

H.I.J.O.S. MEXICO REPORT

(Sons and Daughters for Identity and Justice against Oblivion and Silence.

H.I.J.O.S. for its acronym in Spanish)

As a response to the Mexican State's Report on the *International Convention for the Protection of All Persons Against Enforced Disappearances*

Headed to the Committee on Enforced Disappearances of the United Nations

Mexico City, June 2014

INTRODUCTION

Sons and Daughters for Identity and Justice against Oblivion and Silence (H.I.J.O.S.) is an organization of sons and daughters of the disappeared, exiled, murdered and ex-political prisoners in Mexico and Latin America, and we are also young people, without any blood relationship, who become sensitized about this problem.

The recognition of the Mexican State responsibility in cases of enforced disappearances is essential to establish conditions that allow a democracy based in the Rule of Law, with the guarantee of no repetition of this crime against humanity.

Even though enforced disappearance has taken in recent times varied nuances because of the complex national situation, we want to emphasize the cases of enforced disappearance of persons for political reasons. This specificity should lead us to recognize this crime against humanity as an injury and a grievance to the society as a whole, that is not an isolated event or just a product of the organized crime, nor of the chance, and that it is not the mere result of the abuse of force by the members of police, military or paramilitary security. It is a strategy designed and implemented from the highest levels of public authority as a mechanism of control and extermination, as well as a way of punishment and social terror installation.

The crime of enforced disappearance in our country is a systematic practice of long inheritance that responds to a historic debt that Mexico has with families of disappeared

persons since 1969¹. The low social condemnation in the past, combined with the absence of formal trials and punishments for the responsible of the disappearances in previous decades has led to an impunity scene that currently operates as a "blank cheque", which permits that the disappearances can be executed with certainty for the perpetrators that there will not be effective investigations or punishment for them.

We have registered 561 enforced disappearances of persons in the years before 2006. Probably a lot more exist, and it is Mexican authorities' duty to execute the investigations, punish the people responsible and guarantee the non repetition of this crime, as the State is constitutionally obligated to ensure the safety and the rights of citizens.

By ratifying international instruments, the Mexican government has committed, in more than one occasion, to clear up these crimes; but has done it with reservations and interpretative declarations. Also, the State violates international commitments like the one generated by the judgment of the Inter-American Court of Human Rights in the Rosendo Radilla case, perpetuating the impunity for this crime.

When the current Minister of Interior, Miguel Ángel Osorio Chong, committed to investigate **all** cases of disappeared persons in the country, he tacitly obligated himself to do it also for those persons who were disappeared in presidential periods under the same political affiliation that the current one. To say it clearly: the Institutional Revolutionary Party (PRI) has a "list" of disappeared persons, too, so it is our duty not to forget that now, when everything is set for a "clean slate" to remark the practice of enforced disappearance as something endorsable only to the National Action Party (PAN) governments.

It is also seriously alarming the situation of the journalists disappeared for the themes of their works, because this motivation has, in many cases, a political nature, which make them victims of enforced disappearance. Organizations dedicated to this issues report 19 cases, just for the period from 2007 to 2013².

About those "lists" filtered in the media –resumed by the Undersecretary for Legal Affairs and Human Rights that doubts to declare the precise number of cases, with

¹ Clare example of this is the work of the *Comité Eureka!* since 1977.

² According to the NGO Article 19.

unclear data and that is migrating information from one instance to another-, it must be remembered that enforced disappearance is defined as “the act of depriving a person or persons of his or their freedom (...) perpetrated by agents of the state or by persons or groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or a refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person (...)” (Article II of the Inter-American Convention on Forced Disappearance of Persons). This means that every time the State says it “does not know”, it is committing and consolidating the crime. The treatment of information in past days regarding the number of people disappeared has been seriously sloppy and represents a lack of respect to the pain and work of the families of disappeared persons and of the organizations working in this subject. If the State does not have clear the status of this issue (it would be serious, but is probable), it should take what has been exposed by the organizations who have worked in the subject for years. We have long “lists” and databases made public that reveal the lack of capacity or willingness of the State to take responsibility in this field.

Impunity has at least two consequences: first, the continuity of the crime, both in terms of the lack of clarification of the cases and of the repetition of this one; and second, the permanence of some of the responsible in State institutions. As an example we can mention: Arturo Acosta Chaparro, former Army General, Felipe Calderón's advisor during the war against drugs; Wilfrido Robledo, advisor to the Secretary of the Navy; Marisela Morales, consul in Milan, Italy, and Eduardo Medina Mora, current Mexico's Ambassador in the United States of America.

The Mexican State has established a policy of state-sponsored terrorism characterized by the systematic practice of enforced disappearance since the late sixties, because every presidential period, this practice continues. We see with concern that enforced disappearance has been specialized and extended to various social groups, which aggravates the situation of the demand for justice on the enforced disappearance and in the defense of human rights in Mexico in general.

ABOUT THE MEXICAN STATE REPORT

Since the presentation of the *Report of the Working Group on Enforced or Involuntary Disappearances on its mission to Mexico* (March 18th to 31st, 2011) we have seen that the demands of civil society have not been answered, on the contrary, enforced disappearances have spread all over the national territory. The Mexican State has developed a report (*Report of the Mexican State on the International Convention for the Protection of All Persons Against Enforced Disappearances*) that while serving some of the recommendations that the Working Group on Enforced or Involuntary Disappearances of the UN made, left unsolved the main topics: the presentation of the disappeared persons and the trial and punishment of those responsible.

The Mexican State has the chance to solve this problem, but there is no political will to do it. This is why in the following comments we will emphasize certain points that are inconsistent in the report that the State has presented:

1.- GENERAL LEGAL FRAMEWORK

1.1 Constitutional, criminal and administrative provisions relating to the prohibition of enforced disappearance

There is some degree of suitability in what the Mexican State reports about the legal provisions that it has to forbid the enforced disappearance. On one hand, it seems that there are mechanisms to eradicate this practice, but the serious problem is evident when we counterbalance these statements with reality.

Since enforced disappearance of persons is contemplated by the effect of the action, omission or acquiescence of the State, it is clear that the failure is based on the State's absolute inaction, despite having the provisions for taking appropriate action. The provided provisions, which are not consolidated as a reality, cast doubt on their true suitability, as well as their relevance to consolidate the Rule of Law.

Rather than devoting efforts to describe the framework for its ban, the State must undertake direct actions so this crime is not committed. The mere legislation, established

in an atmosphere of impunity as high as the one that prevails in Mexico, will not stop this practice just because the penalties are described.

1.2 Relevant International treaties in which Mexico is State Part

About the international treaties that Mexico has subscribed, it is very alarming to notice that it ratified the Inter-American Convention on Forced Disappearance of Persons with a reservation and an interpretative declaration which contravene the spirit and ultimate goal of this one Convention, putting aside the enforced disappearances committed in past decades and the military responsibility in the subject. It was only after several years and interpellations (both social, and as the judgments emitted by quasi-judicial agencies internationally), that the reservation was removed for the military jurisdiction.

One of the most relevant and serious omissions that persist until this moment is the one about keeping the interpretative declaration that limits the possibility of justice in the case of the enforced disappearances committed prior to the ratification and the entry into force of the Convention.

This partial and inadequate attention to the commitments made by the Mexican State makes the deployment of mechanisms outlined in its report look like a simulation. The very International Convention for the Protection of All Persons from Enforced Disappearance may be threatened in the event that the Mexican State does not undertake more effective actions as the full recognition of all the powers of the Committee, provided by the United Nations for this purpose.

1.8 International Jurisprudence in which it has applied the Convention's stipulations

Certainly, what has been achieved through the Rosendo Radilla and Jesús Ángel Gutiérrez cases is an important step; but even when there are some sentences, the State

still fails in ensuring justice and punishing the responsible, and we still do not know the whereabouts of all the disappeared persons (including those of Radilla and Gutierrez).

When the State reports to have accomplished almost the entire sentence of Radilla's case, it omits serious elements in this process: for example, the fact that the public act of recognition changed the place without notice, so there could only attend the event a majority of civil servants, letting out many people and organizations involved in these issues. It does not mention that the biography brief was taken and then used without the clear authorization of the author. It also omits to say that, during the process of "payment" of the economic compensation, they tried to make the family accept a declaration of absence in presumption of death as an element to make possible the cheque's collection and deposit³. This re victimizes and seriously undermines the dignity of the families and victims, in a historically sensitive issue, as it is the economic compensation; it also contravenes the acceptance of the figure and type of enforced disappearance.

1.9 National Jurisprudence in which it has been determined the violation of the Convention, as well as the reasons for that violation and the measures taken to remedy this situation

It is important to underline that regarding the possibility of promoting an injunction (*amparo*) the right to appeal it is useless, as in the vast majority of cases the investigations has not even reached to a trial -even where the report was submitted at the General Attorney's Office (PGR)-; regardless of that these *amparos* made by the mothers and relatives of disappeared persons were granted under condition of the subsequent ratification by the victims of enforced disappearance, which - for obvious reasons - is not possible. Even more, as we will see below: the State, through the PGR, summoned the people disappeared to appear in court⁴.

³ According to the State's self-monitoring sentence-compliance by the National's Supreme Court of Justice "in order to the heirs of Mr. Radilla receive the corresponding amounts should initiate a process of voluntary jurisdiction, under domestic law, and obtain a judicial declaration of presumption of death of Mr. Rosendo Radilla", http://fueromilitar.scjn.gob.mx/fm_radilla280612.htm (Accessed 05/30/2014)

⁴ <http://www.jornada.unam.mx/2001/12/06/cita.html> (Accessed 30/05/2014)

In its report, and in accordance with that established by the National's Supreme Court of Justice, the Mexican State accepts the permanent or continuing nature of enforced disappearance; as well as the applicability of this crime until the whereabouts of the victim is known. Therefore, it is very serious that according to the Mexican State, the number of cases has dropped over the time when there are not sufficient trials or clarified cases to justify this drop.

There are public reports prior to 2006; so as enforced disappearance is a crime that has not prescribed, all cases from 1969 are still awaiting the response and action of justice. If behind this omission is the determination of non-prosecution, it is deliberately in breach of the Convention.

1.10 Statistics about enforced disappearance reports and judgment

As the Mexican State accepts enforced disappearance as a permanent crime it is unacceptable that it provides data about preliminary enquiries only since 2006, when there are reports of enforced disappearance filled out in the General Attorney's Office at least 20 years before. Besides, enforced disappearances began in Mexico in the sixties, and this is public domain.

The Mexican State is now under the power of the Institutional Revolutionary Party (PRI), which ruled Mexico since 1929 until 2000, recovering the presidency in December 2012. When responding to its national and international commitments in terms of enforced disappearance, this government does not accept his responsibility during that period, but they highlight the responsibility of previous governments under the National Action Party (PAN), between 2000 and 2012. Ergo, the current Mexican government led by Enrique Peña Nieto (from PRI) does not meet its plain obligations and it covers criminal actions from his predecessors; it also pretends to make the opposition party responsible for all enforced disappearance on the country.

The current Mexican government seeks to eliminate many cases of enforced disappearances that occurred during the Institutional Revolutionary Party (PRI) governments in decades prior to 2000, and whose impunity made possible that, between 2000 and 2012, the crime could be carried on and perpetrated, sheltered by the complicity of State officials, security officers and bureaucrats of either party.

The Mexican State's report does NOT say how many reports for enforced disappearance there are in the country. It only talks about investigations initiated and even in this respect the results are not encouraging: there are TENS OF THOUSANDS of disappeared persons in Mexico, therefore the authority should start TENS OF THOUSANDS of preliminary enquiries, not just a couple of hundreds, as reported.

Even worse: from the hundreds of reported investigations, the sentences can be counted almost with one hand: six, according to the report. The State does not indicate how many reports it has to date; it does not say either how many cases are allegedly unreported. Above all, it does not say what is the effectiveness in monitoring these investigations, how many cases are dismissed and why, nor how many cases will come to the conviction of a sentence.

The State could also indicate how many disappeared persons have been found as a result of the investigations: we would love to hear good news! Furthermore, there is no official register of enforced disappearances in Mexico and this inconsistency creates instability in the official numbers, which certainly produces an erratic action, due to misdiagnosis.

ARTICLE 2. Definition of enforced disappearance in domestic law

It is noteworthy that the elements to define enforced disappearance in domestic law do not correspond, one by one, in exact equality with the definition established by international standards, according to the Convention or to the Rome Statute; not in the federal definition, nor in the local ones.

There is no feasible argument for failing to incorporate in this way the definition, because the various adaptations allow gaps and "leaks" in the interpretation. For example, the specificity of the definition in which it is established that the crime is committed "with the authorization, support or acquiescence of the State..." could not be interpreted in the Mexican law in the same way. This can be appreciated in the fact that the Mexican State only emphasizes the reference in the law "civil servants", ignoring paramilitary or para-

police bodies that have historically been involved in the commission of these crimes, often under orders of elements of the State.

What are the arguments of the Mexican State for not incorporating the international definition verbatim in the Mexican law, both at federal and at state levels? And in this regard, it is worth noting that only 19 of the 32 states that constitute the Mexican Republic have criminalized enforced disappearance and there is still no standardization of such classification. There are state laws (such as the case of the state of Guerrero) that already have many advantages over the other local laws and over the federal one.

It has been recently published the definition of enforced disappearance in the state of Coahuila, which has a high and possible standard to look upon when it incorporates the concept of "declaration of absence for disappearance" as an element that improves the hitherto existing "declaration for presumption of death." There are elements that make it possible to improve the definition and attention of this matter in domestic law. It is urgent to take effective measures for the law's harmonization in this regard.

In the same sense, the definition should make it clear that enforced disappearance is a crime against humanity, and not just consider it "particularly serious when committed as part of a systematic pattern or as a practice condoned by the State". In Mexico, this crime has not been just a pattern, but it has been perpetrated as a systematic practice that is not only tolerated by the State, but also designed, promoted, and executed by it.

ARTICLE 7. Appropriate penalties to punish the offence of enforced disappearance

Given the "extreme seriousness", the contexts and particularities that the crime of enforced disappearance has presented in the last four decades, combined with the painful impunity, its definition in national legislation has to take into account the observations made by the Working Group on Enforced and Involuntary Disappearances, and the addition in reference to "Best practices in national penal legislation on enforced disappearances". The mere reference to the works on legal modification projects is not enough. The existent

legislation has to be submitted to revision and consultation for the adoption of a definition of the crime in accordance with international standards in the field.

Since the end of the sixties, there has been a constant practice of enforced disappearance. The testimonies saying that this crime began to be practised on the 19th of May are well known; to date the victims' whereabouts are unknown. Those directly responsible for the crimes and their superiors have not been punished. We have witnessed a painful impunity, which encourages this crime's perpetration by not submitting to trial and punishment those responsible, despite the fact that witnesses and survivors have indicated their fault, and that the crimes started in the decade cited above have been officially recognised by the Human Rights National Commission (CNDH) or from the Special Prosecutor for Social and Political Movements from the Past (FEMOSPP).

As the Working Group has concluded, the definition of the crime in the national legislation should: include the offence that contemplates the "generalised and systematic attack to a civil population" as well as the "isolated facts"; incorporate at least the accumulative elements of "victim's freedom deprivation", the "participation of governmental agents, at least indirectly by acquiescence", and the "negative to reveal the whereabouts of the disappeared person". It also should: include as a consequence the element of "withdrawal of the victim from the Rule of Law"; define enforced disappearance as a permanent or continuous crime; establish individual and institutional responsibility in chain of command; define it as a crime against humanity with "mitigating and aggravating circumstances and accessory appropriate sanctions", among other recommendations contained in the Working Group's Report.

It is essential to take strong steps for the establishment of the responsibility chains in accordance with careful and dedicated investigations based on preliminary inquiries for each case. In contexts as complex as the Guatemalan and the Colombian, sentences between 160 and 540 months in prison have been established. In the same line the Working Group establishes the sentences between 25 and 40 years, depending on mitigating and aggravating circumstances. According to these parameters, there should not be a pretext for the imposition of similar sentences in our country.

There is the wrong idea that even if a sentence can be established, this would not be useful because the responsible people are not identified. It is essential to remember

that since the seventies the relatives of the disappeared and former detained-disappeared have given faithful testimonies with the full names of many of the direct responsible. Even today, according with information provided by the Mexican State and by the victims there are a series of people accused by the commission of this crime –with many civil servants among them.

It is very important to highlight that international best practices offer a sign, even a guarantee against impunity: “the national legislation in terms of enforced disappearances must consider administrative disqualification for the authors of this crime”. This would lead to the disqualification of civil servants, at least during the investigation and until the segregation of responsibilities. Society would observe positively the punishment to this criminal practice; there is not a better incentive for preventing this practice than the certainty of the opportune and decided application of justice. The most appropriate thing for a sentence is its imposition and its consequent implementation.

ARTICLE 8. The right to an effective remedy during the term of limitation

On the issue of time limitation of the crime of enforced disappearance from the moment in which its consummation stops -when the person appears and its destiny is known- its worth to point out the case of the people disappeared for political reasons that were freed in Mexico during the seventies and the beginning of the eighties.

It is important to draw attention towards the fact that these people gave their testimony and in many cases filled reports stating the facts and the people involved, even when they were under threat to prevent them to give their testimony. From the moment of their liberation and to date, Mexican authorities have not guaranteed “the right to an efficient recourse” during the time of limitation since the enforced disappearance was committed against them. This has been so in spite of the realisation in due time of the reports. These reports never generated serious investigations and let alone any sentence.

In this regard, one shall ask how to materialise the access to the right “to an efficient recourse during the time of limitation” of the crime in a context of impunity like the Mexican case.

ARTICLES 10 to 12. Investigation process in cases of enforced disappearance

In paragraphs 122 to 124 of its report, the Mexican State establishes that Mexican authorities will help victims and witnesses, and that it will “prevent that signs, prints or traces of the crime are lost, destroyed or altered, as well as the instruments, objects or products of it; know who were witnesses; avoid that the crime keeps on being committed and, in general, prevent the investigation from being hindered, proceeding to the immediate detention and immediate search of those that intervened in its commission in the cases of flagrant crime”. The reality is that the relatives of the detained-disappeared face first the negative of even filling a report, and afterwards the dilation and the lies from civil servants in charge of the investigations.

The work of the HRNC is an example of the lack of diligence and of the inefficacy of the investigations carried out by the Mexican State. Created in 1990, it took 11 years for it to make its recommendation 26/2001 in which 257 out of 532 cases of enforced disappearance were dismissed under the argument that it was “impossible to establish the existence or not of the crime, due to the lack of evidence”, even when those evidences were provided by the same institutions of the Mexican State under investigation for their participation in the disappearances.

The Human Rights National Commission (CNDH) established that it is not possible to investigate 49% of the cases in which Mexican State was accused of disappearing one of its citizens due to the information provided by the institutions accused of being responsible for the disappearances. The investigations did not go any further.

The Special Prosecutor’s Office for Social and Political Movements of the Past (FEMOSPP) was created a year after the publication of the HRNC’s report. One of its objectives was to investigate more than 797 cases of enforced disappearance. This Special Prosecutor’s Office closed almost 5 years after its creation, without solving a single case and without prosecuting a single person. Even worst, FEMOSPP’s report was not officially recognised nor made public in whole.

Even more appalling is the fact that the Mexican State incurs in re victimisation, harassment, and even mocks against the relatives of the people disappeared while

carrying out the investigations. The crowning case is the episode occurred in 2001, when the General Attorney's Office (PGR) sent summons to at least 27 people disappeared. Those summons were sent to the houses of the families of the people disappeared, along with a categorical and offensive warning: "I do not omit to express that in case of failing to appear, a measure of constraint from those established in article 144 of the Code of Criminal Procedure will be applied".

Article 12 of the Convention says that any individual who alleges that a person has been subjected to enforced disappearance has the right to report the facts to the competent authorities, which shall examine the allegation promptly and impartially and, when necessary, undertake without delay a thorough and impartial investigation. Even in those cases where there are not reports but it can be presumed that a person has been subject to enforced disappearance, authorities have the obligation to start the pertinent investigations in order to clarify the facts and to punish the people responsible.

The report submitted by the Mexican State fails to establish what have been the results obtained in the hundreds of cases of people subject to disappearance since 1969 and until the beginning of the eighties, for which families, human rights advocates and NGOs have filled reports. Some of these cases were investigated by the Special Prosecutor's Office for Social and Political Movements of the Past (FEMOSPP) with insufficient results in terms of the identification of the perpetrators and intellectual authors in the majority of the crimes.

In the same regard, the investigations carried out by the Human Rights National Commission (CNDH) in these cases have been poor in terms of faculties and resources of the investigating authorities.

The State has not given a proper response to the reports filled out by the families of the enforced disappeared people. Since the first recorded enforced disappearance occurred in Mexico 45 years ago, the null interest in punishing the alleged perpetrators or even the concealment of information in the cases is evidence of this ill treatment by the State.

In that order of ideas, if, like the Mexican State mentions in paragraph 130 of its report "The forensic, criminalistic, fingerprinting data analysis, map analysis, digital

forensics, DNA profiling, are decisive in determining the circumstances and the causes that led to the enforced disappearance or in its case execution” then it should be highlighted that there are at least 561 cases of enforced disappearances that have not been effectively solved and in consequence there has been no perpetrator punished for those crimes.

In respect to the observance of the principle *aut dedere aut judicare* - the responsibility of the Mexican State to extradite or at least, extend its jurisdiction - in the case of the Argentinian marine Ricardo Miguel Cavallo linked to the last military dictatorship in Argentina (1976-1983), it must be said that even though the Mexican State did extradite the ex-torturer to Spain, it has not applied the same diligence in respect to the past and present cases of human rights violations such as kidnapping, torture and enforced disappearance in the past and present in the country.

This omission leads us to the assumption that the Mexican State does not have a real interest in judging the past and present's crimes against humanity that have been committed in this country since the enforced disappearance of Epifanio Aviles Rojas the 19th of May, 1969, even though the State has signed all the international treaties and conventions related to the preservation and respect of human rights.

ARTÍCULO 19. Personal information

The Mexican State set up the “National Registry of Missing and Disappeared Persons” which is not suitable for enforced disappearances since these must not be mixed with missing persons cases, considering that each of those crimes have different characteristics. Also, the Mexican State has not considered a perpetrators' register, which could be useful to identify criminal networks or patterns. In addition it has not been established how would the information regarding a civil servant involved in a case of enforced disappearance be dealt with within the Register.

In its report, the State assures that it has political will to create a database for the search of enforced disappeared persons. However, 24 years after the first investigations carried out by a State agency (HRNC) with information provided by the families of the people disappeared, and after two national reports on enforced disappearance with no progress, it is difficult to believe that the State actually has that will, since the

institutionalized delay reveals a clear intention to relegate the cases of enforced disappearance into oblivion and impunity.

ARTICLE 24. Victims' rights

Taking into account section 5 of Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance that states the forms of reparation (Restitution, rehabilitation, satisfaction; restoration of dignity and reputation, guarantees for non-repetition) it is important to point out that the only measure taken by the Mexican State was the creation of the "Interdisciplinary Committee for the Damage Reparation to Victims of Human Rights Violations of Individuals Related to Social and Political Movements of the Past in the decades of the sixties and seventies". Its procedures in reparation beyond the economical compensation have been shown clearly, neither to society nor to the families of the disappeared persons.

Right to the Truth

The Mexican State mentions in its report the work of the Special Prosecutor's Office for Social and Political Movements of the Past (FEMOSPP) as one of the ways in which it has guaranteed the victims' right to know the truth. It is worthy to remember that FEMOSPP had three work lines: judiciary, historical and file investigation, and cooperation, citizenry participation and institutional connection. As it has been mentioned above, the "Historical Report to Mexican Society" was presented following the line of historical and file investigation. Only can only gain access to this report through a Transparency petition to the Federal Institute of Access to Information Access (IFAI). Even when this report contains relevant information for the Mexican society, especially in terms of the reconstruction of the historical truth of the facts occurred during the Dirty War, it is delivered with all the names of the victims and the perpetrators crossed out. In our opinion this is a grievance to the families and to those offended by the crimes committed in the past. Far from guaranteeing the right to the truth, this report constitutes an insult and a form of re victimization.

The Mexican State writes in its report that when the Special Prosecutor's Office for Social and Political Movements of the Past (FEMOSPP) was closed all ongoing investigations were sent to the "General Coordination of Investigation" (CGI), which according to the report is still carrying out the investigations of cases of enforced

disappearance. This statement made by the Mexican State to the United Nations has not been informed to the families involved in the cases; they have not been given any advance or progress in their investigation, so it is false that the CGI is collecting statements correctly from those offended and from witnesses.

ARTICLE 25. Wrongful removal of children

The International Convention for the Protection of All Persons from Enforced Disappearance states that:

1. Each State Party shall take the necessary measures to prevent and punish under its criminal law:

(a) The wrongful removal of children who are subjected to enforced disappearance, children whose father, mother or legal guardian is subjected to enforced disappearance or children born during the captivity of a mother subjected to enforced disappearance;

(b) The falsification, concealment or destruction of documents attesting to the true identity of the children referred to in subparagraph (a) above.

2. Each State Party shall take the necessary measures to search for and identify the children referred to in paragraph 1 (a) of this article and to return them to their families of origin, in accordance with legal procedures and applicable international agreements.

The Mexican State has knowledge of several cases involving pregnant woman who were subjected to enforced disappearance while they were pregnant, and that several childs were iligaly appropriated during the Dirty War, nevertheless the Mexican State refers no acction or investigation to find these children (now adults) nor to identify, pursue or punish the people involved in this crime. The Amber alert was not set up to find children victims of enforced disappearance, but to find missing or kidnapped children. The Mexican State does not even mention the existence of enforced disappeared children in Mexico.

CONCLUSION

The Mexican State Report is full of data and legal arguments that have little to do with the actual prevention, elimination and real justice in the cases of enforced disappearance. It seems to be an exercise for making bigger the report that in essence has little or no results or real actions taken to prevent enforced disappearance in the country. All the legislation, the training in human rights that the civil servants take, and all the victims' programs, do not resolve, nor will they ever resolve this serious problem while there are no real detailed and meticulous investigations, and while the perpetrators are not found, detained, judged and sanctioned. It is offensive to read that the Mexican State brags of the existence of six guilty sentences for a crime that is estimated in tens of thousands. With this report the Mexican State only pretends to fulfil its human rights responsibility and agreements but in practice, for all Mexicans, the only thing that the State guarantees is total impunity.