prosecutor immediately and by whatever means are available.

201. The register contains information on each detainee, the reason for and general circumstances of the detention, the names of those who have been involved in the investigation, the person who prepared the record and the court where the detainee will appear.

202. Any public servant having access to the system or handling information from it in the course of his or her duties is required to safeguard its confidentiality at all times.

203. For the substantive areas of the justice system, this registration system is a platform for the filing, preservation, use, sending and receiving of information on detainees. It enables arresting officers to give notice of the arrest immediately, using the standard police report, to the National Planning, Analysis and Coordination Centre on Information to Combat Criminality.

204. The Missing or Disappeared Persons Registry Act, adopted on 17 April 2012, established the Registry and regulates its operation, functioning and administration. The Registry was created as an information tool for the National Public Security System to organize and centralize into an electronic database all information on missing or disappeared persons and on persons who are living in care, protection, detention or

⁴⁴ Article 225 of the Federal Criminal Code.

internment establishments and whose filiation, domicile or identification data are unknown, to assist in investigations to seek, locate or trace their families and places of residence.

205. The Act calls for the Registry to include a consultation interface accessible to the general public and to include inboxes through which the public can provide information relating to missing or disappeared persons.

206. It also requires any administrative or judicial authority which knows of a missing person or receives a complaint relating to the disappearance of a person to immediately inform the Registry in the manner provided for in the Act's implementing regulations.

207. The Registry functions 24 hours a day and every day of the year. It can be consulted by telephone or through a Web page designed for the purpose to request information regarding the procedure to be followed in seeking a missing or disappeared person and how that person can be returned home.

Article 18

Access to information for persons having a legitimate interest

208. The information contained in the Registry is restricted and confidential; access to it is available only to the following:

- Authorities having jurisdiction over the investigation of offences;
- Suspects, strictly for the rectification of personal information and when requesting the inclusion of the outcomes of criminal proceedings;
- Detainees and their legal representatives, who are entitled to have access to information contained in detention records but may use it only in the exercise of the right to legal defence;
- The National Human Rights Commission, which has access to the Registry when dealing with a complaint.

209. All detainees are entitled to access to the information used in investigations, as are any persons expressly authorized by the detainee, whether as a legal representative or a trusted friend or relative. The Constitution provides as follows:

“Article 20. Criminal trials shall be in the form of adversarial and oral proceedings and shall be governed by the principles of public hearing, adversarial procedure, concentration, continuity and immediacy.

A. General principles (...)

B. The rights of all accused persons:

VI. He or she shall have access to all information used in the trial that he or she may request for the purposes of legal defence.

The accused person and his or her legal representative shall have access to all the records of the investigation when the former is detained and when he or she is to be interviewed or a statement is to be taken. Before his or her first court appearance he or she may consult those records and shall be given the appropriate opportunity to prepare a legal defence. From that time, the activities of investigators may no longer remain confidential, except in those cases provided for by law where it is necessary for the success of the investigation, provided that they are revealed in a timely manner in order not to infringe the right to legal defence.”

210. Article 128 of the Federal Code of Criminal Procedure provides as follows:

“When an accused person is arrested or surrenders voluntarily to the Federal Prosecution Service, the following formalities shall immediately take place:

I. The official who has detained the suspect or to whom the latter has surrendered shall record the date, time and place of the detention or surrender and, where appropriate, the name and function of the person who ordered it. If the arrest was made by an authority not under the jurisdiction of the Public Prosecutor’s Office, the detailed report signed by whoever made the arrest or took charge of the detainee shall be entered or added, as appropriate.

II. The accused shall be informed of the charge against him or her and the name of the accuser or the complainant.

III. The accused shall be informed of his or her rights under the Constitution and, particularly during the preliminary inquiry, of the following:

(a) The right not to make a statement, if he or she so chooses, or to make a statement with the assistance of defence counsel;

(b) The right to defend him- or herself in person or to be defended by counsel or a trusted person; if he or she does not wish to appoint defence counsel or cannot do so, court-appointed counsel shall automatically be assigned;

(c) The right to have his or her defence counsel present during the presentation of all evidence in connection with the investigation;

(d) The right to be provided with any information which he or she may request for his or her defence and which is recorded during the investigation; to this end, he or she and his or her defence counsel shall be permitted to consult the preliminary inquiry file in the Public Prosecutor’s Office and in the presence of its staff [...].”

211. As for victims who are deprived of liberty or disappeared, access to the information is available to complainants and/or family members of the victim, pursuant to article 20 of the Constitution and article 141, paragraph A, section III, of the Federal Code of Criminal Procedure.

212. Lastly, the new Victims Act, in force since 8 February 2013, provides for a series of rights for victims of both crime and human rights violations; it is now the implementing Act for article, paragraph 3, of the Constitution.

(a) Restrictions on the exercise of the right of access to information

213. Restrictions on access to information are provided for in articles 13, 14 and 15 of the Federal Act on Transparency and Access to Public Government Information, as follows:

“Article 13. Information shall be restricted if its dissemination may: (...)

V. Seriously prejudice activities for the verification of compliance with laws, prevention and prosecution of offences, administration of justice, tax collection, migration control and procedural strategies in judicial or administrative proceedings until such time as their decisions are final.

Article 14. Restricted information shall also include: (...)

III. Preliminary inquiries;

IV. Case files for judicial or formal administrative proceedings until such time as the decisions are final.

Article 15. Information which is classified as restricted under articles 13 and 14 may retain that classification for up to 12 years. It may be declassified if the reasons that gave rise to such classification cease to exist or when the period of restriction ends.”

(b) Laws for the protection of persons who request access to information

214. Articles 1 and 8 of the Constitution ensure the protection of persons who request access to information, as does the Federal Act on Transparency and Access to Public Government Information.

215. The purpose of this Act is to ensure that any person can have access to information in the possession of any of the branches of government or of independent or legally independent constitutional bodies or any other federal entity; implement transparency in public administration through the dissemination of information; ensure that personal information is protected; ensure that government bodies are accountable to citizens so that they can evaluate the performance of federal public servants; improve the organization, classification and management of documents; and contribute to the democratization of Mexican society and enforce the rule of law.

216. This Act protects personal information, establishing responsibilities for persons subject to the Act, who are required to:

(a) Adopt appropriate procedures for receiving and responding to requests for access to and correction of information; and train public servants and share information on policies in relation to data protection;

(b) Handle personal information only when it is appropriate, relevant and not excessive in relation to the purposes for which it has been obtained;

(c) As soon as personal information is obtained, make available to the persons concerned the document stating the purposes for its processing as set out in the guidelines provided by the Federal Institute for Access to Information and Data Protection or the equivalent body as required by law;

(d) Ensure that the personal information is correct and current;

(e) Replace, rectify or update, *ex officio*, any personal information which is incomplete or totally or partly incorrect as soon as they become aware of the situation; and

(f) Adopt the necessary measures to ensure the security of personal information and prevent their alteration or loss and any unauthorized transmission or access.

Article 19

Use of confidential data and information

217. On 23 June 2013, work began to establish a database to assist in the search for disappeared persons. The objective is to create a search file containing all sensitive information, particularly that provided by the families of disappeared persons and that obtained by officials of the attorney general’s office investigating on the ground and through other inquiries.

218. The genetic database will be safeguarded by the Expert Services Coordination Unit of the attorney general’s office.

219. Mexico recognizes that the establishment of the database to assist in the search for disappeared persons, the creation of search files incorporated into inquiries by the attorney general's office and, lastly, the genetic database, represent a major milestone. Work remains to be done in this area, but there is real political will for its realization.

Article 20

Restriction of access to information for detained persons under court supervision

220. In Mexico, all persons deprived of their liberty have a legitimate interest in access to any information they may request on the proceedings against them. In order to guarantee that right, in any case where the authorities deny access to that information, the accused person may file indirect amparo proceedings pursuant to article 107 of the Amparo Act.

Article 21

Release of persons deprived of their liberty

221. The authority which orders the release of a detainee is required to supervise his or her release. Thus, if the release has been ordered by the Federal Attorney General's Office, the latter must supervise the release; in the case of criminal prosecutions, however, it is for the court to verify that the detainee has been released.

Article 22

Right to take proceedings to determine the lawfulness of the deprivation of liberty

222. When an indictment is received, the court must determine the lawfulness of the detention in accordance with article 16 of the Constitution and article 134 of the Federal Code of Criminal Procedure.

223. Under the Mexican legal system, any detention, which is defined as the deprivation of a person's liberty for the purpose of bringing him or her before the competent authority, must be ordered by a court in response to a complaint or allegation of an act determined by law to be an offence.

224. Articles 16 and 19 of the Constitution provide that:

“Article 16. No one may be disturbed in his or her person, family, residence, papers or possessions, except by virtue of a written order from the competent authority substantiating the legal cause of the proceeding.

No arrest warrant may be issued other than by the judicial authority and only after a complaint has been received of an act determined by law to be a crime punishable by deprivation of liberty and there is evidence attesting to the *corpus delicti* and the person's probable responsibility.

The authority which enforces an arrest warrant is enjoined, under the strictest of terms, to bring the accused before the court without delay. Any infringement of the latter shall be punished under criminal law.

Article 19. No detention before the judicial authority may exceed a period of 72 hours from when the accused was brought before the judicial authority without a formal detention order indicating the crime of which the person is accused, the place, time and circumstances of its commission, and the information establishing

that an act defined by the law as an offence has been committed and that there is a high degree of certainty that the accused is the likely perpetrator or a participant in the offence.”

225. In the case of a detention which fails to comply with the requirements enshrined in the Constitution, the Amparo Act provides for indirect amparo as a remedy for such acts of authority. Thus, a person’s detention by a prosecuting or judicial authority may be challenged through the appeals process or a remedy of amparo.

Article 23

Training of military or civilian personnel

226. On 21 February 2013, the Ministry of the Interior signed a cooperation agreement with the International Committee of the Red Cross (ICRC) to foster the integration and promotion of international human rights law and humanitarian principles into the conduct of government affairs.

227. That agreement provides for actions to promote, disseminate, instruct and train government officials in international humanitarian and human rights law, including standards applicable to the use of force and the search for disappeared persons.

228. Under the agreement, the Government of Mexico and ICRC are currently preparing studies, protocols and technical advice in relation with the search for disappeared persons and assistance and psychosocial support for their families.

229. A working group on enforced disappearances has been set up, comprising representatives of the Ministry of the Interior, through the Office of the Under-Secretary for Human Rights; the Office of the Attorney General of the Republic (through the Office of the Assistant Attorney General for Human Rights), the Expert Services Coordination Unit and the Statistics Division; the National Public Security System; the National Information Centre; and the Political Department of the Federal Police.

230. On 17 and 18 July 2013, the working group gave an induction course on the main elements for the establishment of a coordination mechanism in relation to disappeared persons.

231. At the request of the working group, four subgroups were also set up:

- A legal subgroup to study the compatibility of national laws and standards, in order to propose appropriate reforms.
- A forensic subgroup, which is currently looking at the capacities of forensic services in the federal entities in order to propose mechanisms for regulation and harmonization. In November 2012, a standard identification protocol was adopted by the National Conference of Judicial Officers, with the cooperation of ICRC. The protocol is being implemented at the state level. The subgroup has also agreed to create a national register of cadavers.
- A subgroup on technology and forms, which is working on the collection of information on disappeared persons, aims to establish a single national register of ante mortem information.
- A subgroup on support for the families of disappeared persons is studying the support capabilities of the federal authorities in order to create a manual on the subject.

(a) Armed forces

232. In addition to the legal framework and procedures regulating detentions, the Ministry of Defence disseminates information to all military personnel, through the human rights handbook, on the legal basis for cases involving detentions.

233. The Ministry also has a programme on the promotion and strengthening of human rights and international humanitarian law, the purpose of which is to disseminate to military personnel of all ranks information on respect for human rights so that those rights become part of their training and activities.

234. The programme is updated yearly to take account of the requirements of the armed forces within the national legal framework and international agreements to which Mexico is a party.

235. The Ministry of the Navy gives regular talks on human rights to personnel under its various naval commands. Between 1 October 2012 and 10 December 2013, those talks were attended by 21,295 personnel.⁴⁵

236. An estimated 95 per cent of the personnel under the Ministry's authority, both operational and non-operational, has received instruction in human rights. The remaining 5 per cent is made up of recent recruits and personnel assigned to other departments.

(b) Security forces

237. The Ministry of Public Security has boosted its efforts in the areas of training and promotion of a culture of human rights, conducting a variety of activities:

- A course for instructors, and personnel who will train other instructors, in human rights and humanitarian principles applicable to police work, taught by ICRC to the Ministry and its decentralized agencies since 2008.
- Certification of 220 officials from the Federal Police on the prison system, the federal protection service and aspects of human rights, in eight separate groups.
- From January 2011 to July 2012, 347 training events took place, in the framework of the programme to promote human rights, on subjects related to the legitimate use of force in arrest and detention procedures. These events comprised both classroom and distance-learning courses and a total of 31,437 federal police officers took part, including both commanding officers and members of operational units belonging to various divisions of the Federal Police.
- Some 6,592 personnel have received instruction on the prohibition of torture, including supervisors, technical staff and guards and warders from federal social rehabilitation centres.

238. A major element in the training of the Ministry's staff is a course on the prevention of enforced disappearance, which was set up in order to create a forum for knowledge and understanding of human-rights standards and principles so that the officials responsible can incorporate new techniques and tactics, as well as adapting existing ones, in their work to protect the community. A total of 91,269 personnel were trained between February 2006 and March 2012.

239. Another important course within the Ministry relates to the prevention of human rights violations and is designed for the administrative, legal and technical staff as well as security personnel at each federal social rehabilitation centre, to ensure that they are aware

⁴⁵ It should be noted that each staff member attends more than one talk; this explains why the number of people attending talks exceeds the total staff numbers of the Ministry of the Navy.

of the legal framework in relation to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Code of Conduct for law enforcement officers, in order to avoid committing any human rights violation in the course of their duties, such as enforced disappearance and torture. A total of 1,652 personnel were trained between 2006 and 2011.

240. Between 2008 and 2011, a seminar was given on prohibition of enforced disappearance and prevention of torture and the application of the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). A total of 1,219 personnel of the federal prison system were trained, including doctors, psychologists, lawyers and guards and warders.

(c) Migration authorities

241. The National Institute for Migration has provided training on human rights to raise awareness among public servants in their dealings with migrants. The contents of the courses can be found in the annex entitled *Cursos de capacitación INM*.^{46 47}

(d) Judicial power

242. The Ministry of Foreign Affairs, in collaboration with the federal judiciary, began a training programme for the country's judges to bring their activities into line with constitutional reforms in the area of human rights and amparo. The following training activities took place in 2013.

243. Three regional seminars on compatibility with treaties were provided for officials of the National Commission of the High Courts of Justice, in Guanajuato and Coahuila states and the State of Mexico (25–27 April, 23–25 May and 19–21 September 2013, respectively). The seminars involved 32 High Courts of Justice and 550 judges.

244. The first seminar on enforced disappearance in the international context, organized jointly by the Ministry of Foreign Affairs and the Council of the Federal Judiciary, took place on 25 September 2013 at the headquarters of the Institute. It was designed for officials of the federal courts and was attended by 80 officials, with a further 681 following it live via the Institute's website. The event was held in the same way on 29–30 November 2013 in the state of Jalisco and on 21–22 November 2013 in Mazatlán, in Sinaloa state.

Article 24

Victims' rights

245. The Victims Act, which came into force on 8 February 2013, is intended to recognize and guarantee the rights of the victims of crime and of human rights violations, in particular in the areas of assistance, protection, support, truth, justice and integral reparation, on the basis of international standards relating to protection, support and full reparation, and to promote the widest possible protection of the individual.

⁴⁶ These courses were cost-free, since they were given by staff of the Migration Training Department in cooperation with the National Human Rights Commission, the Mexican Commission on Assistance to Refugees and the Office of the United Nations High Commissioner for Refugees.

⁴⁷ The National Human Rights Commission, in its bulletin CGCP/027/12, recognized the effort being made jointly with the National Institute for Migration to provide training in the area of human rights, migrant victims of crime and human dignity.

246. This Act introduces regulations pursuant to three articles of the Constitution:

(a) Article 1, in respect of the duty of the three levels of government and the three branches of the State to promote, uphold, protect and guarantee human rights and prevent, investigate, punish and repair such violations, and the transitional article 2 on the creation of an Act on reparation;

(b) Article 17, which, based on the criminal justice reform of 2008, establishes procedural rights and constitutional principles concerning redress, including class actions; and

(c) Article 20 (c), on the general principles of protection and observance of victims' rights and the provision of redress in the event of their violation.

(a) National Victim Support System

247. In the framework of the Victims Act, the National Victim Support System was established on 15 January 2014 as the supreme body in this area. Its functions will be to formulate, regulate and oversee guidelines, plans, programmes, projects, schemes and other public policies for the provision of protection, aid, assistance, support and comprehensive redress and guaranteeing the right of access to justice and the truth. It will also protect foreign nationals who have been victims of crime or human rights violations in Mexico, providing for the signature of the necessary cooperation agreement with the competent authorities in the country to which the victim is returning and with support from the Mexican consular authorities in that country.

248. The executive board of the System will be the Executive Commission for Victim Support, which will encourage the representation and participation of victims and civil society in all bodies within the System and ensure that victims have access to the national victims registry.

(b) Executive Commission for Victim Support

249. The Commission is the implementing body for the Victims Act, providing support to citizens who have suffered from crime or human rights violations.

250. The Act provides for the Commission to comprise representatives of victims and civil society bodies, pursuant to article 82, section V, and articles 84, 85 and 86 of the Act; article 27, sections I and VIII, of the Federal Public Administration Organization Act; and article 5, section VI, and article 6, sections IV, XII and XVI, of the rules of procedure of the Ministry of the Interior. On 8 October 2013, the Senate approved the election of the seven members of the Commission as the monitoring and supervisory body, as provided for by the Victims Act.

251. The tasks of the Commission include the creation and management of the national victims registry, in order to ensure that victims have access to health care and social services, and determining the amounts of compensation for victims of the State.

(c) National victims registry

252. The Victims Act calls for the creation of a national victims registry, which will log the registrations and records of victims of crime and human rights violations. Victims may enter the system by means of complaints or reports or an account of events provided by the victim him- or herself, the authorities, a public human rights body or a third party who is aware of what has occurred.

253. Under article 98, paragraph 2, of the Act, Mexican nationals resident outside the country may provide their information for inclusion in the registry to the Mexican embassy

or consulate in their country of residence. The information must be added to the registry using the standard declaration form which will be designed by the Commission, the use of which is obligatory.

(d) The right to truth in cases of disappeared persons

254. In 2001, the National Human Rights Commission issued Recommendation 26/2001, relating to cases of complaints of enforced disappearance which occurred in the 1970s and early 1980s, in which it concluded that the responsibility of the Mexican State for human rights violations in 275 cases was confirmed.

255. Aware of the duty to provide redress to victims and their families for human rights violations committed during that period, the Federal Government established lines of action in the National Human Rights Programme for 2008–2012 which show that it is a priority matter for the Government to design a mechanism to provide reparation for the harm suffered by victims during the period known as the “dirty war”.

256. The office of the special prosecutor for acts likely to constitute federal offences committed directly or indirectly by government officials against persons with links to past social and political movements was created in November 2001 as an administrative unit of the Office of the Attorney General. In November 2006, the Office of the Attorney General, through resolution A/317/2006, remitted to the General Coordinating Office for Investigations of the Deputy Attorney General’s Office for the Specialized Investigation of Federal Crimes of the Office of the Attorney General all the pending investigations of the Office of the Special Prosecutor for Past Social and Political Movements. The General Coordinating Office has the same jurisdiction as the Office of the Special Prosecutor in terms of investigating and prosecuting offences, together with additional authority because that transfer meant that the investigations continued and victims’ rights were preserved.

257. The General Coordinating Office has continued preliminary inquiries and criminal prosecutions, endeavouring to establish the facts and obtain statements from the aggrieved parties, witnesses and those under indictment. It has recently conducted important investigations including the inspection and scanning with advanced technology of areas where clandestine burials have been discovered and of the excavation of the sites in search of human remains.

(e) Compensation and reparation

258. The Victims Act takes a human-rights-based approach, where the exercise of the rights of the accused also represents a guarantee of justice and integral reparation for the victim and for society, because respect for his or her rights reflects the existence of a democratic State governed by the rule of law. The term of integral reparation through individual and collective measures was included in the Act as a means for the victim to obtain satisfaction for his or her desire for justice in order to secure a life with dignity.

259. Pursuant to the requirements of international human rights law, reparation measures include restitution, rehabilitation, satisfaction, financial compensation and guarantees of non-repetition (title 8, chapter IV, of the Act).

260. The new system provides for measures such as the integral reparation of harm, restitution, rehabilitation, compensation, satisfaction and guarantees of non-repetition in their individual, collective, material, moral and symbolic dimensions.

261. It also provides for each of those actions to be applied in favour of the victim, taking into account the seriousness and scale of the violation of his or her rights and the circumstances and characteristics of the event.

Article 25

Wrongful removal of children

262. The AMBER Alert Programme has functioned in Mexico since 1996. This is an association between police forces, radio and television broadcasters and transport agencies to facilitate the search for and localization of children and adolescents in Mexican territory in imminent danger of suffering serious harm to their personal integrity in connection with their absence, disappearance, loss, illegal deprivation of liberty or any other circumstance where foul play is suspected.

263. The programme seeks to promote collaborative activities between the authorities and civil society to create an effective dissemination tool which will help to search for and locate and recover children and adolescents.

264. During an AMBER Alert, urgent information bulletins are broadcast by radio and television and on electronic roadside warning signs in order to receive help from the general public in locating an abducted child and detain the person responsible for the abduction.

265. The emergency warning system broadcasts descriptions of the abducted, disappeared or lost child and of the suspected kidnapper. The object is to immediately draw the attention of the whole community to the search for the child and to achieve his or her safe return.⁴⁸

266. In collaboration with the media, police forces issue AMBER Alerts only when the circumstances of the child's disappearance satisfy the local and state criteria for the alert system. If a case does not meet those criteria, other investigation methods are employed such as the use of search dogs, interviewing local people, the finding of relevant evidence and a check of the list of sex offenders in the state.

⁴⁸ Statistics show that the passage of time is in itself an enemy to abducted children, since most children who are kidnapped and subsequently found murdered die within three hours of the abduction.