

## CHAPTER V

# FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS

### THIRD REPORT ON FOLLOW-UP OF RECOMMENDATIONS ISSUED BY THE IACHR IN ITS REPORT ON THE HUMAN RIGHTS SITUATION IN MEXICO\*

#### I. INTRODUCTION

1. The purpose of this Chapter is to follow-up on the recommendations issued in the report entitled "The Human Rights Situation in Mexico," adopted on December 31, 2015 by the Inter-American Commission on Human Rights ("the Commission," "the Inter-American Commission," or "the IACHR") pursuant to Article 59.9 of its Rules of Procedure. Under that provision, by means of Chapter V of its Annual Report, the Commission shall follow-up on measures adopted to comply with the recommendations issued in the country report. Through that follow-up, the Chapter addresses the principal current human rights problems identified in the United Mexican States ("Mexico," "Mexican State," or "State"). They have to do with citizen insecurity and militarization, disappearances, torture, access to justice and impunity, the situation as regards freedom of expression, and the situation of particular groups within that context.

2. Invited by the United Mexican States ("Mexico," "Mexican State," or "State"), the IACHR paid an on-site visit to the country from September 28 to October 3, 2015. The IACHR wrote the Report on the Human Rights Situation in Mexico, along with a series of recommendations to the Mexican State, based on findings and information obtained before, during, and after the on-site visit. It also based its report on investigations conducted ex officio, information provided by the State, inputs from the various mechanisms through which the IACHR has monitored developments in the country, newspaper articles, and decisions and recommendations made by specialized international organizations, as well as other sources, pursuant to Article 59.5 of its Rules of Procedure.

3. In the Country Report, the Commission pointed out that Mexico had been going through a severe crisis of violence and insecurity for several years. The IACHR identified serious situations of violence, which increased following the start of the so-called "war on drugs" in 2006 and escalated to alarming levels, resulting in the deaths of more than 100,000 people since 2006, more than 27,000 disappearances acknowledged by the State, over 2,000 investigations into cases of torture, and conditions that have prompted the displacement of thousands of people in the country. According to the report, in response to the surge in violence, as of 2006 the authorities opted to increase the part played by the Armed Forces in public security tasks, which included a policy of active confrontation with organized crime and the deployment of joint operations by the Armed Forces and state and municipal security institutions. That measure triggered increased violence and grave violations of human rights, in respect of which the IACHR observed a lack of accountability by international standards.

4. In a context characterized by high levels of violence and security policies that have proved ineffective over the years, the IACHR expressed particular concern in its Report at reports of disappearances; the forced disappearance of 43 young students of the "Raúl Isidro Burgos" rural teachers college in the state of Guerrero, on September 26 and 27, 2014; extrajudicial executions and torture; the dangers to which women, children, migrants, human rights defenders, and journalists are exposed, many of whom have been victims of murder, disappearance, kidnapping, torture, threats, and harassment. The IACHR also emphasized that Mexico is considered one of the most dangerous countries in the world, other than those at war, for journalists.

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\* \* In accordance with Article 17(2) of the Rules of Procedure of the IACHR, Commissioner Joel Hernández, a Mexican national, did not participate in the discussion, research, deliberation or adoption of this report.

5. During its on-site visit, the Commission ascertained critical levels of impunity and inadequate and insufficient care for victims and members of their families. The lack of access to justice has led to structurally embedded impunity, which has the effect of perpetuating and, in some cases, encouraging the repetition of grave human rights violations. The threats, harassment, murders, and disappearance of persons seeking truth and justice have intimidated Mexican society, as the IACHR ascertained through numerous interviews with people unwilling to report those violations to the authorities for fear of reprisals, thereby contributing to extensive under-reporting and distorted official statistics. The obstacles to access to justice, ineffectiveness of law enforcement, and the impunity often associated with them have weakened the rule of law and pose urgent challenges.

6. The Commission has appraised the measures taken by the State to deal with the situation described in the Report. In particular, it has acknowledged the important constitutional and legislative reforms that Mexico has embarked upon since 2011, including the amendment of the Constitution and the recently adopted protocols for investigating cases of torture and forced disappearance, as well as other initiatives mentioned in the Report. Notwithstanding the progress made, the State's response has continued to encounter shortcomings, inadequacies, and obstacles to implementation. The IACHR found a deep divide between the legislative and judicial framework and the day-to-day realities on the ground for millions of people in the country, in terms of their access to justice, crime prevention, and other government initiatives. The IACHR pointed out that the major challenge facing the Mexican State is breaking the cycle of impunity in order to achieve effective investigation, trial, and punishment of those responsible for human rights violations.

7. The first and second reports following up on the recommendations issued in the Country Report, corresponding to 2016 and 2019, respectively, included relevant comments received from the Mexican State, from organizations, and from civil society.

8. For the present -- third -- report, the IACHR asked the Mexican State, in a communication dated September 24, 2018, to submit information regarding compliance in 2018 with the recommendations contained in the Country Report. On September 28, 2018, the State requested an extension, which was granted by the Commission. The response of the State was received on November 30, 2018<sup>1</sup> The Commission appreciates and thanks the Mexican State for the information received, which, where applicable, was included in the present report. The IACHR would also like to thank civil society organizations and the National Human Rights Commission (CNDH) for the information they provided.

9. In its report on compliance with the recommendations in 2018, the Mexican State reiterated that<sup>2</sup>:

it acknowledges the human rights challenges it faces and stresses that, in respect of each of them, specialized national and state, and sometimes also municipal institutions have engaged in concrete actions designed to overcome them. The Mexican State reiterates its rejection and condemnation of any human rights violation and reaffirms its unwavering determination to address those violations by strengthening efforts to provide effective protection of human rights in the country.

10. The State further reiterated that "it will continue to strengthen dialogue and collaboration with the IACHR on the following-up of its recommendations, as it is convinced of the positive impact it has on the promotion, monitoring, and protection of human rights in the Americas, including in our country. It is important to mention that efforts and policies implemented thus far, given their transformational nature, will take time to translate, through adjustments, into concrete results. That being so, cooperation with other

<sup>1</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-03121, November 30, 2018.

<sup>2</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-03121, November 30, 2018.

countries and international organizations working in this field, will be of the utmost importance for effective implementation."<sup>3</sup>

11. The IACHR takes note of the acknowledgments of the Mexican State following publication of the 2015 Country Report; appreciates the expressions of willingness to address the very serious human rights situations observed by the IACHR; and reiterates the importance of Mexico complying in their entirety with the recommendations made in the Report<sup>4</sup>. The IACHR also reconfirms its readiness to work with Mexico, within the framework of its mandate and functions, to ensure effective enjoyment of human rights for everyone.

12. On March 13, 2019, the IACHR transmitted to the State a copy of the preliminary draft of this report in accordance with Article 60, paragraph a of its Regulations, so that it may submit the pertinent observations within a period of three weeks. The State requested a one-week extension, which was granted by the Commission. On March 14, 2019, the State presented its observations, which, as pertinent, were incorporated into this final version approved by the Commission on March XX, 2019.<sup>5</sup>

13. The State reiterated the information provided in the reports given in previous years and in November 2018, and made a pronouncement regarding the new observations and concerns presented by the IACHR in its Annual Report. The State reaffirmed its commitment to address the challenges through the protection, defense, surveillance, promotion, study, education and dissemination of human rights. In addition, it reaffirmed its commitment to fully comply with the recommendations issued by the IACHR, through the strengthening of dialogue and collaboration.<sup>6</sup>

14. In its observations to the draft of this report, the State highlighted and took note of the assessment made by the Commission regarding the level of compliance with each of the recommendations and indicated that this information would allow the State to advance in its compliance and attention.<sup>7</sup>

15. Finally, the State reaffirmed its commitment with human rights and fundamental freedoms. The State also indicated that "The State has proposed to strengthen its policy of openness to international observation in human rights, in parallel with its defense and observance at the national level. In this regard, it recognizes the work of the mechanisms of the inter-American system and its contribution to provide guidance on national efforts in the promotion and protection of human rights". Finally, the State endorsed its "willingness to follow up and fully comply with the recommendations issued by the Inter-American Commission on Human Rights, ensuring the implementation of effective policies, actions and programs."<sup>8</sup>

16. The present follow-up report is divided into seven sections devoted to consideration of the measures adopted by the State to comply with the Commission's recommendations and of still pending challenges. It follows the structure of the IACHR Report containing the aforementioned recommendations. Each section recapitulates the recommendations issued by the IACHR in the respective chapters and analyzes the principal advances and challenges identified by the IACHR on the basis of the information provided by the State and by civil society organizations, as well as the information culled by the Commission thanks to its monitoring of the overall human rights situation in the country. Thus, the Commission has availed itself of the

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<sup>3</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-03121, November 30, 2018.

<sup>4</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-03121, November 10, 2016.

<sup>5</sup> Communication from the Mexican State. [Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico."](#) Note OEA-00633, March 14, 2019.

<sup>6</sup> Communication from the Mexican State. [Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico."](#) Note OEA-00633, March 14, 2019.

<sup>7</sup> Communication from the Mexican State. [Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico."](#) Note OEA-00633, March 14, 2019.

<sup>8</sup> Communication from the Mexican State. [Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico."](#) Note OEA-00633, March 14, 2019. paras. 100-101.

information received from the State, that arising out of public hearings, information obtained through ex officio investigations, inputs from the petitions and cases system, precautionary measures, and requests for information filed pursuant to Article 41 of the American Convention on Human Rights; as well information available from other public sources and the decisions and recommendations of specialized international organizations, as well as other sources. Finally, the IACHR offers its conclusions and recommendations.

## II. FOLLOW-UP OF RECOMMENDATIONS

### A. Citizen Security

- Develop a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks and for the recovery of such tasks by the civilian police forces. Strengthen the capacity of police forces to carry out public security tasks according to international human rights standards.
- Adopt a General Law regarding the use of force according to international human rights standards.
- Implement measures so that federal and state public servants abstain from issuing public statements regarding the legality of the acts of security forces in cases that may constitute an undue use of force before the results of an investigation are available.
- Adopt and implement accountability measures by an agency that is independent of all security forces, in relation to their operations and public security tasks whenever there is use of lethal force.
- Ensure that in cases of forced disappearances, extrajudicial executions and torture, investigation lines relate not only to the material perpetrators, but also include the responsibility of those in the chain of command.
- Create systems for the information, compilation and analysis of data regarding the violence that affects the different groups addressed in this Report, such as women, children and adolescents, migrants, human rights defenders, justice operators, LGBT persons, indigenous peoples, and persons deprived of liberty.
- Re-direct the approach to the issue of drugs in Mexico, away from a focus on militarization and “frontal attack” using public force, to one with an integral approach of human rights and public health regarding addictions and consumption without intent to distribute.

17. With respect to the recommendation about **developing a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks**, the IACHR observes that the Domestic Security Law, published in the Official Gazette (*Diario Oficial de la Federación* - DOF) on December 21, 2017, was invalidated on its entirety by the Supreme Court of Justice of the Nation (SCJN) on November 15, 2018. The SCJN ruling is based on the consideration that the Domestic Security Law contravenes the constitutional and conventional (international treaty) order in that it contains provisions seeking to normalize the use of the Armed Forces in public security tasks.<sup>9</sup> In a press release, the Commission welcomed the SCJN ruling. In particular, the Commission underscored that it is vital to establish a clear and precise distinction between domestic security as a police function and national defense as a function assigned to the armed forces, given that they are two, very different institutions in respect of the purposes for which they were created and in terms of their training and preparation.<sup>10</sup>

18. The Mexican State is currently engaged in a constitutional amendment process intended to constitute the so-called National Guard. The bill on forming the National Guard was presented on November

<sup>9</sup> Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico,” p. 22.

<sup>10</sup> IACHR, Press Release 251/18 – [IACHR Welcomes Mexican Supreme Court of Justice Ruling on Unconstitutionality of Domestic Security Law](#). Washington, D.C., November 22, 2018.

20, 2018, and the corresponding legal opinion approved on December 5. Given numerous social actors' disagreements with the initiative, public hearings, organized by theme, were held from January 8 to 12, 2019. On January 16, 2019, in connection with the extraordinary period of sessions of Congress, the Chamber of Deputies approved the draft legal opinion.<sup>11</sup> That same day, the opinion was sent to the Senate, where it was derived to the commissions for constitutional matters and legislative studies, for analysis and a substantiated decision (*dictamen*).<sup>12</sup>

19. In its observations to the draft of Chapter V Report, the State indicated that the National Guard will be governed by a civilian command and that the actions of the armed forces will be temporary for five years. The State pointed out that the Guard will not replace the state or municipal police and will act in a subsidiary way supporting them. The State added that the crimes that come to commit members of the National Guard will be investigated by the corresponding civil authority. The State also indicated that the legislative process regarding the National Guard is still in progress.<sup>13</sup>

20. The UNHCHR has expressed a series of concerns with respect to the National Guard. It underscores that the bill does not provide non-repetition guarantees vis-a-vis human rights violations committed by military personnel in the past; b) the merger between federal police and military police assigned to the Secretariat for Security, which will be governed by a Board composed of senior military officers and Security Secretariat personnel: an arrangement that distorts the civil nature of public security tasks; c) improper regulation of the scope of military jurisdiction; and d) [Tr. concerns about] the suitability and effectiveness of the proposed measure for dealing with insecurity.<sup>14</sup>

21. In this context, the Commission wishes to refer to the recent stipulation by the Inter-American Court of Human Rights that maintaining public order and citizen security must primarily be reserved for civilian police forces. Nevertheless, when the armed forces do intervene in security tasks, their participation must be exceptional, subordinate and complementary, regulated and supervised.<sup>15</sup> In light of the above, the IACHR concludes that the present recommendation has been partially complied with and will continue to follow the legislative course of the Project on the National Guard.

22. Next, the Commission assesses the degree of compliance with the recommendations aimed at: **strengthening the capacity of police forces to carry out public security tasks according to international human rights standards**; adopting a General Law regarding the use of force according to international human rights standards; and adopting and Implementing accountability measures by an agency that is independent of all security forces, in relation to their operations and public security tasks whenever there is use of lethal force.

23. With regard to those recommendations, the Commission was notified by the State of training activities at all three levels of government as part of the Federal Police's Police Command Diploma course. The Commission was also told about 928 academic activities of the Federal Police devoted to human rights issues, including topics on introducing human rights considerations in police operations; the use of force and of firearms in police operations; the human rights of victims; human rights in detention centers; human rights, legal detention and the legitimate use of force; a diploma course for Commanding Officers on human rights; human rights and forced disappearance of persons, and so on.<sup>16</sup> In its observations to the draft of this report, the State indicated that during the periods 2006-2012 and 2012-2018 several training sessions were carried out that had an impact on 35,684 members of the navy, which

<sup>11</sup> The bill garnered 362 votes in favor, 119 against, and 4 abstentions.

<sup>12</sup> Senate, [Special Meeting of the Commission on Constitutional Matters](#), January 22, 2019.

<sup>13</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 2-4.

<sup>14</sup> United Nations, [Remarks by Jan Jarab, Representative of UNHCHR in Mexico, during the hearing on the constitutional amendment process with regard to the National Guard](#), January 10, 2019.

<sup>15</sup> Court H.R., Case of Alvarado Espinoza et al. v. Mexico, Judgment of November 28, 2018. Series C No. 370, paragraphs 181-18.

<sup>16</sup> Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 2-12.



were carried out in coordination with the Ministry of the Interior, the Commission National of Human Rights and the International Committee of the Red Cross, on medical examination, torture, use of force, crimes of victims of sexual harassment, labor, among others.<sup>17</sup> The Commission takes note of the information presented and, in light of the foregoing, considers that these recommendations are in partial compliance.

24. For its part, the IACHR notes that the CNDH mentioned that its Advisory Council emphasized the need to strengthen civil institutions devoted to security, so that they should be the bodies responsible for such tasks, thereby reducing the Armed Forces' participation in that area. Various academics have also emphasized that Mexico needs to boost civilian security institutions by establishing a national police entity to centralize administrative procedures relating to recruitment, training, police career-related matters, vocational training, and discipline; however, in that national police model, states and municipalities would remain in charge of operations.<sup>18</sup>

25. At the same time, regarding regulation of the use of force, the State reported on the implementation of public policies that include agreements, guidelines, and training courses aimed at regulating the use of force at all levels.<sup>19</sup> The IACHR has not received information regarding progress toward the adoption of a General Law on the Use of Force pursuant to the recommendations it made in its Country Report and to the recommendations of the United Nations Rapporteur on extrajudicial, summary or arbitrary executions, the United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>20</sup> and the United Nations High Commissioner for Human Rights.<sup>21</sup> In its observations to the draft of this report, the State indicated that the absence of a specific law on the subject does not imply a gap in the protection of human rights, since there are public policies that regulate the use of force at all levels.<sup>22</sup> In this regard, the Commission considers that the compliance with said recommendation remains pending.

26. With respect to accountability measures, the State told the IACHR that in 2017 five regional offices of the Internal Affairs Unit of the Federal Police had been established, thereby increasing surveillance and supervisory capabilities, developing and implementing inspection and investigation procedures, and stepping up responses to complaints and reports pointing to irregularities or misconduct. In addition, in October 2016, an agreement was signed on implementing an external supervision mechanism with the

<sup>17</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 5.

<sup>18</sup> Chamber of Deputies, Public hearings on the National Guard: thematic roundtable discussion on "Human Rights and the National Guard", January 10, 2019.

<sup>19</sup> The State refers to the publication in 2017 of the Federal Police Operations Protocol; Agreements 04/2012 and 05/2012 of the National Security Commission (CNS), which regulate the use of force by police institutions and decentralized agencies responsible for public security, and the General Guidelines on Law Enforcement in respect of Persons and Objects (*Lineamientos Generales en materia de puesta a disposición de personas y objetos*); Agreement A/080/2012 of the Attorney General's Office (PGR) on Guidelines on the legitimate use of force and legal detention that are to be observed by Federal Police agents; the *Manual del Uso de la Fuerza de aplicación común a las tres Fuerzas Armadas* [Joint Armed Forces Manual on the Use of Force], published in the Official Gazette on May 30, 2014; and the Comprehensive Model for Regulating the Use of Force by the Police, presented on July 14, 2017, which focuses on work done by the municipal police. Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 22.

<sup>20</sup> United Nations. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico, A/HRC/34/54/Add.4, 17 February 2017, para. 19.

<sup>21</sup> The IACHR heard that, in Mexico state on March 17, 2016, the legislature adopted the Law regulating the Use of Force at the behest of the Governor of the state. According to several civil society organizations, the law contained several provisions at variance with international human rights standards. According to IACHR sources, three actions have been brought, which have yet to be resolved, alleging the unconstitutionality of that law. Decree No. 75. <http://legislacion.edomex.gob.mx/sites/legislacion.edomex.gob.mx/files/files/pdf/gct/2016/mar188.pdf>. Those suits were reportedly filed by the Human Rights Commission of Mexico State; the National Human Rights Commission, and lawmakers in the Mexico State Congress who had also adopted the law. According to information in the public domain, that action had been brought at the request of the Governor of the State, who asked the legislature to lodge the appeal. See also: United Nations. Recommendations for Mexico issued by the United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad al Hussein, as a result of his official visit to the country in October 2015.

<sup>22</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 7.

participation of six civil society organizations.<sup>23</sup> Both the IACHR and UNHCHR have stressed the need for Mexico to supplement its citizen security efforts by adopting and implementing accountability measures put in place by an agency that is independent of all the security forces in relation to their operations and public security tasks whenever there is use of lethal force.<sup>24</sup> The IACHR had not received information specifically regarding that recommendation. In light of the above, the IACHR observes that compliance with this recommendation is still pending.

27. Regarding the recommendation about **implementing measures so that federal and state public servants abstain from issuing public statements regarding the legality of the acts of security forces in cases that may constitute an undue use of force before the results of an investigation are available**, the Commission was told by the Mexican State that, since the presumption of innocence is a right recognized in the Political Constitution, all public servants are obliged to refrain from issuing any statements regarding facts derived from possibly illicit conduct until the findings of the corresponding investigation are available.<sup>25</sup>

28. Moreover, the State pointed out that the PGR has issued several instruments designed to avoid the use of re-constructions or speculations by public servants. Likewise, the General Law of Victims establishes the principle of "non-criminalization," that is to say, the authorities must not exacerbate the suffering of the victim (re-victimization) or, under any circumstances, treat the victim as a suspect or as responsible for committing the acts that he or she is reporting. In addition, no authority or private individual may speculate publicly regarding the possible links of the victims to organized crime or their connections to any criminal activity.<sup>26</sup>

29. For their part, civil society organizations have reported that representatives of the State and political forces have promoted measures contrary to the adversarial criminal system that violate human rights, for instance by violating the principle of presumption of innocence.<sup>27</sup> This situation precludes the incentives needed for an evidence-based criminal investigation, which in turn impairs the quality of the justice system.<sup>28</sup> One example of that is Recommendation 5/2018 issued by the National Human Rights Commission (CNDH) directed at the National Security Commission for the improper publication of the photographs of 12 injured parties (*agraviados*) in the media in both Mexico City and in the state of Oaxaca. The text of the recommendation also points out that there were violations of human rights in the form of arbitrary arrest and excessive use of force. The CNDH recommended that the National Security Commission issue a circular requiring that its officials refrain from showing photographs and providing data on detainees.<sup>29</sup>

30. In its observations to the draft of this Report, the State indicated that the Government of Mexico issued an official document for public servants to refrain from exhibiting photographs and providing information on detainees, adding that since the implementation of the Accusatory Criminal System, there is an obligation to make their rights known.<sup>30</sup> In light of the above, the IACHR considers that compliance with this recommendation is partial.

<sup>23</sup> Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 2-12.

<sup>24</sup> IACHR, The Human Rights Situation in Mexico, 2015. United Nations, [Recommendations for Mexico issued by the United Nations High Commissioner for Human Rights, Mr. Zeid Ra'ad al Hussein, as a result of his official visit to the country in October 2015](#), October 20, 2016.

<sup>25</sup> Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 2-12.

<sup>26</sup> *Ídem*.

<sup>27</sup> Animal político, [Lo agarras y no sale, si es inocente luego investigamos](#), October 1, 2018.

<sup>28</sup> México Evalúa, *Hallazgos 2017, Seguimiento y Evaluación del Sistema de Justicia Penal en México*, Mexico 2018, p. 144.

<sup>29</sup> [CNDH, Recomendación 5/2018, March 20, 2018](#).

<sup>30</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para 9-10.

31. With respect to the recommendation about **ensuring that in cases of forced disappearances, extrajudicial executions and torture, investigation lines relate not only to the material perpetrators, but also include the responsibility of those in the chain of command**, the State reiterated the entry into force of the General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishments, as well as the General Law on the Forced Disappearance of Persons, Disappearance committed by Private Individuals, and the National System to Search for Missing Persons.<sup>31</sup> Thus, both instruments provide for complete investigations including the chain of command and have specific provisions covering that concern. They also provide for officials being charged with the crimes of torture and forced disappearance if, from their more senior positions in the hierarchy, they are aware that subordinate under their immediate authority and effective control were preparing to commit or committing any of those crimes and consciously omitted to take the steps needed to avoid or prevent it.<sup>32</sup>

32. In this regard, in connection with Mexico's Third Universal Periodic Review in 2018 and efforts to combat impunity, several civil society organizations recommended that the Office of the Prosecutor General (*Fiscalía General*) have an entity that, through autonomous and effective criminal prosecution, investigates serious violations, with the legal authorization and technical capacities needed to investigate both the material perpetrators and the instigators, including any in the chain of command.<sup>33</sup>

33. While a regulatory framework is in place that provides for the chain of command being included in investigations into forced disappearances, the IACHR points out that said law still needs to be implemented in practice. In light of the above, the IACHR considers that compliance with this recommendation has been partial.

34. As regards the recommendation about **creating systems for the information, compilation and analysis of data regarding the violence that affects the different groups addressed in this Report, such as women, children and adolescents, migrants, human rights defenders, justice operators, LGBT persons, indigenous peoples, and persons deprived of liberty**, the Mexican State notified the Commission regarding various systems that compile data relating to the aforementioned groups, namely:

- The National Institute of Statistics and Geography (INEGI), which uses the following surveys and tools: the National Human Rights Census, National Censuses on Governance, Public Security, and the Penitentiary System; the Integrated System of Statistics on Violence against Women (SIESVIM); the 2016 National Survey of the Dynamics of Household Relations (ENDIREH); the National survey on Victimization and Perception of Public Security (ENVIPE), the National Survey of Adolescents in the Criminal Justice System (ENASJUP); and the 2017 National Survey on Discrimination, As regards analysis of the information obtained, INEGI produced the document entitled "*Violencia contra niñas, niños y adolescentes; consideraciones conceptuales, metodológicas y empíricas para el caso de México*" (Violence against children and adolescents: conceptual, methodological, and empirical considerations regarding the Mexican case).
- The National Institute of Indigenous Languages (INALI) has a microsite called "Basic Statistics on the Population speaking National Indigenous Languages," derived from "Socio-linguistic Indicators for the National Indigenous Languages. The information is useful for getting to know and analyzing social and demographic aspects of the population speaking national indigenous languages.
- A Technical Committee Specializing in Information on Comprehensive Protection of Children and Adolescents (CTEIPIDNNA) identified and forges indicators covering various topics, including some that address violence against children and adolescents.
- There is a Working Group on Information Systems in the Commission of Executive Secretariats for Integral Protection of the National Systems and Federative Entities of the National System of Integral

<sup>31</sup> Communication from the Mexican State. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 2-12.

<sup>32</sup> *Ídem*.

<sup>33</sup> Colectivo EPUMX2018, [Informe conjunto para el Tercer Examen Periódico Universal de México por organizaciones de la sociedad civil mexicanas 2018](#), p. 40.



Protection for Children and Adolescents (SIPINNA), which will foster the installation of State information systems and seek to identify, analyze, and design a proposed set of indicators using the data available, that covers violence against children and adolescents at the local level.

- The National Commission to Prevent and Eradicate Violence against Women (CONAVIM) has a Statistical Working Group made up of the National Institute of Women (INMUJERES), INEGI, the Executive Secretariat of the National Security System, the National Commission of Higher Courts of Justice, the National Justice Administration Conference [*Conferencia Nacional de Procuración de Justicia*], and the Office of the Director General of Human Rights Strategies of the Secretariat of the Interior. This Group is working on developing a standard, mandatory format for registering information on offenses, victims, and alleged perpetrators of all crimes against women. Also worth mentioning is that an audit is under way to verify the quality of the statistical data on femicide.
- The National Information System on Discrimination is a platform specializing in information on discrimination, with a view to providing useful input for drafting public policies.

35. The Commission takes note of the existence of systems for gathering data relating to a series of groups, such as children, women, migrants, human rights defenders, justice system operators, indigenous peoples, and persons deprived of liberty. Likewise, the IACHR appreciates ongoing efforts to improve and expand those systems. In its observations to the draft of this Report, the State referred to several data collection and policy analysis implemented in 2018 by the Executive Secretariat of the National System for the Comprehensive Protection of Children and Adolescents (SIPINNA), the National Institute of Statistics and Geography (INEGI) and the National Commission to Prevent and Eradicate Violence against Women (CONAVIM). In light of the above, the IACHR concludes that the present recommendation has been partially complied with.

36. With respect, specifically, to the recommendation on **creating systems for the information, compilation and analysis of data regarding the violence that affects LGBTI persons**, according to the information provided by the State, the National Institute of Statistics and Geography (INEGI) has contributed, via the Office of the Director General for Statistics on Governance, Public Security, and Justice (DGEOSP), with the National Human Rights Census, which contains information on applications referring to complaints regarding human rights violations committed against LGBTI persons.<sup>34</sup> The IACHR also takes note of the initiative undertaken by Mexico state in 2018, through the National Council for the Prevention of Discrimination (CONAPRED) and the CNDH, to conduct the "Survey on Discrimination on grounds of Sexual Orientation and Gender Identity (ENDOSIG), which garnered opinions, perceptions, and data on cases of discrimination, exclusion, and violence encountered by LGBTI persons in Mexico. The Commission welcomes Mexico's efforts to gather and compile data. However, it underscores that those data need to be incorporated into an integral and disaggregated analysis of official data and statistics, supplemented with information elicited from public security agencies, in such a way as to provide a holistic overview of the violence experienced by LGBTI persons that will be conducive to recognition of its structural roots and to public policies for preventing and eradicating it. In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

37. With regard to the recommendation about **re-directing the approach to the issue of drugs**, the Mexican State reiterated what it had already told the IACHR about a decree on the matter that had been approved and published in the Official Gazette on June 19, 2017. That decree amended, added, and repealed various provisions of the General Health Law and amended Article 195.3 of the Federal Criminal Code.<sup>35</sup> The idea was not to characterize the possession of fewer than five kilograms of narcotic drugs as a

<sup>34</sup> Government of Mexico, Response to the request for information on the status of attention to the recommendations made in the 2015 Country Report, presented on November 18, 2016, National Institute of Statistics and Geography, [The State's 2018 National Human Rights Census](#).

<sup>35</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note O2064, August 22, 2017 Mexican Government. Response to the request for information on the status of attention to the recommendations made in the 2015 Country Report, presented on November 10, 2016. Note OEA-02902 of November 17, 2016.

crime. That authorization by the health authorities applied to the sowing, harvesting, cultivation, preparation, packaging, possession, trading, possession in any form, prescription by a doctor, supply, application, use, and consumption of marijuana solely for medical and scientific purposes.

38. The IACHR also takes note of the judgments handed down by the Supreme Court () in two constitutional protection cases under review (547/2018<sup>36</sup> y 548/2018<sup>37</sup>) on October 31, 2018, which open up the possibility of allowing personal recreational use of the narcotic substance "cannabis" and the psychotropic substance THC (tetrahydrocannabinol). As a result of those judgments, moreover, any ban on the aforementioned narcotic or psychotropic substances is declared to be unconstitutional, a situation that needs to be regulated by the institution concerned. In light of the above, the IACHR observes that compliance with this recommendation is partial.

39. In light of the above considerations, the IACHR reiterates its recommendation to the State described in the present Section. In particular, the IACHR trusts that the State will implement a plan for the gradual withdrawal of the armed forces from public security tasks and will at the same time build police capacity to handle citizen security tasks in accordance with international human rights standards.

## B. Disappearances and forced disappearances

- Adopt a General Law regarding Disappearances and Forced Disappearances, and adopt all necessary measures to ensure that both at the federal and state level, the laws and practices comply with international standards on the subject.
- Establish mechanisms of immediate search for disappeared persons in the entire national territory.
- Improve the National Registry of Disappeared Persons to become a sole registry of disappearance so that it can also register a person as a victim of forced disappearance. A database should contain personal information of the disappeared persons, all necessary information, primarily genetic information and cellular samples, of relatives of disappeared persons with their consent, and genetic information and cellular samples from any unidentified person who is deprived of life. Such personal information shall be protected on the Registry's platform in accordance to international standards regarding access to information.
- Strengthen existing mechanisms in terms of early alerts and urgent search in cases of disappearances of women and children, to ensure their effective application at the federal, state, and municipal levels. In addition, strengthen the National Registry of Data of Missing or Disappeared Persons, so that it may provide precise and reliable information about women and girls who are disappeared and forcibly disappeared.
- Follow the recommendations of the Interdisciplinary Group of Independent Experts (GIEI) in accordance with the attributes established by its mandate, specifically the reiterated request to interview the members of the Army and visit Battalion No. 27, and continue the investigation of the Ayotzinapa case. Consider utilizing similar mechanisms for other cases of gross human rights violations.

40. Regarding the recommendation that calls upon the State to **adopt a General Law on Disappearances and Forced Disappearances and to ensure that laws and practices comply with international standards on the subject**, pursuant to its second follow-up report, the IACHR notes that the General Law on Forced Disappearance and Disappearance Committed by Private Persons (LGMDFP) was passed on November 17, 2017, so that the State complied with the first part of the recommendation.

<sup>36</sup> SCJN, review of an action for protection of a right guaranteed by the Constitution (Amparo en revisión) 547/2018 of October 21, 2018.

<sup>37</sup> SCJN, review of an action for protection of a right guaranteed by the Constitution (Amparo en revisión) 547/2018 of October 21, 2018.

41. As for the other measures to ensure that practices match international standards on the subject, the State reported that the National Commission to Search for Missing Persons (CNBP) and similar authorities are in the process of implementing the General Law and the National System to Search for Missing Persons.<sup>38</sup> The State added that, in order to implement the LGMDFP, it adopted various measures, such as the following: the creation of the CNBP, establishment of the Citizen Council, installation of the National Registry of Disappeared and Missing Persons; opening of the Public Prosecutor's Office Specializing in the Investigation of Forced Disappearance Offenses; publication of the Protocol approved for searches for missing persons and investigating the forced disappearance of persons; promulgation of the Federal Law on the Special Declaration of Absence for Disappeared Persons; and installation of the National System to Search for Missing Persons.<sup>39</sup> The State further reported that justice system operators receive regular and updated training.<sup>40</sup>

42. For its part, the IACHR stressed that, while the promulgation of this law is a major step forward, it is still not adequately applied and implemented.<sup>41</sup> The Movement for Our Disappeared [Persons] likewise maintained that the State thought of the law as a finished accomplishment rather than as a starting-point, because it lacked a plan for implementing it in all federative entities.<sup>42</sup> Still pending aspects include the lack of budget, insufficient infrastructure, delays in adjusting implementing regulations, and scant participation by victims. As regards budgetary resources, the Movement for Our Disappeared maintained that not enough funds had been allocated to the CNBP or to local search committees and specialized public prosecutors' offices.<sup>43</sup> As for infrastructure, the CNDH pointed out that as of November 2018, 25 federative entities had still not established their respective Local Search Committee and 11 had not constituted their local Care for Victims Committee.<sup>44</sup> In the same vein, according to the National Citizens' Council, as of October 2018, 80% of federative entities had still not set up local search committees.<sup>45</sup> With respect to the regulations, according to the CNDH, most legislatures have not adjusted their laws in line with the provisions in the General law on the declaration of absence, meaning that there are no proper or consistent guarantees for the recognition and protection of the legal personality of the victims of disappearance nor legal certainty for their next-of-kin.<sup>46</sup> Finally, as regards the involvement of victims, the Movement for Our Disappeared claimed that the Federal Government had not respected their right to full and effective participation.<sup>47</sup>

43. In its observations to the draft of this Report, the State referred to the issuance of instruments such as the "Guidelines for the Training, Evaluation, Certification and Renewal of the Certification of Public Servants" and the "Technological Guidelines of the National Bank of Forensic Data and the National Registry of Unidentified and Unreclaimed Deceased Persons", which seek to develop a specific,

<sup>38</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 12-13.

<sup>39</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 12-13.

<sup>40</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 12-13.

<sup>41</sup> CNDH, Contribution of the National Human Rights Commission of Mexico (CNDH) in connection with the review of compliance with the recommendations contained in the "Report on the Human Rights Situation in Mexico," published by the Inter-American Commission on Human Rights (IACHR) in 2015, November 30, 2018, pp.5-6.

<sup>42</sup> Movement for Our Disappeared in Mexico Report presented to the United Nations Committee on Enforced Disappearances, November 2018, p. 8.

<sup>43</sup> Movement for Our Disappeared in Mexico Report presented to the United Nations Committee on Enforced Disappearances, November 2018, p. 7.

<sup>44</sup> CNDH, Contribution of the National Human Rights Commission of Mexico (CNDH) in connection with the review of compliance with the recommendations contained in the "Report on the Human Rights Situation in Mexico," published by the Inter-American Commission on Human Rights (IACHR) in 2015, November 30, 2018, pp. 5-6.

<sup>45</sup> Ibero, "Familias de personas desaparecidas necesitan certezas, no triunfalismos mediáticos", October 10, 2018

<sup>46</sup> CNDH, Contribution of the National Human Rights Commission of Mexico (CNDH) in connection with the review of compliance with the recommendations contained in the "Report on the Human Rights Situation in Mexico," published by the Inter-American Commission on Human Rights (IACHR) in 2015, November 30, 2018, pp. 5-6.

<sup>47</sup> Movement for Our Disappeared in Mexico Report presented to the United Nations Committee on Enforced Disappearances, November 2018, p. 6.

differentiated and specialized technique for the investigation of forced disappearance crimes and that committed by individuals. The State added that the investigations have specialized in three areas: search, identification of those responsible and care for victims.<sup>48</sup>

44. The IACHR acknowledges the important measures adopted in this area, such as the establishment of the CNBP, the launch of operations by the Public Prosecutors' Office Specializing in the Investigation of Forced Disappearance Offenses, publication of the Protocol approved for the search for disappeared persons and investigation of the crime of forced disappearance of persons, and the setting up of the National Search for Missing Persons System. Nevertheless, the Commission remains especially concerned at the large numbers of disappeared persons, the lack of effective actions to locate them, and the impunity surrounding these cases. In this context, the IACHR notes that measures have yet to be adopted to ensure, at federal and state level, that both legislation and practices are adjusted to conform to recognized standards in this matter. In light of the above, the IACHR concludes that substantive compliance with this recommendation has been partial.

45. With respect to the recommendation on **establishing mechanisms of immediate search for disappeared persons**, the State reported the creation of the Search in Life pilot program aimed at consolidating a biometric database to help search for persons in shelters, Integral Development of the Family Centers (*Centros DIF*), hospitals, and rehabilitation centers, as well as street people.<sup>49</sup> The State also reported that the CNBP has 1,102 biometric enrollment kits and has provided training for search teams in the five municipalities with the highest disappearance index (Chimalhuacán, Ecatepec, Naucalpan, Nezahualcóyotl, and Toluca).<sup>50</sup>

46. On this, UNHCHR has stated with regard to cases of forced disappearance and extrajudicial executions carried out by public servants that the State urgently needs to act to make it clear that it does not tolerate such grave violations.<sup>51</sup> In particular, UNHCHR has voiced its concern at the situation in Nuevo Laredo, where members of the security forces are alleged to have disappeared at least 21 men and 2 women in May 2018. Regarding that case, despite the ample information and evidence available, the Mexican authorities have made little headway with finding the disappeared persons and investigating what happened.<sup>52</sup> According to UNHCHR that has left the families in charge of the search, with no kind of protection.<sup>53</sup>

47. This issue was also brought up before the IACHR at a public hearing held in December 2018. The petitioners stated that between February and May 2018, between 37 and 51 people had been disappeared in Nuevo Laredo, Tamaulipas, and said that Mexican Navy personnel were allegedly involved in those crimes. They stated that the Attorney General's Office (PGR) had not guaranteed a proper investigation, had denied access to information, had refused to protect victims who had been threatened, and had at the same time started investigating and criminalizing next-of-kin and human rights defenders. The petitioners also requested that the State embark on a series of structural measures to combat disappearance, including holding a high-level meeting with the families in Nuevo Laredo and the establishment of an IACHR follow-up mechanism. The State indicated its commitment to opening up to international scrutiny and acknowledged that Mexico was undergoing a crisis of human rights violations and a very serious forced disappearance problem. It also agreed to tackle the challenges of implementing the General Law on Forced Disappearance and committed to conducting impartial and objective investigations into all those responsible; taking steps to stop criminalization of family members of victims and human rights defenders; guaranteeing access to

<sup>48</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 5-9, p. 8.

<sup>49</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 14.

<sup>50</sup> *Ídem*.

<sup>51</sup> UNHCHR, press release [Zeid urges Mexico to act to end wave of disappearances in Nuevo Laredo](#), May 30, 2018.

<sup>52</sup> United Nations High Commissioner, press release [Zeid urges Mexico to act to end wave of disappearances in Nuevo Laredo](#), May 30, 2018.

<sup>53</sup> *Ídem*.

information; strengthening the National Search Commission; and establishing a Public Prosecutors' Office Specializing in Human Rights.<sup>54</sup>

48. For its part, the Movement for Our Disappeared pointed out that search mechanisms are being hampered by the mistrust and fear families have of filing complaints.<sup>55</sup> Thus, by way of example, in the state of Veracruz, there are allegedly 16,000 cases of disappeared persons, whose disappearance has not been reported.<sup>56</sup> The same Movement alleges that, even in cases in which a complaint is lodged, there are still difficulties with achieving an immediate and effective search. The principal causes of the above are: negligence on the part of public servants; poor or zero inter-agency communication; obstacles to scrutiny on the part of victims; criminalization or defamation of disappeared persons; threats or intimidation of their family; corruption; and the lack of resources for searches.<sup>57</sup>

49. According to the information received by the IACHR, a series of measures for boosting the national search system are still pending. They include, notably, the approval and composition of 25 state search commission; awareness campaigns to inspire trust among victims and facilitate collection of their complaints; and the implementation of protocols governing the search for missing people and criminal investigations. In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

50. As regards the recommendation to **Improve the National Registry of Disappeared Persons and turn it into a sole registry of disappearance with genetic and protected information**, the State reported that the National Registry of Disappeared and Missing Persons has the digital I.D. of the disappeared person (iDig), which contains data associated with the disappeared person, as well as biometric quality photograph, fingerprint and a record of family members who contributed genetic samples. According to the State, that makes it possible to cross-compare the data biometrically with those in other databases, including the database on persons deprived of liberty and that on unidentified corpses.<sup>58</sup>

51. For its part, the IACHR notes that the National Register of Data of Missing or Disappeared Persons (RNPED) was last updated on April 30, 2018, at which time it reported a total of 37,435 disappeared persons.<sup>59</sup> As stipulated in the General Law, subsequent statistics fell within the purview of the CNBP via the National System to Search for Missing Persons (specifically, the National Registry of Disappeared and Missing Persons). The System began to function in October 2018, five months behind schedule, but the National Registry of Disappeared and Missing Persons is still not operational. That being so, the IACHR notes that there is currently no national, unified, and up-to-date register, as required under the General Law.<sup>60</sup> In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

52. With respect to the recommendation to **strengthen existing mechanisms in terms of early alerts and urgent search in cases of disappearances of women and girls, and to strengthen the National Registry of Data of Missing or Disappeared Persons, so that they provide precise and reliable information about women and children**, the State reported that the National Program to Search for Disappeared and Missing Persons takes a specially tailored (gender-sensitive) approach to cases of disappeared women and girls.<sup>61</sup> The State also reported that the Care, Response, and Coordination Protocol

<sup>54</sup> IACHR, [Annex to the press release on the 170th Period of Sessions](#), December 18, 2018.

<sup>55</sup> Movement for Our Disappeared in Mexico, [Report presented to the United Nations Committee on Enforced Disappearances](#), November 2018, pp. 23-25.

<sup>56</sup> *Ídem*.

<sup>57</sup> *Ídem*.

<sup>58</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 15.

<sup>59</sup> Government of Mexico, Executive Secretariat of the National Public Security System, [Registro Nacional de Datos de Personas Extraviadas o Desaparecidas](#).

<sup>60</sup> Movement for Our Disappeared in Mexico, [Report presented to the United Nations Committee on Enforced Disappearances](#), November 2018, p. 9; Government of Mexico, [National Register of Data of Missing or Disappeared Persons \(RNPED\)](#); Animal Político, press release, "México busca a 37 mil desaparecidos con un sistema incompleto y sin recursos suficientes", October 12, 2018.

<sup>61</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights



for and between Federal, State, and Municipal Authorities in the case of Disappeared or Missing Women and Girls -- known as the *ALBA Protocol* -- has been disseminated in 32 federative entities through technical support meetings geared to its replication, based on the model tested in Ciudad Juárez, Chihuahua. Thus far, 24 entities have a Protocol and 19 have formed a Technical Committee.<sup>62</sup>

53. The Commission notes and welcomes this information. Nevertheless, it has continued to receive worrisome reports of disappearances of women, girls, and adolescents, which indicates that existing mechanisms are ineffective and need to be strengthened.<sup>63</sup> According to public statistics in the National Registry of Data on Missing or Disappeared Persons, as of April 2018, out of a total of 36,265 persons missing, 9,327 women have still not been found.<sup>64</sup>

54. The IACHR also notes with concern information regarding ongoing obstacles to access to justice in cases of disappearances of women which typically go unpunished.<sup>65</sup> According to information received by the Commission, the barriers to access to justice encountered by family members of disappeared women when they start searching for them include the following: the complexity of the procedures needed to activate the Alba Protocol and the Amber Alert; repeated refusals by law enforcement authorities to start searching immediately and their insistence on waiting 72 hours before registering the case; a lack of consistency in the legislation for legally characterizing, investigating, and punishing the disappearance of women, including a failure in some local Criminal Codes to legally characterize the crimes of forced disappearance and disappearance.<sup>66</sup> In its observations to the draft of this report, the State stated that the Alert Program AMBER Mexico establishes a fast procedure for the activation of alerts that has shown good practices such as eliminating borders between the states at all levels of government, overcoming communication barriers and promoting the presentation of complaints in the first hours.<sup>67</sup>

55. Similarly, the IACHR is concerned at the prevalence of discriminatory behavior by the authorities given that in a majority of cases responsibility for searching for disappeared persons rests with the mother or other women in the nuclear family, due to discriminatory attitudes on the part of the authorities.<sup>68</sup>

56. With regard to strengthening the National Registry of Data on Missing or Disappeared Persons so that it provides precise and reliable information on disappeared and forcibly disappeared women and girls, the IACHR notes the absence in some states of an official consolidated register of disappeared women and girls, which is an obstacle to a correct appraisal of the scope of the problem and to the adoption of appropriate policies.<sup>69</sup> The Commission further observes that neither the Public Prosecutors' figures nor those of the RNPED distinguish between disappearance cases and cases in which people are lost/missing; nor do they distinguish between cases of disappearance and forced disappearance, which results in a lack of up-to-date, consolidated information about the number of disappeared women and a lack of clarity in the establishment of criminal liability.<sup>70</sup>

57. The organs of the inter-American human rights system have established that the duty of

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Situation in Mexico," pp. 15-17.

<sup>62</sup> *Ídem*.

<sup>63</sup> Amnesty International, [The State of the World's Human Rights 2017/18](#), Annual Report 2018. P. 314.

<sup>64</sup> National Registry of Data on Missing or Disappeared Persons, [Consulta Pública](#), Estadísticas de Fuero Común, April 30, 2018.

<sup>65</sup> Amnesty International, [The State of the World's Human Rights 2017/18](#), Annual Report 2018. P. 314.

<sup>66</sup> Id(dh)eas, [Informe alternativo sobre la desaparición de mujeres en el Estado de México](#), June 2018.

<sup>67</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 9, p. 8.

<sup>68</sup> United Nations - Committee for the Elimination of Discrimination against Women, Concluding Observations on the ninth periodic review of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 de July 2018. Id(dh)eas, [Informe alternativo sobre la desaparición de mujeres en el Estado de México](#), June 2018.

<sup>69</sup> United Nations - Committee on Enforced Disappearances, [Concluding observations on the report presented by Mexico under Article 29.1 of the Convention](#), together with follow-up Observations by the Committee on the additional information provided by Mexico under Article 29.4 of the Convention, CED/C/MEX/FU/1 Advance unedited version, 19 November 2018, para. 46.

<sup>70</sup> Id(dh)eas, [Informe alternativo sobre la desaparición de mujeres en el Estado de México](#), June 2018.

strict due diligence in cases involving the disappearance of women requires that an exhaustive search be carried out and they have, in particular, underscored that it is essential for police, public prosecution, and judicial authorities to act immediately, ordering prompt and necessary measures to the whereabouts of the victim. Adequate procedures should exist for reporting disappearances, which should result in an immediate effective investigation.<sup>71</sup> States must also adopt preventive measures in specific cases in which it is evident that certain women and girls may be victims of violence.<sup>72</sup> In light of the above, the IACHR observes that compliance with this recommendation is still pending.

58. At the same time, the Commission has received information from civil society pointing to widespread under-reporting of cases of disappearance of women, adolescents, and girls. That is reportedly due to the threats and intimidation that family members are subjected when they report such cases,<sup>73</sup> as well as to the fact that the RNPED excludes both federal cases prior to 2014 and cases classified as instances of kidnapping or trafficking in persons.<sup>74</sup> With respect to protocols, Amnesty International points out that some federative entities still have no guidelines for mainstreaming an updated gender perspective, while in others protocols have been issued but not implemented.<sup>75</sup> As regards immediate responses to a disappearance complaint, according to Amnesty International, delays by the authorities are very often due to harmful gender stereotypes, such as the belief that the victim "is with her boyfriend."<sup>76</sup> In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

### Follow-Up to the Ayotzinapa Case

59. With regard to the recommendations relating to the Ayotzinapa Case, the Mechanism to Follow Up on the Ayotzinapa Case (MESA), established on July 29, 2016 to keep track of the precautionary measures granted (MC/409-14) and to the recommendations of the Interdisciplinary Group of Independent Experts (GIEI) formulated in its two report, has completed its second year of work. On November 28, 2018, the IACHR published the Final Report mentioned in its Work Plan. The report describes the actions undertaken by the Mexican State to search for and discover the whereabouts of the missing students; the investigations carried out to throw light on the facts; the care provided for victims and their next-of-kin and the steps taken to avoid a repetition of the atrocious events on the night of September 26/27, 2014 in Iguala, Guerrero. Prior to that report, on June 6, 2018, the MESA published its status report (*Informe de Balance*) in Washington, D.C, detailing the outcomes of this first phase of monitoring the precautionary measure and the GIEI recommendations. In early September 2018, the IACHR visited the Rural Teacher's College in Ayotzinapa and showed the Status Report to family members of the students and to the civil society representatives assisting them.

60. With respect to the search and more than four years after the disappearance, the IACHR noted that the Mexican State had hired the LIDAR system,<sup>77</sup> which is used to verify ground disturbances.

<sup>71</sup> I/A Court HR. Case of López Soto et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2018. Series C No. 362, par. 142; I/A Court H.R. Case of Hacienda Brasil Verde workers v. Brazil. Preliminary Objections, Merits, Reparations, and Costs. Judgment of October 20, 2016. Series C No. 318, par. 427; I/A Court H.R. [Case of González et al. \("Cotton Field"\) v. Mexico](#). Preliminary Objection, Merits, Reparations and Costs. Judgment of November 16, 2009. Series C No. 205. Par. 283 and IACHR. The Human Rights Situation in Mexico OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015, par. 186; and IACHR, [Access to justice for Women Victims of Violence in the Americas](#), OEA/Ser.L/V/II. Doc. 68, 2007, par. 298.

<sup>72</sup> I/A Court HR. Case of Veliz Franco et al. v. Guatemala. Preliminary Objections, Merits, Reparations, and Costs. Judgment of May 19, 2014, para. 138.

<sup>73</sup> I(dh)eas, [Informe alternativo sobre la desaparición de mujeres en México](#), June 2018, p. 6; Red Nacional Todos los Derechos para Todas y Todos, Derechos y violencias. [La experiencia de ser mujer Situación nacional 2008-2017](#), March 2018, pp. 60-70.

<sup>74</sup> Amnesty International, Report to the Committee on the Elimination of Discrimination against Women, 70th Session, 2-20 July, 2018, p.9

<sup>75</sup> Amnesty International, Report to the Committee on the Elimination of Discrimination against Women, 70th Session, 2-20 July, 2018, pp.9-10

<sup>76</sup> Amnesty International, Report to the Committee on the Elimination of Discrimination against Women, 70th Session, 2-20 July, 2018, p.10.

<sup>77</sup> Mexican State, State Report in response to the Note of the Inter-American Commission on Human Rights of March 10, 2017, April 11, 2017, p. 15; Mexican State, State Report in response to the Note of the Inter-American Commission on Human Rights of May 17, 2017, June 8, 2017, p. 6.; and Office of the Attorney General of the Republic of the United Mexican States,

It was deployed in a 60 square kilometer area around Iguala, to no positive effect. A joint review of those activities was conducted by the authorities and family members. The MESA called upon the Mexican State to elicit the cooperation of detainees by offering them incentives as provided for in both domestic legislation and international human rights treaties.<sup>78</sup> Moreover, the IACHR continues to deem it essential to have a database of disappeared persons and clandestine graves to facilitate search efforts, along with an analysis of the context surrounding the disappearance, with both tools focusing on the state of Guerrero.

61. As regards investigation, the IACHR observed that a large amount of information was compiled in the investigation being conducted by the PGR. The Commission notes that it included prior findings contained in the principal file derived from the Public Prosecutors' Office in Guerrero and other dependencies of the PGR, along with information received under international legal assistance arrangements between Mexico and the United States, which the IACHR believes could provide relevant data for the investigation and might be worth pursuing in greater depth. The Special Mechanism also noted that the investigation continues to be scattered, incomplete, and devoid of a clear guideline. It notes the absence of detentions and indictments for the crime of forced disappearance; and a failure to detain State actors for acts or omissions. An official narrative persists in connection with the Cocula garbage dump line of investigation, despite everything said about that by this Commission, the GIEI, the Office of the United Nations High Commissioner for Human Rights (UNHCHR), and the Argentine Forensic Anthropology Team (EAAF).

62. The IACHR observed that three coordination mechanisms -- the Center for Strategic Operations (COE), the Control, Command, and Computing Center (C-4), and the Urban Joint Operations Units (BOMUS), which together centralize coordinated actions by municipal, state, and federal authorities -- might have been activated or have known of what happened days prior to or during the night of September 26, 2014: a line that needs to be pursued in greater depth.

63. Regarding the investigation into members of the 27th battalion based in Iguala, Guerrero, the Final Report refers to the monitoring of the students' activities reportedly carried out by military personnel since September 25, 2014<sup>79</sup>, a line of investigation worth pursuing exhaustively. The IACHR likewise pointed out that it would be important to conduct an exhaustive inquiry into military personnel singled out because of their ties to the criminal organization Guerreros Unidos.<sup>80</sup>

64. With respect to the investigation into the municipal police, the IACHR recommended ascertaining the extent of participation by police from Tepecoacuilco, Pilcaya, Eduardo Neri, Buenavista de Cuéllar, and Apaxtla; and from places near Iguala.<sup>81</sup> The IACHR observed that important telephonic and ballistic evidence exists, pointing to the presence of police officers from Huitzuco at the scene of the events. As regards the Federal Police, information obtained from statements was crossed against that culled from PGR analysis of telephone calls. The IACHR further recommended clarifying the chain of command;<sup>82</sup> the transfer of personnel from that police service to Iguala; the changes made to Iguala police station staffing on October 13, 2014;<sup>83</sup> and the information in the file on the monitoring of student activities since September 25, 2014.<sup>84</sup> The Commission also pointed out that the State should continue investigations conducive to more

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AP/PGR/SDHPDSC/OI/001/2015, Volume 432, p. 1245 (digital format). Contract signed on April 20, 2017.

<sup>78</sup> IACHR, Status Report on Follow-Up to the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. May 04, 2018, para. 110.

<sup>79</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 199 to 204.

<sup>80</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 208 to 217.

<sup>81</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 100 to 129.

<sup>82</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 173 to 177.

<sup>83</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 160 and 161.

<sup>84</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 162 to 163.

solid indictments, in connection with the actions undertaken by the three members (*elementos*) of the Federal Police and others from the Ministerial Police of the local Attorney-General's Office.<sup>85</sup> Likewise, with respect to the State police, the IACHR recommended clarifying actions undertaken by that security force, based on the alleged guard unit in the Regional Police Training Center (CRAPOL) and in the Social Re-adaptation Center in Iguala (CERESO).

65. Regarding the telephonic evidence,<sup>86</sup> the PGR reportedly identified nine cellphones belonging to the disappeared students which are said to have been used subsequent to the facts of the case. Two of them were allegedly in the hands of municipal and state authorities. That being so, the Commission recommends that this information continue to be analyzed, with a view to eliciting data for objectively ascertaining the whereabouts of the students in the hours following the facts of the case. As for the ballistic evidence,<sup>87</sup> the IACHR deemed it necessary to determine the persons responsible for the destruction of 16 rifles of the municipal police in Iguala and to investigate in greater depth 9 additional rifles related to the fact of this case, reportedly being kept in the Attorney General's Office (PGR).

66. Regarding the investigation into a shipment of drugs and the fifth bus hypothesis, the IACHR takes note that the Mexican State has reported on steps taken to interview some of the defendants deprived of liberty in the city of Chicago, Illinois, which are deemed to be of crucial importance for eliciting more information that could determine the whereabouts of the students.<sup>88</sup> The IACHR recommends that continuing to pursue in greater depth the information derived from the still open legal assistance arrangements with the United States government, relating to the shipment of drugs; and to other bus companies, their routes, and actions being taken to determine the route taken by the fifth bus.<sup>89</sup> With respect to the alleged irregularities committed by the authorities in the case, the IACHR noted that progress is still pending in the investigations into the San Juan river connection, the alleged hiding of Sidronio Casarrubias's I.D. from the GIEI, and the acts of a PGR official who, according to one of the alleged leaders of Guerreros Unidos, has ties to criminal groups. Other issues still pending are: the investigation into the spying on the GIEI and on the families' attorneys<sup>90</sup> and into reports of torture of detainees.<sup>91</sup>

67. The Inter-American Commission took note of the resolution of May 31, 2018, in the case of the Constitutional Remedy (Amparo) under review 203/2017, handed down by the First Collegiate Circuit Court based in Reynosa, Tamaulipas, regarding the alleged torture of some of the accused in the Iguala case. In this connection, the Commission ascertained from information in the public domain the release of three accused whose statements under torture maintained the Cocula garbage dump theory,<sup>92</sup> a situation the State must clarify.

68. The Special Mechanism's Report mentioned the Care for Victims measures and this Commission notes that given to Edgar Vargas and Aldo Gutierrez Solano. The Report also urged the Mexican State to implement the recommendations of the Report entitled "All I Wanted Was for Dawn to Come" and to continue providing constant medical care and all necessary assistance. The Special Mechanism took note of

<sup>85</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 151 to 154.

<sup>86</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 220 to 243.

<sup>87</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 244 to 249.

<sup>88</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 255 to 261.

<sup>89</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, para. 253.

<sup>90</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 269 to 270.

<sup>91</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, paras. 271 to 277.

<sup>92</sup> Milenio, Libres ya, cuatro implicados clave del caso Iguala, November 19, 2018. Milenio, Desechó juez 83 declaraciones por tortura y detención ilegal, November 20, 2018.

and appreciated the news reported by several media about the transfer of Aldo Gutiérrez to his home in Ayutla de los Libres on October 9, 2018.<sup>93</sup> The Commission welcomes the treatment provided by the Mexican State to Edgar Vargas and its monitoring of progress with his oral rehabilitation treatments. The IACHR acknowledges those actions to save the health of that young man and his family.<sup>94</sup>

69. In connection with the activities of the 170th period of sessions of the IACHR, the Mexican State expressed interest in the Commission continuing to monitor precautionary measure 409-14.

70. In addition, the Commission takes note of the recent actions in the Ayotzinapa case, specified by the State in its observations to this Report. The State indicated that on December 4, 2018, a "Decree was issued to establish effective material, legal and human conditions to strengthen the human rights of the relatives of the victims of the Ayotzinapa case to truth and access to justice". On January 15, 2019, the Truth and Access to Justice Commission was installed in the Ayotzinapa case, and on March 11, 2019, the Special Mechanism for cooperation and technical assistance on the Ayotzinapa case and its Work Plan was presented. This Mechanism will provide technical assistance and support the development of capacities in issues related to human rights, including disappearance, search, investigation, victim assistance and comprehensive reparation.<sup>95</sup>

### C. Torture

- Adopt a General Law against Torture and other cruel, inhuman or degrading treatment or punishment, and adopt all necessary measures to ensure that both at the federal and state level the laws and practices comply with international standards on the subject, particularly the Inter-American Convention to Prevent and Punish Torture.
- In particular, ensure that the General Law against Torture excludes "evidence" or "confessions" obtained through the use of torture from the criminal process of the tortured person and of other persons implicated in such confessions. Establish clearly in the law that the prosecution has the burden of proof to prove the lawfulness of any questioned evidence or confession.
- Create a Single National Registry of detained persons and ensure that such persons are taken immediately before a judge under risk of sanctions for failure to do so.
- Investigate cases in which judges have not ordered an investigation where there are reports of indications that torture or mistreatment took place. Ensure that the Istanbul Protocol is applied at the national level by competent and independent authorities in an expedited manner and under risk of sanctions for failure to do so.
- Establish the mandatory use of cameras and other security protocols during interrogations and inside police vehicles, as a measure to prevent torture and other cruel, inhuman and degrading treatments.
- Establish federal and state-level guidelines regarding the collection of uniform statistics regarding gross human rights violations. In particular, the State should improve its system to compile information that is disaggregated, transparent and that follows a consistent methodology.
- Eliminate "arraigo" and quasi flagrante delicto (flagrancia equiparada) from the Mexican legal framework.

71. Regarding the recommendation **to adopt a General Law against Torture and ensure that practices comply with international standards**, the IACHR stresses that the General Law to Prevent, Investigate, and Punish Torture was published in the Official Gazette of the Federation (*Diario Oficial de la Federación*) on June 26, 2017. Having done that, the State has complied with the first part of the recommendation.

<sup>93</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, para. 295.

<sup>94</sup> IACHR, Final Report: Special Follow-Up Mechanism on the Ayotzinapa Case, prepared by the Special Follow-Up Mechanism of the Inter-American Commission on Human Rights. November 28, 2018, para. 300.

<sup>95</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para 11, p 9.



72. As for the other measures contemplated in the present recommendation, the State specified that the following actions are currently under way: implementing regulations for the Law; revision of the Protocol Approved for Investigating the Crime of Torture with a view to aligning its contents with the new principles contained in the General Law; establishment of the Public Prosecutor's Office Specializing in Crimes of Torture; preparation of the National Program to Prevent and Punish Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishments; and the preparation of new job profiles for public servants in the new Public Prosecutor's Office.<sup>96</sup> In the same vein, the State reported that, with a view to equipping Mexico's judicial authorities with tools and instruments, the SCJN had issued the "Protocol for Justice Administration Officials in Cases Involving Acts amounting to Torture and Mistreatment."<sup>97</sup>

73. For its part, the Miguel Agustín Pro Juárez Human Rights Center pointed out that even though the new law supersedes the fragmented legislation and judicial interpretations prior to it, there is little State willingness or capacity to implement it in practice.<sup>98</sup> In particular, civil society organizations pointed to the lack of progress and transparency with designing the National Program against Torture contemplated in the General Law.<sup>99</sup>

74. At the same time, civil society organizations complained about the Protocol Approved for the Investigation of Torture, issued by the National Justice Administration Conference (Conferencia Nacional de Procuración de Justicia), which, in their view, would be a step backwards in terms of a proper and prompt judicial response in torture cases. In particular, they voiced their concern at a provision in the Protocol establishing that the official in the Public Prosecutors' Office who is notified of the use of torture shall conduct a kind of preliminary inquiry, for which there is no basis in the General Law, Article 53 of which provides that the investigation must be carried out directly by the Specialized Public Prosecutor's Office.<sup>100</sup> In its observations to the draft of this report, the State indicated that an extract of the Protocol was published in the Official Gazette of the Federation on February 2, 2018. Its purpose is to define policies for action and procedures for members of the Public Prosecutor's Office or Prosecutors, experts and police, who are subject to international human rights standards.<sup>101</sup>

75. In view of the passing of the General Law, the IACHR concludes that there has been substantial partial compliance with the recommendation. Nevertheless, the Commission reiterates the importance of the State adopting the measures needed to ensure that the corresponding practices are brought into line with that General Law and with international standards in this area.<sup>102</sup>

76. Regarding the recommendation to ensure that **the General Law against Torture excludes evidence or confessions obtained through the use of torture and that the prosecution has the burden of proof to prove the lawfulness of any questioned evidence or confession**, the IACHR observes that the General Law provides, in Article 51, for excluding or annulling evidence obtained through torture or via any other human rights violation.<sup>103</sup> That precept further stipulates that "in any case, the prosecution has the burden of proof to prove the lawfulness of the evidence adduced."<sup>104</sup> The IACHR therefore considers that this

<sup>96</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 18 and 19.

<sup>97</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 18 and 19.

<sup>98</sup> Centro Prodh, 10 preguntas sobre la Ley General contra la tortura, November 2018.

<sup>99</sup> Fundar and other organizations, A un año de la aprobación de la Ley General contra la Tortura, instituciones del más alto nivel incumplen y violan la norma, June 25, 2018.

<sup>100</sup> Fundar and other organizations, A un año de la aprobación de la Ley General contra la Tortura, instituciones del más alto nivel incumplen y violan la norma, June 25, 2018.

<sup>101</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 14, p 9.

<sup>102</sup> IACHR, Annual Report. Mexico, 2017, par. 84.

<sup>103</sup> IACHR, Annual Report. Mexico, 2017, par. 85.

<sup>104</sup> Ley General para Prevenir, Investigar y Sancionar la Tortura y otros Tratos o Penas Crueles, Inhumanos o Degradantes, Diario Oficial de la Federación, June 26, 2017, Article 51.

recommendation has been fully complied with.

77. Notwithstanding the above, the Commission expresses its profound concern regarding the adoption by the SCJN of a thesis in jurisprudence that holds that it is only in self-incrimination cases that a retrial must be held if the convicted person claims that his conviction was based on evidence fabricated under torture.<sup>105</sup> In its observations to the draft of this report, the State indicated that the aforementioned decisions are not contrary to international standards, "since when there is evidence that proves the commission of torture, it must be investigated by the judicial authority to verify whether said human rights violation had an impact on the creation, introduction or release of evidence."<sup>106</sup>

78. Accordingly, the IACHR issues a special call to judicial authorities to issue jurisprudence that matches international standards with respect to torture, such as the ex officio exclusion of any evidence or statement when there is reason to believe that it was obtained under torture.

79. As regards the recommendation to **create a Single National Registry of detained persons and ensure that such persons are taken immediately before a judge**, the State sent no information referring to 2018.<sup>107</sup>

80. The IACHR points out that, judging by information in the public domain, there is no indication so far that the different registers of detainees have been consolidated into a single list.<sup>108</sup> In its observations to the draft of this Report, the State indicated that the Commission for the Detainee Consultation System (SDC) was created "with the purpose of having a technology solution that allows searches in the FGR databases."<sup>109</sup> Furthermore, the Commission has received information that instances of cases of detainees being tortured are not only continuing but increasing. Due to the lack of a single register, these cases are not being systematically tracked and addressed. Civil society organizations in particular have reported an increase in the number of women prisoners being subjected to sexual torture.<sup>110</sup> This is especially worrisome for the IACHR, because the absence of a Single Register makes it difficult to check complaints lodged by other entities against official information. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

81. With regard to the recommendation to **ensure that the Istanbul Protocol is applied and to investigate cases in which judges have not ordered an investigation where there are reports of indications that torture took place**, the State remitted the "Protocol for Justice Administration Officials in Cases Involving Acts amounting to Torture and Mistreatment," issued by the SCJN, which requires application of protocols such as the Istanbul Protocol.<sup>111</sup>

82. The IACHR appreciates the issuance of the Protocol in question, but notes that the State provides no information regarding progress in that area. Above all, the State provides no relevant information regarding related investigations. For its part, and mindful of the absence of official data, Amnesty

<sup>105</sup> Fundar [A un año de la aprobación de la Ley General contra la Tortura, instituciones del más alto nivel incumplen y violan la norma](#), June 25, 2018.

<sup>106</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019. para 15, p. 10.

<sup>107</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 20.

<sup>108</sup> PGR, [Sistema de Consulta de Detenidos](#).

<sup>109</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019. para. 16, p 10.

<sup>110</sup> National Citizens' Observatory on Femicide, National Network of Civil Society Human Rights Organizations, the Fray Francisco de Vitoria Human Rights Center, information presented to the IACHR in an Application for a Thematic Hearing at the 170th period of sessions of the IACHR, on July 17, 2018. Amnesty International, Centro Prodh, the Mexican Commission for the Defense and Promotion of Human Rights, the "Tlachinollan" Mountain Human Rights Center, JUST Associates (JASS), EQUIS, Justice for Women, Information presented to the IACHR in an Application for a Follow-up Thematic Hearing at the 170th period of sessions of the IACHR, September 25, 2018.

<sup>111</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 20-21.

International reported 4,390 alleged cases of torture at the federal level and the start of 777 investigations. However, it is impossible to tell whether any measures were adopted in cases in which the judges did not order an investigation.<sup>112</sup> In its observations to the draft of this report, the State indicated that the SCJN has indicated that the *amparo* judges must investigate the allegations of torture, "gathering all the necessary elements to determine its possible commission."<sup>113</sup>

83. In light of the information available, the IACHR takes the view that not enough progress has been made to determine compliance with this recommendation. It therefore concludes that compliance has been partial.

84. Concerning the recommendation to establish the **mandatory use of cameras during interrogations and inside police vehicles**, the State provided no information relating to 2018.<sup>114</sup> For its part, the IACHR notes that, in its Recommendation 35/2018, the CNDH likewise stressed the need to use those mechanisms and urged the Armed Forces and the Federal Police to use cameras and video and audio recorders in all their operations.<sup>115</sup> Given the lack of progress in this area, the IACHR concludes that compliance with this recommendation is still pending.

85. With respect to the recommendation regarding **the collection of uniform statistics and improving the system used to compile information**, the State mentioned that INEGI's National Human Rights Census gathers statistical information from federal and state human rights protection agencies.<sup>116</sup> The State added that this mechanism covers information about the population affected as well as the alleged violations of human rights.<sup>117</sup>

86. For its part, the CNDH insisted on the need to establish the National Register of Crimes of Torture, as a tool for investigation and a database of torture cases. According to the CNDH, this Register should encourage the Office of the Attorney General of the Republic state Public Prosecutors' Offices to provide data on regular basis to keep the Register up to date. The idea here would be to reduce the number of unregistered cases and forge statistical indicators and data for combating impunity and achieving integral reparation for victims.<sup>118</sup> In the same vein, the organization called Código DH also described the strengthening of a register of cases as one of the measures still pending for concrete implementation of the General Law.<sup>119</sup> Given the lack of progress along these lines, the IACHR concludes that compliance with this recommendation is still pending.

87. As for the recommendation on **eliminating "arraigo" (restriction orders) and quasi flagrante delicto (*flagrancia equiparada*)** from the Mexican legal framework, the State pointed out that repealing those articles falls with the remit of the Legislative Branch.<sup>120</sup> Nevertheless, it added that on September 2, 2015, the First Chamber of the SCJN resolved to declare quasi flagrante delicto -- that is to say, the possibility of applying flagrante delicto to cover up to 72 hours following the commission of a crime --

<sup>112</sup> Amnistía Internacional, [Informe Anual. México](#). 2017/2018.

<sup>113</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019. para. 18, p. 10.

<sup>114</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 21.

<sup>115</sup> CNDH, [Recomendación no. 35 / 2018 sobre el caso de la detención arbitraria y tortura en agravio de v. en Nuevo León](#), October 9, 2018.

<sup>116</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 21.

<sup>117</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 21.

<sup>118</sup> CNDH, [Press Release. Demanda MNPT adscrito a la CNDH más participación de la Defensoría Pública, elaborar un programa nacional de prevención y establecer el registro nacional del delito de tortura para combatir y erradicar ese flagelo](#), DGC/266/18, September 16, 2018.

<sup>119</sup> Código DH, [Pendientes de la LGPIST: el registro de la tortura](#), August 18, 2018.

<sup>120</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 22.

unconstitutional.<sup>121</sup> As regards the "arraigo" preemptive restrictive order, based on the information available in the public domain, the Chamber of Deputies voted to eliminate this legal concept on April 26, 2018 and the amendment bill is pending adoption by the Senate.<sup>122</sup> In its observations to the draft of this report, the State indicated that the legislative amendment is still pending opinion in the "*Comisiones Unidas Constitucionales, Justicia y Estudios Legislativos*" of the Chamber of Senators, and reiterated the commitment of the Mexican Government to fully comply with said recommendation.<sup>123</sup>

88. The IACHR appreciates the judicial precedent with regard to "flagrante delicto) as well as the bills for eliminating the "arraigo" restriction. However, it sees only "substantial partial compliance" with this recommendations.

#### D. Extrajudicial executions

- In any act in which there is lethal use of force or loss of life at the hands of members of the security forces, undertake a comprehensive formal investigation in accordance with international standards, with investigations at the scene of the crime being carried out by experts who are not members of police or military bodies.
- Ensure that the Armed Forces register statistics regarding persons who are killed or wounded in their operations, and that the relevant investigations are initiated as appropriate.
- Establish a national registry regarding the unidentified remains unearthed in cemeteries throughout the country, which are the result of violent deaths. In addition, search for clandestine graves in states with the highest levels of violence.
- Create a national, autonomous institution of forensic services with adequate infrastructure, sufficient financial and human resources, and standardized protocols applicable at the national level.
- Undertake all processes of unearthing and identifying remains strictly abiding by a dignified treatment of the victims' families by all authorities of all levels of government involved in the process.
- Continue and expand the work of the Forensic Commission for the Identification of Remains found along the routes followed by migrants. Adopt all necessary measures to create a Transnational Mechanism of Access to Justice for Migrants and their Families, as well as the creation at the federal level of a Special Prosecutor's Office for Violent Crimes against Migrants.
- Implement a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Mexicans and Central Americans disappeared in Mexico with the forensic databases of disappeared migrants that have been developed throughout the region.

89. As regards the recommendation that, **for any act in which there is loss of life at the hands of members of the security forces, an investigation in accordance with international standards be carried out by experts who are not members of police or military bodies**, the State did not provide information for 2018.<sup>124</sup> For its part, the CNDH reported in September 2018 that manipulation of the crime scene by the security forces continues in cases of extrajudicial executions.<sup>125</sup> Along similar lines, the group called "Fiscalía que sirva" ("A Public Prosecutor's Office that does its job") claimed that one structural issue preventing the solving of cases is that the Attorney General's Office (PGR) is obsolete, inefficient, and

<sup>121</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 22.

<sup>122</sup> Proceso, [Diputados aprueban en comisiones eliminar la figura del "arraigo"](#), April 25, 2018; [Cámara de Diputados del Honorable Congreso de la Nación, Boletín N.º 5371. Diputados aprueban eliminar figura del arraigo: April 26, 2018](#); Animal Político, ["Adiós al arraigo"](#), April 30, 2018; La Jornada, ["Pide ONU en Senado derogar la figura de arraigo"](#), November 15, 2018.

<sup>123</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 20, p. 10.

<sup>124</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 23.

<sup>125</sup> Europa Press, [La CNDH acusa a las Fuerzas Armadas de México de realizar ejecuciones extrajudiciales](#), September 20, 2018.

insufficiently independent of the President of the day.<sup>126</sup> Add to that the non-existence of available official data on progress with bringing investigations into line with international standards. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

90. With respect to the recommendation to ensure that the Armed Forces **register statistics regarding persons who are killed or wounded in their operations, and that the relevant investigations are initiated as appropriate**, the State reported that the Ministry of National Defense expressed its commitment to record the number of people killed and wounded during its operations; In addition, the Ministry of the Navy "is working closely with the CNDH and the Attorney General to provide support and the necessary information to investigate possible human rights violations. This within the framework of the Manual on the Use of Force, the Code of Military Justice, the Federal Criminal Code and the General Law of Administrative Responsibilities of Public Servants."<sup>127</sup>

91. As far as civil society organizations are concerned, Amnesty International pointed out that for the fourth consecutive year the authorities have failed to publish the number of persons who have lost their lives or have been wounded in clashes with the police and the military.<sup>128</sup> Amnesty also mentioned that the State had not provided information regarding charges brought in the Tlatlaya, Apatzingán, and Tanhuato cases, all of which reportedly involved the death of civilians at the hands of the security forces. Civil society organizations also reported that 12 people were victims of extrajudicial execution in the state of Guerrero between June 2017 and May 2018.<sup>129</sup>

92. In light of these circumstances, the IACHR considers that this recommendation has not yet been followed. Accordingly, it reiterates its concern that the Armed Forces do not keep figures on persons killed or wounded in their operations,<sup>130</sup> and emphasizes that timely and trustworthy information in that regard is essential for measuring the use of force and carrying out the diagnostic assessments needed to identify and implement corrective measures.<sup>131</sup>

93. Regarding the recommendation to establish **a national registry regarding the unidentified remains unearthed in cemeteries**, In its observations to the draft of this Report, the State indicated that the "FGR has made coordinated efforts with the respective consular authorities, mainly Central American authorities and civil society organizations to identify the largest number of persons reported as disappeared."<sup>132</sup> For its part, the CNDH disclosed the finding of 163 clandestine graves in Mexico in 2017 to 2018, from which at least 530 corpses were exhumed. Not counted in that figure are the 166 corpses exhumed in a clandestine grave fund in Veracruz.<sup>133</sup> Based on research covering a longer period, the platform "Where do the disappeared end up?" ("A dónde van los desaparecidos?") concluded that almost 2,000 clandestine graves had been discovered between 2006 and 2016.<sup>134</sup> In light of these circumstances, the IACHR considers that so far this recommendation has not been followed. Accordingly, the Commission reiterates that it is the duty of the State to adopt the necessary measures to establish a national registry of the location of unidentified human remains, be they in graveyards all over the country or in clandestine graves.<sup>135</sup>

<sup>126</sup> Fiscalía que Sirva, Por qué combatir la impunidad?

<sup>127</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 22, p 11.

<sup>128</sup> Amnesty International, Mexico 2017/2018.

<sup>129</sup> Organización de Derechos Humanos – Comité Cerezo México, Reportan tres ONG 12 ejecuciones extrajudiciales de activistas de junio de 2017 a mayo de 2018, October 8, 2018.

<sup>130</sup> IACHR, Annual Report. Chapter V. Mexico, 2017, para. 102.

<sup>131</sup> IACHR, Annual Report. Chapter V. Mexico, 2017, para. 103.

<sup>132</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 23, p. 11.

<sup>133</sup> CNDH, Press Release DGC/257/18. Mediante muestreo hemerográfico, la CNDH revela el hallazgo de cuando menos 163 fosas clandestinas en el país entre 2017 y 2018, de las que se exhumaron cuando menos 530 cuerpos, September 7, 2018.

<sup>134</sup> A dónde van los desaparecidos, El país de las 2000 fosas, November 12, 2018.

<sup>135</sup> IACHR, Annual Report. Chapter V. Mexico, 2017, para. 112.



94. Concerning the recommendation to **create a national, autonomous institution of forensic services**, the State did not provide updated information for 2018.<sup>136</sup> Information in the public domain indicates that no progress was made in that regard. That being so, the IACHR considers that so far this recommendation has not been followed.

95. As for the recommendation to **exhume and identify remains strictly abiding by a dignified treatment of the victims' families**, the State pointed out that on June 1, 2018, the CNBP installed the Working Group to Identify Human Remains with a view to coordinating the cross-checking of data needed for the identification of bodies, the drawing up of a multidisciplinary comprehensive expert opinion, subsequent notification of family members, and delivery of the remains to them.<sup>137</sup> One part of the Group's work consisted of massive cross-checking of fingerprints taken from unidentified bodies in Plataforma México against fingerprints kept in the National Electoral Institute Register.<sup>138</sup> The Mexican State also reported that the CNBP had developed an automated system for converting rolled fingerprints to flat fingerprints. According to the State, that would expedite the process and allow a large number of fingerprints to be matched at one go.<sup>139</sup> For its part, the Mexican Movement for Our Disappeared pointed out that, even when the State intervenes in the search for disappeared persons, problems persist: best practices are not followed; next of kin are notified and bodies delivered without proper prior confirmation of identity, and only fragmented forensic services are available.<sup>140</sup>

96. The IACHR appreciates the information provided by the State. However, it points out that major challenges persist for compliance with this recommendation. Compliance with this recommendation has therefore been partial. Accordingly, the IACHR reiterates the urgent need for the State to take steps to ensure that the exhuming and identification of remains are carried out in a way that rigorously safeguards the dignity of the victims' family members.<sup>141</sup>

97. Regarding the recommendation to **continue and expand the work of the Forensic Commission for the Identification of Remains found along the routes followed by migrants**, the State did not provide additional information and referred to that contained in earlier reports.<sup>142</sup> For its part, UNHCHR reported irregularities with respect to the correct identification and delivery of bodies found, a lack of coordination between the Central American countries and Mexico, and difficulties with accessing copies of files and ascertaining progress made with investigations.<sup>143</sup> The Commission received information showing that of the 316 remains from the three large massacres of migrants in Mexico between August 2010 and May 2012, 80 migrants' remains had been identified as of December 31, 2018: 14 from Caradeyta, 63 from graves in San Fernando, Tamaulipas,, found since April 6, 2011; and 3 from the Massacre of San Fernando, Tamaulipas, in August 2010.<sup>144</sup>

98. At the same time. Amnesty International reported that the Unit for Investigating Crimes against Migrants in the PGR has institutional issues and problems coordinating with other authorities, which

<sup>136</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 23.

<sup>137</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 24-25.

<sup>138</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 24-25.

<sup>139</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 24-25.

<sup>140</sup> Movement for Our Disappeared in Mexico Report presented to the United Nations Committee on Enforced Disappearances, November 2018, p. 15.

<sup>141</sup> IACHR, Annual Report. Chapter V. Mexico, 2017, para. 112.

<sup>142</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 25.

<sup>143</sup> UNHCHR, Se deben intensificar esfuerzos para lograr plena identificación de las víctimas, acceso a justicia y reparación: UNHR, August 23, 2018.

<sup>144</sup> Comisión Forense, Estadísticas 2013-2018.

hampers progress in criminal investigations, including massacres of migrants that remain unpunished.<sup>145</sup>

99. The Commission accordingly reiterates the recommendation made to the Mexican State that it continue and expand the work of the Forensic Commission in the remaining cases encountered on the routes migrants take in Mexico, especially bearing in mind the international repercussions of crimes and human rights violations against migrants.<sup>146</sup> The Commission thus urges the State to provide information and access to files so as to be able to respond more quickly and effectively to families still hoping for outcomes regarding the fate of their loved ones. The Commission further urges the State to allocate the technical and financial resources needed for the Forensic Commission to operate and for its cooperation with victims, civil society organizations, and independent experts.<sup>147</sup> In light of the above, the IACHR considers that compliance with this recommendation has been partial.

100. As for the recommendation on **implementing a national mechanism to facilitate the exchange of forensic information on the unidentified remains of Mexicans and Central Americans disappeared in Mexico with the forensic databases of disappeared migrants that have been developed throughout the region**, the State reported that the National Commission to Search for Missing Persons is part of the External Support Mechanism, which has approached Ecuador and Honduras, with a view to eliciting biometric quality information on their citizens, as well as civil society organizations.<sup>148</sup> The Commission takes note of this progress and urges States to expand and strengthen such efforts. In light of the above, the IACHR concludes that substantial partial compliance with this recommendation has been achieved.

#### E. Access to justice

- Strengthen the prosecutors' offices throughout the country in terms of technical and independent training, with the objective of guaranteeing investigations with due diligence.
- Establish a coherent plan regarding cooperation between prosecution authorities at the federal and state levels in the investigation of gross human rights violations, with an integral vision, specific protocols, and the adoption of technical and professional—but not political—criteria for the decision to transfer specific investigations to the federal level.
- Adopt specific protection measures for victims, their families, their representatives, witnesses, experts and defenders who participate in the investigation or search for justice, when they are at risk. Guarantee access to files to families and their legal representatives. Impose appropriate sanctions in cases of reprisals against any of these persons.
- Adopt specific protection measures for justice operators according to their particular needs and in consultation with them.
- Ensure the implementation of the General Law of Victims and the functioning of the Executive Commission of Attention to Victims at the federal and state level. In consultation with civil society organizations and with victims, analyze and address concretely the barriers that impede its effective implementation, and eliminate them.
- Assume the historic responsibility of accountability for gross human rights violations. Investigate, clarify and punish the acts committed during the time period known as the Dirty War.
- Strengthen the Mechanism of protection for human rights defenders and journalists, guaranteeing its financial sustainability in the long-term and vesting it with greater administrative autonomy, and urging the states to collaborate with it. In turn, the recommendations for the Mechanism are to evaluate and adopt differentiated protection measures taking into account gender, indigenous leaders, environmental defenders; measure the

<sup>145</sup> Amnesty International [Mexico 2017/2018](#).

<sup>146</sup> CIDH, *The Human Rights Situation in Mexico*, OEA/Ser.L/V/II.Doc. 44/15, December 13, 2015, par. 26.

<sup>147</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 25.

<sup>148</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 25.

effectiveness of implemented measures; foster the institutional articulation and cooperation with the PGR; and increase the transparency of all actions to increase the trust of the beneficiaries in the mechanism. The foregoing shall be accompanied by a policy of prevention and participation by the population object of the Mechanism.

- Reform the Code of Military Justice to provide that whenever a member of the armed forces commits acts that may constitute a human rights violation, such acts shall be judged by civil tribunals, independently of whether the victim is a civilian or a member of the armed forces.
- Monitor the entry into force of the new criminal justice system as well as the effectiveness of the trainings regarding it. Include public defenders in the trainings.
- Evaluate the effective implementation of the new criminal justice system, as well as the areas that will require more specific monitoring, with adequate training and all necessary resources. Include permanent training for justice operators and public defenders regarding the monitoring of compliance with international treaties (*control de convencionalidad*).

101. Regarding the recommendations about **strengthening prosecutors' offices and establishing a cooperation plan among prosecution authorities at the federal and state levels**, the Commission observes that the State referred back to previous reports<sup>149</sup> and presented no information on specific compliance with those recommendations in 2018. Only with regard to the LGBTI population did the State point out that it had adopted the Protocol to be followed by Administration of Justice Personnel in cases involving sexual orientation or gender identity. The Protocol was published by the National Justice Administration Conference.<sup>150</sup> The IACHR has not received information on this matter from civil society organizations nor are any public data available on the training of prosecutors' offices or on the establishment of a plan among authorities or a public policy on judicial matters geared to adopting criteria about more integrated work with the Federation. The Commission will therefore continue to follow-up on this recommendation.

102. In keeping with earlier recommendations and efforts to boost the independence of justice sector authorities, the IACHR noted that the 2014 reforms included the establishment of the Office of the Prosecutor General of the Republic (*Fiscalía General de la República* -FGR) to replace the current Office of the Attorney General of the Republic (*Procuraduría General de la República* - PGR) in respect of federal crimes. The Commission has taken note of the coalition of organizations that asked the Executive and Legislative Branches of Government to convene a national dialogue and round tables to come up with a jointly designed new Office of the Prosecutor General. The organizations also drew attention to the procedure for appointing the new Prosecutor General and to the model the institution should follow in order to enhance its autonomy, capacity, and independence in combating impunity.<sup>151</sup>

103. According to information in the public domain, in 2018 the “#FiscalíaQueSirva” and “#VamosPorMás” Initiatives continued their opposition to the so-called automatic shift in which the Attorney General of the Republic would automatically become the new Prosecutor General and asked the Mexican Senate to refrain from appointing the Prosecutor General until an independent Public Prosecutor's Office was in place.. The Commission takes note that the aforementioned Initiatives stated that they had worked in 15 technical working groups (*mesas técnicas*) with the team appointed by the President, lawmakers, the Institute for Juridical Research of the UNAM, and the Center for Economic Research and Teaching (Centro de Investigación y Docencia Económicas—CIDE), that they had worked on a draft Organic Law for the new Office of the Prosecutor General, and had produced a technical round table report on pertinent amendments to the Constitution.<sup>152</sup> In this regard, the IACHR takes note of the citizens' initiatives and of the progress made by technical working groups toward establishing an independent, autonomous, and professional public

<sup>149</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico,” p 26.

<sup>150</sup> CNDH, Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015 [Contribution to the review of compliance with recommendations made in the IACHR Report of 2015], November 30, 2018, p.11.

<sup>151</sup> IACHR, Annual Report 2017, December 2017, Chapter V, pp.127 and 128.

<sup>152</sup> Public pronouncement “[Presentación de los resultado de las mesas de trabajo: Ley Orgánica de la Fiscalía General y reformas constitucionales necesarias](#)”, September 10,2018.

prosecutor's office vested with the capabilities needed to guarantee citizens' access to justice and effectively pursuing its investigative tasks.

104. In its observations to the draft of this Report, the State indicated that it has concentrated its efforts on consolidating a Prosecutor's Office governed by the principles of autonomy, legality, objectivity, respect for human rights, gender perspective and interculturality, among others. The State added that on December 14, 2018, the Organic Law of the Office of the Attorney General of the Republic was published.<sup>153</sup>

105. At the same time the Commission observes that in January 2019, the Senate elected the first Prosecutor General of the Republic, for a nine-year term. The IACHR observes that the organizations pertaining to the "#FiscalíaQueSirva" and "VamosPorMás" Initiatives and the Public Appointments Observatory described the process by which the Prosecutor General was appointed as a "simulation," because they considered it hurried and insufficiently transparent and that it had merely been used to confirm a decision that had already been taken.<sup>154</sup> In light of the above, the IACHR concludes that substantial partial compliance with this recommendation has been achieved.

106. Regarding the recommendation to **adopt specific protection measures for those who participate in the investigation or search for justice, when they are at risk, to guarantee access to files, and to impose sanctions in the event of reprisals**, the State reported that the SCJN had handed down rulings that recognized family members of the victims as affected and as victims, with access to the investigations.<sup>155</sup> It likewise pointed out that in cases involving the disappearance of persons, the SCJN had recognized the difficulty of demonstrating the harm suffered in order to be established as victims and that in other cases, based on the good faith principle, statements by persons claiming to be victims had been deemed credible in a preliminary inquiry.<sup>156</sup> The State also indicated that the SCJN had issued "Protocols to govern the actions of justice administrators" that contained specially tailored guidelines for judges pronouncing on issues involving people living in vulnerable circumstances.<sup>157</sup>

107. The Commission takes note of, and appreciates, the criteria being espoused by the CSJN to recognize victims in its judicial rulings and shall continue to track the consolidation of its case law. The IACHR will also continue to monitor all matters relating to the adoption of protection measures for persons involved in the quest for justice and considers that in the meantime compliance with this recommendation remains pending.

108. As regards the **recommendation to adopt specific protection measures for justice operators according to their particular needs and in consultation with them**, the State pointed out that the Federal Judiciary had a "major stake" in providing for security and guarantees for all its personnel, including judges, whom it strives to protect so that they can perform their functions, and that it elicits the support of the Public Administration in such matters. The Commission points out, however, that the State did not report any concrete actions taken in 2018 to protect justice operators.

109. The IACHR again stresses that it is up to each State to protect justice operators against attacks, acts of intimidation, threats, and harassment; to investigate those who commit violations of their rights; and to punish them effectively. Otherwise, if States do not guarantee the security of their justice operators against all kinds of outside pressure, including reprisals directly targeting them and their families, performance of the judicial function as such may be gravely impaired, frustrating access to justice. Given the

<sup>153</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 24 y 25, p. 11.

<sup>154</sup> #FiscalíaQueSirva, #VamosPorMás and Observatorio Designaciones Públicas. [Comunicado "Proceso de designación del Primer Fiscal General de México ha sido una simulación"](#), January 18, 2019.

<sup>155</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 27.

<sup>156</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 27.

<sup>157</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 28.

lack of information provided by the State, the IACHR considers that compliance with this recommendation is still pending.

110. In respect of the recommendation on implementation of the General Law of Victims and the functioning of the Executive Commission of Attention to Victims, the State referred back to earlier reports and did not provide updated information on any measures adopted in 2018.<sup>158</sup> On this, the CNDH stated that in July 2018 it had urged authorities in the Executive Branch and the local congresses of the federative entities to establish their Victims Commission. The IACHR likewise takes note of a document signed in 2018 by a large number of Mexican social organizations expressing their concern at the "lack of a clear and transparent methodology in the consultation process" used for approval of the implementing regulations for the General Law of Victims.<sup>159</sup> In its observations to the draft of this report, the State stated that by February 2019, it had installed 19 Executive Commissions for Attention to Victims in the states of Coahuila, Colima, Chihuahua, Durango, Guerrero, Jalisco, State of Mexico, Michoacán, Morelos, Nayarit, Nuevo León, Quintana Roo, San Luis Potosí, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatan and Zacatecas.<sup>160</sup> The Commission therefore considers that compliance with this recommendation remains pending and reiterates the importance of effective enforcement of the Law and of mechanisms to ensure the participation of, and attention to, victims and their representatives.

111. Regarding the recommendation on **accountability for gross human rights violations and the investigation and punishment of the acts committed during the period known as the Dirty War**, the State said it "reiterated" what it had said in previous reports and referred to a ruling handed down by the SCJN in connection with the review of constitutional remedy (*amparo de revisión*) 911/2016, which granted protection to access the names of victims of disappearance of the political movements of the 1970s and 1980s contained in preliminary inquiries. The State asserted that the [Supreme] Court considered that confidentiality of the information could not be invoked in cases of grave violations of human rights or crimes against humanity, thereby applying a legal exception to Article 14 of the Federal Law on Transparency and Access to Governmental Public Information.<sup>161</sup> So that the Court had granted the constitutional protection needed for the National Institute of Transparency, Access to Information, and Protection of Personal Data (INAI) to order the Office of the Prosecutor General of the Republic (*Procuraduría General de la República*) to hand over the information requested.

112. The Commission further underscores the fact that INAI ordered the National Defense Secretariat (SEDENA) to release the public version of the files on two members of the military involved in the so-called "Dirty War" in Guerrero. According to the Institute's press release, publicizing the information "makes it possible to collectively construct and preserve the historical memory of the country."<sup>162</sup>

113. The Commission also takes note of the commemoration of the 50th anniversary of the 1968 Student Movement by the plenary of the Chamber of Deputies in October 2018 as well as the inscription of the phrase "To the Student Movement of 1968" on the Chamber of Deputies wall of honor.<sup>163</sup> The IACHR observes that, according to information in the public domain, the rector of the Autonomous National

<sup>158</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 28.

<sup>159</sup> [Letter addressed to the: Executive Commissioner of the Executive Commission of Attention to Victims](#), July 3, 2018, Mexico

<sup>160</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 28, p 12.

<sup>161</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 29.

<sup>162</sup> The National Institute for Transparency, Access to Information and Personal Data Protection (INAI). Press release 068 of 2018. "SEDENA debe dar a conocer expedientes de generales involucrados en la "Guerra Sucia" en Guerrero." Available at: <http://inicio.inai.org.mx/Comunicados/Nota%20INAI-068-18.pdf>.

<sup>163</sup> Chamber of Deputies. Hon. Congress of the Union. Mexico. Bulletin No. 0166. "Diputados expresan posicionamientos con motivos de los 50 años del Movimiento Estudiantil de 1968". Available at: <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2018/Octubre/02/0166-Diputados-expresan-posicionamientos-con-motivo-de-los-50-anos-del-Movimiento-Estudiantil-de-1968>



University of Mexico (UNAM) remarked, on the 50th anniversary of the 1968 Student Movement, that young people continued to be victims of "abominable crimes" and that what they needed was security, hope, and to be listened to.<sup>164</sup> The Commission likewise takes note of the many commemorations of the massacre organized by civil society to denounce the impunity that continues to surround it, the lack of access to justice, and the lack of knowledge of the truth. The Commission also takes into account that an indirect action for protection (*amparo indirecto*) filed by ARTICLE 19, Indignación, Centro ProDH, and Carlos Escoffé against the Secretariat of Public Education demanded that information on the so-called "Dirty War" be included in public education.<sup>165</sup> A ruling on that action is still pending.

114. The Commission considers that State authorities have taken important decisions with respect to access to public information. However, no significant progress is discernible with respect to investigations and to throwing light on the truth of grave human rights violations. The IACHR therefore notes only partial compliance with this recommendation.

115. As for the recommendation on reform of the Military Justice Code, the State indicated that it reiterated its statements in earlier reports. Here, the Commission points out that, according to the 2017 Annual Report, the reform of the Code was still pending and that current legislation has still not been aligned in part with inter-American standards, as the I/A Court of HR stated during its monitoring of compliance with certain judgments handed down against Mexico.<sup>166</sup> Thus, the Commission reiterates the need for the State to comply with said recommendation, which is still pending, in order to establish that the military criminal justice system does not apply to human rights violations, regardless of whether the perpetrator is a civilian or a member of the military.

116. Regarding the recommendations to **monitor the entry into force of the new criminal justice system and evaluate the effectiveness of its implementation**, the State pointed out that in 2017 and 2018, the Federal Council of the Judiciary (*Consejo de la Judicatura Federal*) conducted 117 meetings in 44 cities, attended by 22,690 people, to disseminate the new criminal justice system. The State also indicated that federal public defense counsel had received training in the federal criminal justice system. It pointed out that 40 Federal Criminal Justice Centers are currently operating, along with 150 specialized district court judges, and that the system includes a National Justice Center specializing in the supervision of techniques for investigation, restraining orders (*arraigo*) and interception of communications. The State reported that the system's operating data are published on the portal of the Federal Judicial Council and in the 2017 annual report (the 2018 report is to be published shortly).<sup>167</sup>

117. The Commission also notes information in the public domain regarding a statement by the Secretariat of the Interior under the new Government to the effect that the Technical Secretariat of the Council for Coordinating Implementation of the Criminal Justice System (SETEC) is to be re-installed, given that there are still problems in the justice system due to lack of training. Also in the public domain was a statement by the outgoing Minister that the institutions involved were not given enough time to put the new system fully in place.<sup>168</sup>

<sup>164</sup> Chamber of Deputies. Hon. Congress of the Union. Mexico. Note No. 334. "A 50 años del movimiento estudiantil de 1968, los jóvenes continúan siendo víctimas de "crímenes abominables"; requieren seguridad, esperanza y ser escuchados: Graue Wiechers". October 02, 2018. Available at: <http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Agencia-de-Noticias/2018/Octubre/02/334-A-50-anos-del-movimiento-estudiantil-de-1968-los-jovenes-continuan-siendo-victimas-de-crimenes-abominables-requieren-seguridad-esperanza-y-ser-escuchados-Graue-Wiechers>.

<sup>165</sup> Artículo 19. "Poder judicial resolverá si la SEP está obligada a incluir la Guerra Sucia en los programas educativos". October 1, 2018. <https://articulo19.org/poder-judicial-resolvera-si-la-sep-esta-obligada-a-incluir-la-guerra-sucia-en-los-programas-educativos/>

<sup>166</sup> I/A Court of HR, Monitoring of Compliance with Judgment, Cases of Radilla Pacheco, Fernández Ortega et al., Rosendo Cantú et al. v. Mexico, April 17, 2015, par. 20.

<sup>167</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 31.

<sup>168</sup> El Universal, "Persisten problemas con juicios orales, dice Sánchez Cordero". September 06, 2018. Available at: <https://www.eluniversal.com.mx/nacion/politica/persisten-problemas-con-juicios-orales-dice-sanchez-cordero>

118. The Commission takes note of the work done by the México Evalúa organization and of the conclusions reached in its paper on user rights in the justice system ("Derechos de los usuarios en el sistema de justicia". They point out that while the regulatory shift to the adversarial system "sought to protect victims' rights during proceedings, there is evidence that that objective was not achieved at either the federal or local level."<sup>169</sup> The IACHR observes that some of the conclusions point to problems with the services that victims need when lodging complaints and later on, as well as with the protection they need so as not to be at risk during or after the proceedings. The document also point out defects "conducive to violations of the human rights of both accused and convicted persons."<sup>170</sup> In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

119. The Commission reiterates its concern at the high rate of impunity in Mexico. According to the 2018 Global Impunity Index Mexico (GII-MEX 2018)<sup>171</sup>, impunity increased both in Mexico as a whole and in the states. "The national average impunity index (GII-MEX 2018) rose to 69.84 points, from 67.42 at the last measurement in 2016."<sup>172</sup> The same study pointed out that "the percentage of unreported crimes remains very high and even increased by one percentage point in two years, from 92.8% to 93.7% (ENVIPE, INEGI). This confirms that Mexicans continue to lack the trust in their security and justice system institutions needed to denounce crimes against them."<sup>173</sup> The IACHR likewise notes the findings of the State index for the performance of public prosecutors' offices (both "procuradurías" and "fiscalías") measured by the Impunidad Cero organization, according to which "the likelihood of a crime being reported and looked into is 1.14%."<sup>174</sup>

## F. Groups in particularly vulnerable situations

### 1. LGBT persons

- Adopt necessary measures to investigate, punish and make reparation for acts of violence against LGBT persons, according to international standards regarding due diligence. Investigations of cases of violence against LGBT persons must be free of stereotypical notions of LGBT persons and should include a determination of whether the acts were because of the sexual orientation or gender identity of the victims.
- Adopt necessary measures in terms of prevention of violence, including legislative and public policies aimed at eradicating social discrimination towards LGBT persons, which causes and reinforces the violence based on prejudice.

120. Regarding the recommendation to **investigate, punish and make reparation for acts of violence against LGBT persons**, the State provided information for this report on the new "Protocol for actions by justice administration personnel in Mexico in cases involving sexual orientation and gender identity."<sup>175</sup> That protocol was adopted in December 2017 and began to be implemented in 2018 with a view to establishing rules for justice administration personnel throughout the country when dealing with crimes

<sup>169</sup> México Evalúa: "Derechos de los usuarios en el sistema de justicia. Ejercicio exploratorio". 2018. Available at: <https://www.mexicoevalua.org/2018/11/06/derechos-los-usuarios-en-sistema-justicia/> p.50.

<sup>170</sup> México Evalúa: "Derechos de los usuarios en el sistema de justicia. Ejercicio exploratorio". 2018. Available at: <https://www.mexicoevalua.org/2018/11/06/derechos-los-usuarios-en-sistema-justicia/> p.51.

<sup>171</sup> Universidad de las Américas Puebla, UDLAP Jenkins Graduate School, Centro de Estudios sobre Impunidad y Justicia - CESIJ-. "La impunidad subnacional en México y sus dimensiones IGI-MEX 2018". Marzo de 2018. Disponible en: [https://www.udlap.mx/igimex/assets/files/2018/igimex2018\\_ESP.pdf](https://www.udlap.mx/igimex/assets/files/2018/igimex2018_ESP.pdf).

<sup>172</sup> Universidad de las Américas Puebla, UDLAP Jenkins Graduate School, Centro de Estudios sobre Impunidad y Justicia - CESIJ-. "La impunidad subnacional en México y sus dimensiones IGI-MEX 2018". Marzo de 2018. Disponible en: [https://www.udlap.mx/igimex/assets/files/2018/igimex2018\\_ESP.pdf](https://www.udlap.mx/igimex/assets/files/2018/igimex2018_ESP.pdf).

<sup>173</sup> Universidad de las Américas Puebla, UDLAP Jenkins Graduate School, Centro de Estudios sobre Impunidad y Justicia - CESIJ-. "La impunidad subnacional en México y sus dimensiones IGI-MEX 2018". Marzo de 2018, pág. 7. Disponible en: [https://www.udlap.mx/igimex/assets/files/2018/igimex2018\\_ESP.pdf](https://www.udlap.mx/igimex/assets/files/2018/igimex2018_ESP.pdf).

<sup>174</sup> Impunidad Cero. Comunicado de Prensa "Ranking de procuradurías y fiscalías estatales 2018". 16 de julio de 2018. Disponible en: <https://www.impunidadcero.org/uploads/app/articulo/70/contenido/1531769545S34.pdf>.

<sup>175</sup> Mexican Government. Response to the request for information on the status of attention to the recommendations made in the 2015 Country Report, presented on November 18, 2018.

involving LGBTI persons. The Commission notes that the protocol includes several recommendations formulated by the IACHR for combating stereotypes against LGBTI persons. Thus, the above-mentioned protocol embraces due diligence standards in investigating crimes committed against such persons and requires justice operators to give due consideration to the vulnerability of the victim in the investigation avenues they pursue.

121. The State also reported on the establishment of the Unit specializing in attending to users in the LGBTTTTI community<sup>176</sup> in the Prosecutor-General's Office in Mexico City. Its main function is to investigate cases involving discrimination based on sexual orientation, gender identity and/or expression, and body diversity in the Mexican capital. In its observations to the draft of this report, the State indicated that this agency provides specialized multidisciplinary attention with a gender perspective, sexual diversity and human rights approach, and that it has trained personnel in said topics. The State added that 210 investigation files have been initiated for crimes against LGBTI persons<sup>177</sup>.

122. The IACHR takes note of the establishment of institutions geared to investigating, punishing, and ensuring reparation for cases of violence against LGBTI persons. Nevertheless, it wishes to remind the State of the importance of providing substantive information and data regarding the work done by those institutions. Accordingly, the IACHR considers that the State's compliance with this recommendation was partial.

123. With respect to the recommendation urging the State **to adopt violence prevention measures aimed at eradicating social discrimination towards LGBT persons**, the Mexican State pointed out that the list of prohibited forms of discrimination had been updated in various federative entities. At the same time, the Commission was informed that on November 6, 2018, the Senate of the Republic adopted a reform of the laws governing the Mexican Social Security Institute (IMSS) and the State Workers' Safety and Social Services Institute (ISSSTE), which expressly and without using discriminatory language, provides for social security benefits for same-sex couples, mainly in respect of medical care and old-age pension rights.<sup>178</sup>

124. In its observations to the draft of this report, the State reported that in October 2018, CONAPRED presented to the Senate a "priority legislative agenda on equality and non-discrimination" that includes issues of sexual diversity and gender<sup>179</sup>.

125. Regarding the eradication of discrimination against same-sex couples, even though in June 2015 the SCJN ruled that laws prohibiting marriage between persons of the same sex are discriminatory and unconstitutional,<sup>180</sup> it transpires from official information that such couples continue to face obstacles when it comes to exercising their right to get married. Accordingly, the Human Rights Commission of the Federal District pointed out that "this illustrates the need to explicitly regulate same-sex marriage, in order to get rid of any discriminatory content in norms and to induce a change of paradigm in the way society behaves with regard to what today is seen as traditional marriage."<sup>181</sup> As of November 2018, the IACHR ascertained that access to marriage for same-sex couples was only available in 13 federative entities.

126. At the same time, the State recognizes gender identity rights for trans persons. According to official information, actual recognition of gender identity in birth certificates via an administrative procedure and without pathologizing hurdles has only been possible in the states of Michoacán, Nayarit, and in Mexico

<sup>176</sup> Lesbian, gay, bisexual, transsexual, transvestite, transgender, and intersexual community.

<sup>177</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 30 y 32, p. 12.

<sup>178</sup> National Human Rights Commission of Mexico (CNDH), Response to the request for information on the status of attention to the recommendations made in the 2015 Country Report, presented on November 18, 2018.

<sup>179</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 34, p. 13.

<sup>180</sup> SCJN, Jurisprudencia 43/2015, June 19, 2015.

<sup>181</sup> Human Rights Commission of the Federal District, Report regarding the situation of the Economic, Social and Cultural Rights in Mexico City, August 25, 2017, pp. 23-24

City.<sup>182</sup> Very little information is available about intersex persons. What is known, however, is that there are very few restrictions on harmful practices involving unnecessary medical procedures on intersex children.<sup>183</sup>

127. The IACHR acknowledges important steps taken by the State geared to ensuring respect and guarantees for the rights of LGBTI persons. In particular, the IACHR welcomes the creation of mechanisms for reporting discrimination, as well as the development of protocols facilitating access to justice for victims of violent crimes pursuant to the recommendations put forward in the country report, and the compilation of data and statistics that take sexual orientation and gender identity into account. Despite that, however, the Commission cannot hide its concern at the levels of violence against LGBTI persons still found in Mexico.

128. In light of the above, the IACHR concludes that compliance with this recommendation has been partial. The IACHR therefore calls upon the State to continue its prevention efforts and investigation into the violence to which LGBTI persons are subjected. It urges the State to adopt affirmative measures to combat the structural roots of the violence based on prejudices against these persons. The Commission likewise urges the Mexican State to harmonize its internal legislation on non-discrimination and protection against hate crimes, with a view to providing comprehensive protection and guaranteeing LGBTI persons their right to live a life free from violence and discrimination.

## 2. Women

- Implement and strengthen measures that incorporate a gender perspective to comply with the duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women, including specific efforts to comply with the obligation to prevent, investigate, punish and repair human rights violations against women; this includes training and monitoring of the authorities in charge of stages beginning with the investigation, including health services in the context of justice.
- Adopt necessary measures to prevent, punish and eradicate acts of sexual violence and other forms of violence, torture and cruel, inhuman or degrading treatment by security forces against women, especially those who are deprived of liberty.
- Implement uniform protocols approved by justice administration authorities for crimes related to violence against women, as well as a proper supervision of their implementation. Adopt public policies aimed at restructuring stereotypes regarding the role of women in society and promote the eradication of socio-cultural patterns of discrimination that impede their access to justice, including training programs and integral policies for the prevention of violence against women.
- Design and implement culturally adequate policies, with the participation of indigenous women, and apply a comprehensive and holistic focus that has as its objective prevention, investigation, punishment and reparation of acts of violence and discrimination committed against them.

129. **Regarding the recommendation to implement and strengthen measures to comply with the duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women**, the State notified the Commission of the work done in connection with the 30 Gender Violence Against Women (AVGM) Alert procedures that have been used to promote several national policies for combating violence against women, including, notably, the adoption and implementation of protocols for ministerial, police, and experts' investigations with a gender perspective into the crime of femicide and sexual violence; the establishment of specialized public prosecutors' offices; the creation of protocols for attending to women victims of violence; the issuance and monitoring of protection orders; the establishment

<sup>182</sup> CONAPRED, *Ficha temática Orientación sexual, características sexuales e identidad y expresión de género*

<sup>183</sup> UN Committee on the Elimination of Discrimination against Women, *Concluding observations: Mexico* CEDAW/C/MEX/CO/9, July 25, 2018, paras. 21-22.

of databases on acts of violence against women; the establishment or strengthening of shelters, safe houses, and justice centers for women; training for judiciary personnel; health care services, and so on.<sup>184</sup>

130. The State also mentioned other progress made with the compilation of data on violence against women, including femicide. Thus, in 2016 and 2017, 30 states collaborated with the updating of the National Data and Information Base on Cases of Violence against Women (BANAVIM), which has helped generate statistics on the subject. The Executive Secretariat of the National Public Security System (SESNSP) consolidated the new instrument for the Registration, Classification, and Reporting of Crimes and Victims, and, in November 2017, INEGI published the Integrated System of Statistics on Violence against Women (SIESVIM).<sup>185</sup>

131. The IACHR was likewise notified of the State's reports on actions taken to comply with its due diligence obligations relating to prevention and protection, such as implementing the Gender Violence Against Women Alerts (AVGM), 18 of which have been declared since 2015 (of the 30 requested).<sup>186</sup> The State also reported that between 2013 and 2017, 39 Justice Centers for Women (CJM) were consolidated in 27 entities and provided 16.2 million women with legal counseling services, medical and psychological care, economic and social empowerment, specialized care for children, and referrals to safe houses and shelters. Along the same lines, between 2013 and 2017, the Secretariat of the Interior (SEGOB) set up the "Línea 01800 Háblalo" hotline and conducted awareness campaigns, such as "Prevención de la violencia contra las mujeres" [Prevention of Violence against Women], "No todos los hombres somos iguales" {Not All of Us Men are Like That} and "#NavegaSegura" [Stay Safe].<sup>187</sup> In addition, in its observations to the draft of this report, the State indicated that in September 2018, CONAVIM prepared a "Structural Diagnosis of the National System of Prevention, Attention, Punishment and Eradication of Violence against Women", which seeks to have a Protocol of performance for participating institutions.<sup>188</sup>

132. Regarding the murders of women based on their gender, the Commission welcomes the legal characterization of the crime of femicide throughout the country<sup>189</sup> establishing that the murder of a woman is premeditated when the victim is threatened or confined in isolation before dying, receives degrading wounds, or her corpse is exhibited. The text also provides for punishments for government official who by act or omission delay looking into this crime, as well as mechanisms for making reparation to the family members of the murdered women<sup>190</sup>. In this regard, the IACHR observes that, so far, of the country's 32 entities, 19 have a legal characterization of the crime that, in whole or in part, meets the requirements for being able to establish the crime, while 13 still lack an adequate characterization<sup>191</sup>.

<sup>184</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".

<sup>185</sup> *Idem*.

<sup>186</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 35, p. 13.

<sup>187</sup> United Nations - General Assembly, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21](#). Mexico, Human Rights Council Working Group on the Universal Periodic Review, Thirty-first session, A/HRC/WG.6/31/MEX/1. August 23, 2018.

<sup>188</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 36, p. 13.

<sup>189</sup> <sup>189</sup> United Nations - General Assembly, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21](#). Mexico, Human Rights Council Working Group on the Universal Periodic Review, Thirty-first session, A/HRC/WG.6/31/MEX/1. August 23, 2018.

<sup>190</sup> Expansión, [Cámara de Diputados aprueba la tipificación del delito de femicidio](#), December 13, 2017.

<sup>191</sup> The 19 entities in Mexico that have a legal characterization of the crime that, in whole or in part, meets the requirements for being able to establish the crime (depriving a woman of life for gender-related reasons) are: Campeche, Chiapas, Ciudad de México, Coahuila, Colima, Guerrero, Hidalgo, Jalisco, Estado de México, Morelos, Nuevo León, Oaxaca, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Veracruz, and Zacatecas. The 13 federative entities that lack an adequate legal characterization of the crime are: Aguascalientes, Baja California, Baja California Sur, Chihuahua, Durango, Guanajuato, Michoacán, Nayarit, Puebla, Quintana Roo, Tabasco, Tlaxcala, and Yucatán. All -- with the exception of Chihuahua, which until 2017 included a specific characterization, without to this day recognizing the term "femicide" in its Criminal Code -- have undertaken one or two reforms, without thereby improving the legal characterization of femicide. (El País, [La ONU pide a México tipificar el femicidio en todo el país](#), June 13, 2018).



133. Notwithstanding the above, the Commission reiterates its concern at the large number of gender-based murders of women in Mexico and for the generalized impunity surrounding those cases.<sup>192</sup> According to the Información delictiva y de emergencias con perspectiva de género [Information on crimes and emergencies from a gender perspective] of the Executive Secretariat of the National Public Security System, s of November 2018 there were records of 760 alleged femicides, confirming an upward trend for such crimes in Mexico.<sup>193</sup> For its part, UN Women pointed out that violence against women and girls in Mexico is one of the most serious, generalized, and tolerated violations of human rights, given that two-thirds (66%) of women had suffered at least one act of discrimination or violence during their lifetime.<sup>194</sup>

134. In its observations to the draft of this report, the State indicated that "within the Federal Legal Department of the CEAV, 42 convictions have been obtained for the crimes of sexual abuse, pedophilia, trafficking persons, sexual harassment, child pornography, corruption of children under 19 years of age, rape, femicide, trafficking persons and acts of violence against women on the basis of gender, in coordination with the current FGR".<sup>195</sup>

135. As regards the mainstreaming of a gender perspective in the administration of justice, the Commission welcomes with satisfaction the adoption of the Protocol to Judge with a Gender Perspective, while at the same time it observes with concern the various obstacles that women still face to achieve access to justice on an equal footing and without discrimination. Those obstacles include stereotyped interpretative criteria in judicial resolutions; the scant knowledge of women's rights among members of the judiciary; justice professionals and law enforcement officers, including the police; the lack of accountability of judges who fail to take gender matters into account in their rulings; scant public access to judicial rulings; the financial, linguistic, and geographical barriers that hamper access to justice for low-income women, indigenous women, women from rural areas, and women with disabilities; the lack of familiarity of women, especially women victims of gender-based violence, with their rights and the legal remedies at their disposal.<sup>196</sup>

136. In its observations to the draft of this Report, the State indicated that the SCJN has recognized that the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women and the Convention on the Elimination of All Forms of Discrimination against Women are part of the actions of all state authorities. In addition, the State indicated the methodology that should guide the analysis of judicial authorities to determine cases of gender-based violence.<sup>197</sup> In this regard, the State expressed that the CEAV provides assistance to direct and indirect victims of gender crimes in state prosecutor offices, and that it has prepared information materials on women's rights and against gender violence.<sup>198</sup> The State noted that on November 30, 2018, INMUJERES "carried out the translation and printing, in Braille language, of the General Law on Women's Access to a Life Free of Violence. Likewise, it recorded in audio the General Law on Women's Access to a Life Free of Violence to facilitate its dissemination among all sectors of the population, "as well as trainings for authorities in charge of research in the area of

<sup>192</sup> CNDH, Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015 [Contribution to the review of compliance with recommendations made in the IACHR Report of 2015], November 30, 2018.

<sup>193</sup> According to data on Alleged Femicides and their National Trend, in 2015, 2016, and 2017 there were 407, 584, and 775 such cases, respectively. (Secretariat for Security and Citizen Protection, Información delictiva y de emergencias con perspectiva de género, National Information Center, information cut-off date: November 30, 2018.)

<sup>194</sup> United Nations - General Assembly, Compilation on Mexico, Human Rights Council Working Group on the Universal Periodic Review, Thirty-first session, A/HRC/WG.6/31/MEX/2., 3 September 2018.

<sup>195</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 38.

<sup>196</sup> United Nations - Committee for the Elimination of Discrimination against Women, Concluding Observations on the ninth periodic review of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 July 2018. Equis et al, Judicial Actions against Women's Rights in Mexico, request for a thematic hearing in connection with the 168th period of sessions of the IACHR in Santo Domingo (Dominican Republic), communication of March 9, 2018.

<sup>197</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 40, p 14.

<sup>198</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 40 a 42, página 14.

justice that, in the period from 2012 to 2018 amounted to thirteen workshops. These trainings had the participation of 1,433 people from the judiciary and state prosecutor offices.<sup>199</sup>

137. In light of the above, the IACHR acknowledges the State's efforts and urges that they be stepped up so as to comply with its recommendation to implement and strengthen measures to fulfill its duty to act with due diligence to prevent, punish and eradicate violence and discrimination against women by adopting a gender perspective. Those efforts should include concrete steps to comply with the obligations to prevent, investigate, punish, and make reparation for violations of women's human rights. In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

138. **With respect to the recommendation to adopt necessary measures to prevent, punish and eradicate acts of sexual violence and other forms of violence, torture and cruel, inhuman or degrading treatment by security forces against women, especially those who are deprived of freedom,** the Commission received update information from the State regarding training courses provided by the Unit for Substantive Equality of the Office of the Commissioner General of the Federal Police,<sup>200</sup> as well as about training given to Federal Penitentiary System personnel on human rights, prevention of torture, equality, and nondiscrimination. The Commission takes note that, according to the information remitted by the State, there was a 94.3% drop in the number of complaints of alleged human rights violations of women deprived of liberty in 2018 compared to 2017, as a result of actions undertaken by the Prevention and Social Rehabilitation Decentralized Administrative Body (OADPRS) for preventing and eradicating acts of violence and discrimination against women deprived of liberty.<sup>201</sup>

139. Despite the efforts reported by the State, sexual violence and especially sexual violence as a form of torture against women deprived of liberty continues to be a matter of concern to the IACHR. According to information provided to the Commission, 8 out of every 10 women detained in Mexico between 2009 and 2016 were tortured before being taken before a judge,<sup>202</sup> which shows that sexual torture of women in the custody of the various different Mexican security forces, far from being exception, occurs, on the contrary, with alarming regularity, and generally goes unpunished.<sup>203</sup> The IACHR has likewise continued to receive information regarding acts of sexual violence by the security forces as a means of obtaining forced confessions, especially in connection with the militarized security policy and the "war on drugs".<sup>204</sup>

140. The Commission further notes with concern that, despite the increase in reports of this type of violence<sup>205</sup> and the large number of complaints filed by women regarding acts of sexual violence as a form of torture, the authorities' response has not remotely lived up to the State's international commitments to investigate, bring to trial, punish, and make reparation. According to information provided to the IACHR by the CNDH, in August 2018 that body issued Recommendation 28/2018 regarding human rights violations in the form of arbitrary arrest, illegal retention, and acts of torture to the detriment of 17 victims; sexual violence against 11 victims; the illegal searching of one victim, breaches of the privacy of 5 victims committed

<sup>199</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019. para. 43-44, p. 14.

<sup>200</sup> In coordination with the National Human Rights Commission and the International Committee of the Red Cross, the Federal Police trained 3,138 officers through the In-house Human Rights Program on human rights issues applying to police work; combating and preventing torture, the human rights of victims of crime; human rights, the use of force and firearms; the human rights of migrants; and combating human trafficking, as well as other topics. (Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".)

<sup>201</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".

<sup>202</sup> Animal Político, [En México, 8 de cada 10 mujeres detenidas sufren tortura o malos tratos de las autoridades](#), November 21,

<sup>203</sup> Centro Prodh, [Mujeres con la frente en alto. Informe sobre la tortura sexual en México y la respuesta del Estado](#), November 2018.

<sup>204</sup> IACHR, [Women's human rights situation in the context of the criminalization of drugs in the Americas](#), Thematic hearing, 168th period of session, Santo Domingo (Dominican Republic), May 10, 2018.

<sup>205</sup> United Nations - Committee for the Elimination of Discrimination against Women, Concluding Observations on the ninth periodic review of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 July 2018.

by navy personnel, and violations of access to justice to the detriment of 17 victims in five Mexican states.<sup>206</sup> The Commission notes that, since the establishment of the Mechanism for Monitoring Cases of Sexual Torture of Women in 2015, the Mechanism has so far issued opinions in only two cases.<sup>207</sup>

141. The Commission observes with concern the ongoing shortcomings with respect to investigation of these acts and the failings when it comes to detecting and documenting torture and other mistreatment, given that the initial medical exams of detainees are usually deficient and often underestimate the seriousness of wounds; official forensic medical appraisals are usually done months or years after the torture was inflicted; such appraisals are not performed with a gender perspective; and as a result of persistent discriminatory gender stereotypes the victims' testimony is often not accorded the credibility it deserves. All that results in re-victimization of women and further obstacles to their access to justice.<sup>208</sup>

142. The IACHR also underscores the judgment handed down by the Inter-American Court on November 20, 2018 in the case on victims of sexual torture in Atenco against Mexico.<sup>209</sup> On May 3 and 4, 2006, the municipal police in Texcoco and San Salvador de Atenco, the state police of Mexico state, and the Preventive Federal Police carried out operations in the municipalities of San Salvador de Atenco and Texcoco and on the Texcoco-Lechería highway to suppress demonstrations. The 11 women victims in the case were arrested during the operations and during their detention, transfer and entry into the "Santiaguito" Social Rehabilitation Center subjected to various kinds of violence, including sexual violence and, in some cases, rape. The Court declared the Mexican State responsible for violating the rights to personal integrity, privacy, not to be subjected to torture, personal liberty, defense, judicial guarantees, and judicial protection to the detriment of the eleven women victims.

143. In this regard, the Commission reiterates that the inter-American system has held that sexual violence occurs when acts are committed vis-a-vis a woman without her consent that, apart from physical invasion of the human body, may also include acts that do not involve penetration or even any physical contact.<sup>210</sup> In addition, the Court has specified that to classify sexual violence as torture or cruel, inhuman, or degrading treatment, consideration must be given to intentionality, to the severity of the suffering, and the purpose (finality) of the act,<sup>211</sup> and it stressed that, even outside a context of conflict, sexual violence as a form of violence against women is to be construed as torture in cases in which it is observed that the aggressor's purpose is intimidation, annulment of the victim's personality, or subjugation by asserting a position implying the subordination of women.<sup>212</sup>

144. Regarding the above, the Commission notes with concern the information it has received regarding the scale of sexual violence against women during their detention, transfer, entry into prison, and deprivation of liberty in Mexico and it points out that, despite the information reported by the State, the actions it reports have not constituted significant progress in the fulfillment of its due diligence duties with respect to the prevention, protection, investigation, punishment, and reparation for these gender-based acts

<sup>206</sup> CNDH, Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015 [Contribution to the review of compliance with recommendations made in the IACHR Report of 2015], November 30, 2018.

<sup>207</sup> Amnesty International, Asociadas por lo Justo (JASS), Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), Centro de Derechos Humanos de la Montaña "Tlachinollan", Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (CMDPDH), EQUIS Justicia para las Mujeres, Sexual Torture of Women in Mexico, Request for a thematic hearing, 170th period of sessions of the IACHR, communication of September 25, 2018.

<sup>208</sup> Amnesty International, [Report to the Committee on the Elimination of Discrimination against Women](#), 70th session, 2-20 July 2018. I/A Court HR. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371.

<sup>209</sup> I/A Court HR. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371.

<sup>210</sup> I/A Court HR. Case of J v. Peru. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 27, 2013, para. 358.

<sup>211</sup> I/A Court HR. Case of Women Victims of Sexual Torture in Atenco v. Mexico. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 28, 2018. Series C No. 371, para. 193.

<sup>212</sup> I/A Court HR. Case of López Soto et al. v. Venezuela. Preliminary Objections, Merits, Reparations, and Costs. Judgment of September 26, 2018. Series C No. 362, para. 188.

of violence against women. In light of the above, the IACHR considers that compliance with this recommendation is still pending.

145. The Commission also received information from the State regarding its **recommendation to implement uniform protocols approved by the administration of justice authorities for crimes related to violence against women, as well as ensure proper supervision of their implementation.** In that regard, and as mentioned above, the Commission appreciates the adoption of a femicide protocol<sup>213</sup> by 23 federative entities and the fact that publication of the Protocol for Handing Down Judgments with a Gender Perspective has enabled the Federal Judiciary to increase the number of judgments with a gender perspective. For its part, on November 23, 2017, the Electoral Tribunal of the Federal Judiciary (TEPJF) presented the updated version of the Protocol for Dealing with Gender-based Political Violence against Women, which the IACHR welcomes and which has been explained to 4,387 people in training courses since it was published.<sup>214</sup>

146. At the local level, the State reported that it had encouraged the federative entities to sign the Covenant for Introducing the Gender Perspective to Justice Administration Bodies in Mexico, and about progress made with installing and launching the Human Rights and Gender Equality Units in local judiciaries.<sup>215</sup> The Commission was likewise apprised of the development of other instruments, such as those devised by the Office of the Prosecutor General of the Republic (PGR), including the General Guidelines for standardizing investigations into crimes relating to disappearances, rape, and the gender-based murder of women and the protocols for ministerial, police and expert appraisal investigations with a gender perspective into the crime of femicide and sexual violence.<sup>216</sup>

147. Here, the Commission welcomes the progress made by the State with the development, adoption, and implementation of various kinds of protocol aimed at improving the response to gender-based violence against women in Mexico and enhancing women's access to justice on an equal footing. The Commission calls upon the State to persist in its efforts to ensure nation-wide adoption of said protocols, especially the protocol for cases of femicide; to guarantee the effective implementation of all of them; reinforce the mechanisms for monitoring and supervising their implementation; and keep the IACHR abreast of those actions. In light of the above, the IACHR observes that compliance with this recommendation has been partial.

148. Concerning the recommendation to adopt public policies aimed at restructuring stereotypes regarding the role of women in society and promote the eradication of socio-cultural patterns of discrimination that impede their access to justice, the Commission takes note of the fact that the State reiterates comment made in earlier reports.

149. Accordingly, the State reiterated the information referring to actions undertaken by CONAVIM and INMUJERES: institutions constantly conducting awareness campaigns designed to question the attitudes, individual behavior, and social practices that accept and tolerate violence against women, and to help forge a culture that rejects gender-based violence.<sup>217</sup> The Commission takes a positive view of the actions

<sup>213</sup> The entities with femicide protocols are: Aguascalientes, Baja California, Chiapas, Colima, Ciudad de México, Guanajuato, Guerrero, Hidalgo, Jalisco, Estado de México, Morelos, Nuevo León, Oaxaca, Puebla, Quintana, Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz, Yucatán, and Zacatecas. The five units with a gender-based homicide protocol are: Campeche, Chihuahua, Michoacán, Querétaro, and Tlaxcala. The two units currently in the process of drafting and publishing femicide protocols are Guerrero, Hidalgo, Jalisco, Estado de México, Morelos, Nuevo León, Oaxaca, Puebla, Quintana, Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz, Yucatán, and Zacatecas. The five units with a gender-based homicide protocol are: Campeche, Chihuahua, Michoacán, Querétaro, and Tlaxcala. The two units currently in the process of drafting and publishing femicide protocols are Coahuila and Durango. Only two entities still lack a femicide protocol: Baja California Sur and Nayarit. (Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".)

<sup>214</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".

<sup>215</sup> *idem*.

<sup>216</sup> United Nations - General Assembly, [National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21](#). Mexico, Human Rights Council Working Group on the Universal Periodic Review, Thirty-first session, A/HRC/WG.6/31/MEX/1. August 23, 2018.

<sup>217</sup> In this regard, the information provided by the State underscores the production and dissemination of 29 spots on women's

undertaken. However, the IACHR points out that, judging by the information provided by the State, public policies have not been espoused in a strategic, coordinated, and structured manner geared to unambiguously eradicating the discriminatory social and cultural patterns that prevent women's access to justice on an equal footing.

150. At the institutional level, the IACHR appreciates the development of a national policy on equality between women and men as well as the establishment of mechanisms for promoting gender equality, such as the gender equality units. Nevertheless, the Commission observes with concern the scant human, technical, and financial resources allocated to key entities for bringing about gender equality, such as the National Institute of Women, the lack of coordination between federal, state, and municipal plans and between the mandates of the principal organs in the National System for Equality between Women and Men; the dearth of mechanisms for monitoring and evaluating the effects of adopting and mainstreaming the gender perspective; and the insufficient participation of women's organizations in the design and monitoring of public policies on gender equality.<sup>218</sup>

151. In general, the Commission has received credibly consistent information regarding the prevalence of discriminatory attitudes regarding the functions and responsibilities of women and men in the family and in society, as a result of a deep-seated male chauvinist (machista) and misogynist culture in Mexico. In the same vein, the Commission views with concern the normalization and tolerance of violence against women, along with the prevalence of the stereotypical and sexualized images with which women are depicted in the media, especially the stereotyped and negative images of indigenous and Afro-Mexican women, women migrants, refugees, and asylum-seekers.<sup>219</sup>

152. In view of the information provided by the State and information consistently revealing the prevalence of discriminatory gender stereotypes that prevent women, girls and adolescents from effectively enjoying their rights, the Commission urges the State to redouble its efforts to comply with this recommendation. In light of the above, the IACHR observes that compliance with this recommendation is still pending.

153. As for the **recommendation to design and implement culturally adequate policies for preventing investigating, punishing, and making reparation for acts of discrimination against indigenous women**, the Commission underscores the State's acknowledgment of the challenges it faces attending to the present recommendation. In particular, the Commission takes note of the challenges involved in mainstreaming the intercultural perspective in actions to prevent, investigate, punish, and make reparation for acts of violence and discrimination against indigenous women and girls. In this area, according to information provided by the State, strengthening the Indigenous Women's Houses program (CAMI) is so far the only public policy with a gender and intercultural perspective for indigenous women and girls, being implemented by indigenous women's groups and organizations.<sup>220</sup>

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concepts and rights; the translation and dissemination of the concepts upheld in the Convention on the Elimination of All Forms of Discrimination against Women and the Inter-American Convention on the Prevention, Punishment, and Eradication of All Forms of Discrimination against Women in 14 indigenous languages. In coordination with other bodies, the SCJN also conducted the "Gender and Justice" competition to throw light on the juridical, social, cultural economic political, and family-based patterns shaped by gender prejudices and stereotypes. Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".

<sup>218</sup> United Nations - Committee for the Elimination of Discrimination against Women, Concluding Observations on the ninth periodic review of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 July 2018.

<sup>219</sup> United Nations - Committee for the Elimination of Discrimination against Women, Concluding Observations on the ninth periodic review of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 July 2018. United Nations - General Assembly, [Compilation on Mexico](#), Human Rights Council Working Group on the Universal Periodic Review, Thirty-first session, A/HRC/WG.6/31/MEX/2., 3 September 2018. Amnesty International, [Report to the Committee on the Elimination of Discrimination against Women](#), 70th session, 2-20 July 2018.

<sup>220</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico".



154. The Commission also received information regarding efforts since 2017 to promote indigenous representation on national decision-making bodies before the National Electoral Institute. (INE). On this matter, the Electoral Tribunal of the Federal Judiciary resolved in favor of the INE decision which resolved that 13 of the 28 indigenous electoral districts must have a representative of that indigenous sector and that candidates may not be persons of the same gender in more than 7 districts. Following the elections held on July 1, 2018, of the 13 indigenous electoral districts, three are held by indigenous women.<sup>221</sup>

155. The Commission was also told of other activities carried out, such as the celebration of Access to Justice for Indigenous Women Days, the Forum entitled “Diálogo con los Pueblos Indígenas en el Vértice del Horizonte Nacional,”<sup>222</sup> and the Dialogue with the Indigenous Peoples of Mexico (CDPIM), which pushed for parity in the allocation of leadership positions in indigenous communities governed by traditional practices and customs.<sup>223</sup>

156. For its part, and despite its positive assessment of this information, the Commission notes with concern the deep-seated discrimination and violence still confronting indigenous women in Mexico. The IACHR observes with concern the prevalence of discriminatory, racist, and intolerant practices against women pertaining to indigenous peoples and communities; the gender violence against them, including gender-based murders; the racist and anti-feminist stereotypes that hamper their participation in politics; the lack of the institutional support needed for them to have adequate access to health care, education, and decent employment opportunities; and their increased exposure to poverty and exclusion.<sup>224</sup>

157. Based on the information available, the Commission observes the lack of a structured and coordinated strategy for designing and implementing culturally appropriate policies for preventing, investigating, punishing, and making reparation for discriminatory acts against indigenous women, and sees that as an institutional expression of the discrimination historically faced -- and still being faced -- by indigenous women in Mexico. In that context, the IACHR reiterates its recommendation to the State and urges it to make every effort to cater appropriately to the needs of indigenous women, guarantee all of them access to justice, and, as it complies with its due diligence obligations, adopt policies with a cultural diversity and gender perspective. In light of the above, the IACHR observes that compliance with this recommendation is still pending.

## 2. Children and adolescents

- Develop operational protocols for the police regarding interventions involving children and adolescents, aimed at ensuring the protection of their rights.
- Implement and strengthen measures to fulfill the duty to act with due diligence to prevent, punish and eradicate violence against children and adolescents, including efforts to fulfill the obligations to prevent, investigate, punish and repair human rights violations and consider the corresponding aggravating factors related to the age of the victim.

<sup>221</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico”.

<sup>222</sup> More than 150 indigenous representatives attended the forum entitled “Diálogo con los Pueblos Indígenas en el Vértice del Horizonte Nacional.” They took part in four working and thematic groups, one of which dealt with “Gender Equity.” Points stressed by participants included the need to boost training and awareness among public servants of gender equity and equality; guaranteeing the presence of interpreters and translators with an intercultural and gender equality perspective in both the health sector and the judiciary; disseminating the work done by CONAVIM’s Justice Centers for Women among indigenous women; compiling statistics and public policies on behalf of indigenous women; and guaranteeing their empowerment and participation in political, economic and social life. (Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico”.)

<sup>223</sup> National Electoral Institute, [Diputadas y diputados indígenas podrían impulsar agenda en el Congreso que beneficie a sus comunidades](#), September 24, 2018.

<sup>224</sup> El Universal, [Continúa discriminación y violencia contra los pueblos indígenas](#), August 9, 2018; United Nations - Committee on the Elimination of Discrimination against Women. Concluding observations on the ninth periodic report of Mexico, Convention on the Elimination of All Forms of Discrimination against Women, CEDAW/C/MEX/CO/9, 25 July 2018; FAO, [The triple discrimination faced by indigenous women](#), 12 January 2018.

158. **With regard to the development of operational protocols for the police regarding interventions involving children and adolescents, aimed at ensuring the protection of their rights,** the State informed the Commission that the Inter-Agency Working Group on Justice for Adolescents (GTI-JA) had drawn up and adopted the Protocol to govern confinement as a precautionary measure and as punishment, use of force in the detention center, security, discipline, and transfers.<sup>225</sup> It also reported that it is planning the development of a protocol to govern detention, use of force, and determination of age, without, however, stating when such a protocol would be adopted.<sup>226</sup> The State also indicated that the Executive Secretariat of the National Public Security System (SESNSP) offers several distance training options for Integral Adolescent Justice System operators.<sup>227</sup>

159. For its part, the Network for Children's Rights in Mexico (REDIM) told the IACHR that it is unaware of the existence of a state police protocol for operations involving children and adolescents, but did mention the existence of protocols for attending to children and adolescents in organized crime scenarios.<sup>228</sup> In that regard, REDIM reported that said Protocol is not taken into account by the Secretariat of the Navy, the Secretariat of National Defense, the Secretariat for Public Security, or by the Office of the Prosecutor-General of the Republic.<sup>229</sup> In its observations to the draft of this report, the State affirmed that SEMAR and SEDENA contemplate the implementation of the Protocol for the Care of Children and Adolescents in Scenarios of Organized Crime; it also indicated that protocols should be developed for the actions of the authorities responsible for security issues in relation to the guarantee of the rights of children and adolescents.<sup>230</sup>

160. The Commission appreciates the efforts being made by the State to train personnel working in contact with children and adolescents in accordance with the principle that specialized treatment is needed for them. In its observations to the draft of this report, the State indicated that in order to contribute to the effective exercise of the legal powers of the Federal and State Procurator's Offices for the Protection of Children, it has conducted 36 training workshops on social assistance centers, 6 courses on the Methodology for promoting Good Treatment for Children and 6 Workshops on the best interest of the child, among others.<sup>231</sup> In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

<sup>225</sup> Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, p. 47.

<sup>226</sup> Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, p. 47.

<sup>227</sup> One of the distance training courses mentioned was the "Refresher Course for Persons involved in the Integral Criminal Justice System for Adolescents" directed at public prosecutors' offices and police. Another was the "Initial Training Program for Preventive Police (Criminal Justice System for Adolescents)", an induction course for police. In the same communication, the State informed the IACHR that over the course of the year the National Security Commission has delivered 16 training courses on human rights through the Police Development System, which were attended by 286 Federal Police officers. The Mexican State further reported that, through the national System for Comprehensive Protection of Children and Adolescents (SIPINNA), procurators' offices for the protection of children and adolescents were being strengthened in the federative entities. Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, pp. 43-44.

<sup>228</sup> National System for the Comprehensive Development of the Family, Protocolo para la atención de niñas, niños y adolescentes en escenarios de delincuencia organizada, primer contacto, Protocolo para la atención de niñas, niños y adolescentes en escenarios de delincuencia organizada, segundo momento, and Protocolo para la atención de niñas, niños y adolescentes en escenarios de delincuencia organizada, seguimiento y articulación para la restitución de derechos, tercer momento. The aforementioned protocols were developed in connection with the Inter-agency Round Table on Attending to Children and Adolescents in Organized Crime Scenarios.

<sup>229</sup> In the same communication, REDIM mentioned the Protocol -- applicable only in Mexico City -- governing joint police unit actions for multidisciplinary attention to children and adolescents in demonstrations, crowds, and cultural, social, and sports events. Communication of the Network for Children's Rights in Mexico (REDIM), Inputs on the compliance with and follow-up to IACHR recommendations for Mexico, January 2019, p. 1.

<sup>230</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 48 y 50, p. 15.

<sup>231</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 51, p. 15.

161. Regarding the recommendation to **Implement and strengthen measures to fulfill the duty to act with due diligence to prevent, punish and eradicate violence against children and adolescents**, the State told the IACHR that all 32 federative entities have passed local laws recognizing the right of children and adolescents to live a life free from violence. It also reported that, at the municipal level, 1,667 Municipal Protection Systems had been installed for the State's 2,457 municipalities,<sup>232</sup> along with 984 "initial contact" areas responsible for providing special protection to children and adolescents. It added that, at the state level, 31 entities have state commissions on violence.<sup>233</sup> The State pointed out that the SCJN had prepared a Protocol to govern actions taken by persons administering justice in cases involving children and adolescents which stresses that the State's obligations toward this segment of the population require that they be provided not only with immediate protection but also with the comprehensive restitution of all their rights.<sup>234</sup> The State likewise underscored Mexico's accession to the Global Partnership to End Violence Against Children in 2017.<sup>235</sup> That initiative entails drawing up a 2019 - 2030 Agenda of Priorities for ending violence against children and adolescents, which is currently in preparation.<sup>236</sup>

162. The IACHR takes note of the acknowledgment by the Mexican State of technical difficulties with the process of implementing Mexico's 2017-2018 Plan of Action within the Global Partnership for ending violence against children and adolescents. As one of those difficulties, it mentioned that since said Plan had been drawn up in the penultimate year of the previous Federal Government, it had not sufficiently permeated the system in such a way as to enable all Federal Government bodies to align their programs with it and to allocate the funds needed to achieve the Plan's goals.<sup>237</sup> In its observations to the draft of this Report, the State indicated that in February 2019, within the framework of the aforementioned Plan of Action, the "Agenda of Priorities to End Violence against Girls and Boys and Adolescents 2019-2030 was prepared, in order to influence the process of planning at the national level the implementation of policies for the prevention and care of violence."<sup>238</sup>

163. The IACHR underscored the actions undertaken by the State to prevent and deal comprehensively with violence against children and adolescents. In particular, the Commission is keeping close track of the reforms under way aimed at banning corporal punishment of children and adolescents. Accordingly, the Commission has taken note of the work of the Special Commission on the Rights of Children and Adolescents of the Senate of the Republic, which has prepared a road map for analyzing legislative deficiencies, with a view to boosting the legal framework. In connection with that analysis, moves were made to amend the Civil Code and the General Law on the Rights of Children and Adolescent (LGDNNA) in a number of areas, including a ban on corporal punishment.<sup>239</sup> Based on an estimate that 63% of children and

<sup>232</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 51, p. 15.

<sup>233</sup> Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, p. 44.

<sup>234</sup> Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, p. 45.

<sup>235</sup> In particular, the State pointed out that said Partnership, which it joined in December 2018, has helped to identify a series of advances, challenges, and lacunae in both laws and public policies for ending all the forms of violence to which children and adolescents are exposed. Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, pp. 45-46.

<sup>236</sup> Communication from the Mexican State, Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015, November 2018, p. 45.

<sup>237</sup> Along the same line, the Commission also received information from REDIM about the shortage of funding and the need for a specific budget allocation to cover the operations and strengthening of the Procurators' Offices for the Protection of Children and Adolescents at the municipal, state, and federal level. Communication of the Network for Children's Rights in Mexico (REDIM), Inputs on the compliance with and follow-up to IACHR recommendations for Mexico, January 2019, p. 2.

<sup>238</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 57, p. 16.

<sup>239</sup> Mexico, Government of the Republic, [Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes](#).

adolescents have been victims at some point of corporal or psychological punishment at home, on April 24, 2018, Senators approved an expert opinion on amending the Federal Civil Code so as to strengthen the express prohibition of corporal punishment.<sup>240</sup> That expert opinion is currently pending approval by the Chamber of Deputies.<sup>241</sup>

164. At the same time, the IACHR takes note of the various campaigns against violence against children and adolescents, designed to raise awareness in society via social networks.<sup>242</sup> The Commission also appreciates that fact that a "Manual to Prevent Violence and Mistreatment of Children in the Family" is being prepared, to train health personnel to detect suspect signs and symptoms of violence and to proceed immediately to diagnose it and provide timely, comprehensive, and effective treatment in the health sector for children victims of domestic violence.<sup>243</sup> At the same time, the IACHR welcomes the information that another protocol on treating children and adolescents who are victims of violence.<sup>244</sup>

165. As regards measures adopted to comply with the obligation to make reparation for violations of the human rights of children and adolescents, the Commission takes note that the preliminary report on progress with implementing the 2017-2018 Mexico Plan of Action (*Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018*<sup>245</sup>) refers to responses to requests for intervention on behalf of children and adolescents whose human rights have been violated, as well as to plans for restoration of their rights. Nevertheless, the IACHR also observes the State's acknowledgment of obstacles to reparation.<sup>246</sup>

166. In this regard, REDIM considers that these obstacles to reparation and the restitution of rights are due to the persistence of a guardianship/child placement approach (*visión tutelar*) in the administration of justice, which it regards as one of the chief impediments to access to justice for children and adolescents.<sup>247</sup>

167. As for the situation of children and adolescents who are victims of sexual violence and the State's obligation to act with due diligence to eradicate it, the IACHR voices its concern at the impunity surrounding the "Ciudad de los Niños" shelters case. In the context of its observations on the draft 2017 Annual Report,<sup>248</sup> the State reported that the Attorney General's Office in Guanajuato (PGJEG) had started an

Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, p. 11.

<sup>240</sup> Sin Embargo, La prohibición de castigos corporales y humillantes contra menores de edad avanza en el Senado, April 24, 2018.

<sup>241</sup> Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, p. 13.

<sup>242</sup> Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, p. 19.

<sup>243</sup> Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, pp. 47-48.

<sup>244</sup> Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, pp. 53-54. One example is the awareness campaign entitled "'Por tus derechos, noviazgo sin violencia" [For Your Rights, Dating without Violence], launched in February 2018 and directed mainly at adolescent girls, with a view to preventing and eradicating violence against women. Office of the Director General of Higher Education for Teachers, "Por tus derechos, noviazgo sin violencia", 2018.

<sup>245</sup> Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018.

<sup>246</sup> On this, the Federal Attorney's Office for the Protection of Children and adolescents (PFPPNA) indicated: "One risk is possible delay in attending to applications for appraisal, given the shortage of staff for dealing with the high number of notifications (...). Another risk is posed by the still small number of people trained to conduct initial interventions involving children who are in a state of vulnerability, compared to the high number of notifications of possible violations of children's and adolescents' rights, There might be delays in preparing Plans for the Restitution of Rights and Comprehensive Protection Measures (...)" Mexico, Government of the Republic, Alianza Global para poner Fin a la Violencia contra Niñas, Niños y Adolescentes. Reporte preliminar de avances del estado de implementación del Plan de Acción de México 2017-2018, 2018, pp. 45-46.

<sup>247</sup> Communication of the Network for Children's Rights in Mexico (REDIM), Inputs on the compliance with and follow-up to IACHR recommendations for Mexico, January 2019, p. 2.

<sup>248</sup> IACHR Informe Anual 2017 de la CIDH 2017 Annual Report of the IACHR, 2017.

investigation into the facts<sup>249</sup> and that efforts to throw light on what had happened continue in accordance with the regulatory framework.<sup>250</sup>

168. Nevertheless, according to information in the public domain, the PGJEG has not yet summonsed any of the principal alleged perpetrators accused by the victims and by civil society. Nor have the responsibilities of public servants in official bodies been determined, despite reports that the abuses were committed with the complicity of officials in those government units.<sup>251</sup> Civil society organizations have likewise expressed concern at the threats reportedly received by some of the victims who filed criminal complaints, with a view to their desisting from bringing charges.<sup>252</sup> The IACHR urges the State to comply with its due diligence duty to conduct investigations into violent acts against children and adolescents, and, in particular, the facts denounced in the “Ciudad de los Niños” case. The IACHR also urges the State to punish those responsible for those crimes, make reparation to the victims, and to restore and guarantee their rights as a matter of urgency, especially in the case of the child and adolescent victims in the “Ciudad de los Niños” case.

169. With regard to the situation of children and adolescents, the Commission is also concerned at the prevalence of gender-based violence, which includes sexual crimes, dating violence, and femicides. According to data garnered by REDIM, 74% of the victims of groping and 67% of rape victims are girls.<sup>253</sup> For his part, the Secretary General of SIPINNA has stated that 76% of female adolescents report having experienced violence while dating.<sup>254</sup> On this matter, civil society organizations consider that this serious state of affairs is due, among other reasons, to the refusal by certain authorities to promptly activate the Gender Violence Against Women Alerts (AVGM).<sup>255</sup> In its observations to the draft of this Report, the State indicated that during 2018, the National System for the Integral Development of the Family (SNDIF) disseminated the Protocol of Prevention of Sexual Abuse against Children, gave a Workshop-Workshop on Raising Sexual Exploitation and made two publications on children and adolescents.<sup>256</sup> Accordingly, the IACHR urges the State to take the necessary steps to ensure prompt activation of the Gender Violence Against Women Alerts.

170. The IACHR likewise notes with concern the violent practices against children and adolescents that are socially accepted “as a form of discipline and education.” In this regard, In its observations to the draft of this Report, the State indicated that “according to the National Survey of Children and Women 2015 (ENIM), in Mexico 63% of children, from 1 to 14 years old, have experienced some method of violent discipline, of which 44% corresponds to corporal punishment and 6% to severe corporate punishment.”<sup>257</sup>

171. In light of the above, the IACHR notes that there has been substantial partial compliance with the recommendation and underscores the measures adopted to that end. The Commission particularly reiterates the need to implement and strengthen measures to comply with the State's obligations to prevent, punish, investigate, and eradicate violence against children and adolescents, as well as to make reparation for human rights violations, taking into account aggravating factors, given the age of the victim.

<sup>249</sup> The alleged crimes in the case of the “Ciudad de los Niños” shelters case were sexual violence, cruelty, forced disappearance, and trafficking in persons.

<sup>250</sup> IACHR 2017 Annual Report of the IACHR, 2017. 163.

<sup>251</sup> Animal Político, Procuraduría de Guanajuato exonera a sacerdote por presuntos abusos cometidos en Ciudad de los Niños, September 5, 2018. Red por los Derechos de la Infancia en México (REDIM), Boletín Núm. 21/2018, September 4, 2018.

<sup>252</sup> Zona Franca, Ante impunidad en caso Ciudad de los Niños, organizaciones piden intervención de la CIDH y el papa Francisco, September 4, 2018.

<sup>253</sup> Red por los Derechos de la Infancia en México (REDIM), Boletín Núm. 20/2018, August 27, 2018.

<sup>254</sup> Animal Político, Cada día son asesinados tres menores en México, alerta el Sistema de Protección a la Infancia, July 19, 2018.

<sup>255</sup> Red por los Derechos de la Infancia en México (REDIM), REDIM exige investigación civil sobre el homicidio de dos niñas y su familia en un operativo de la Marina en Tamaulipas, March 28, 2018.

<sup>256</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico.” Note OEA-00633, March 14, 2019, para. 60, p. 17.

<sup>257</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico.” Note OEA-00633, March 14, 2019, para. 60, p. 17.



#### 4. Indigenous peoples

- Adopt measures to ensure that a culturally adequate perspective, which takes into account the collective nature of indigenous peoples and communities, is considered when they or their members are victims of human rights violations.
- Guarantee the availability of translators throughout the country and at all levels of government so that indigenous peoples and their members may have access to justice when they so require it.
- Adopt necessary measures to carry out free, prior and informed consultations on projects that affect their lands

172. With regard to the recommendation to **adopt culturally adequate measures in the event of human rights violations**, the State reported the establishment of the National Commission for Dialogue with the Indigenous Peoples of Mexico (CDPIM) in 2013, as the Secretariat of the Interior's unit for liaising with indigenous persons, peoples, communities, and organizations. It pointed out that between February 2013 and October 2018, the CDPIM had conducted 1,741 inter-agency round tables to find ways of resolving the issues posed by 40 ethnic groups in 23 federative entities, mainly in connection with human and collective rights. The State also referred to cases that had been resolved and to the preparation of protocols, including, in particular, the Protocol governing the actions of persons responsible for administering justice in cases involving the rights of indigenous persons, communities, and peoples<sup>258</sup>. Nevertheless, acts of violence and murders of indigenous peoples' leaders and defenders in Mexico are still a matter of grave concern to the IACHR.

173. In 2018, the IACHR welcomed the consultation process conducted in preparation for the drafting of the protocol on protection measures for indigenous leaders and human rights defenders in Oaxaca, Mexico.<sup>259</sup> The protocol to be prepared refers to the implementation of IACHR precautionary measures to protect individuals and groups of people in Mexico.<sup>260</sup> Nevertheless, in 2018, the IACHR continued to observe the violence and insecurity to which indigenous peoples in Mexico are subjected: a state of affairs caused by failure to provide adequate recognition, the expansion of development projects, and third parties illegally asserting territorial control. In this context, the IACHR once again points out that the adoption of culturally adequate entails prevention and protection against threats to the territorial rights of indigenous peoples.

174. The IACHR remains concerned at the violence faced by leaders and defenders of indigenous peoples in Mexico. In that regard, the IACHR received abundant information about the murder of Julián Carrillo, a defender of Rarámuri human rights and leaders of the Coloradas de La Virgen community, who was hounded down and murdered by unidentified assailants on the night of October 24. That happened despite having being part of the Mechanism for Protecting Defenders and Journalists since 2014. That murder was committed weeks after members of the community had complained of the existence of a mining concession on its territory that had been granted without free, prior, and informed consultation. The IACHR likewise received information concerning the murder of Noel Castillo Aguilar on October 25, 2018 in the Barra de la Cruz community, in the municipality of Santiago Astata, Oaxaca. Noel Castillo was a defender working to protect the beaches and community land rights of the Barra de la Cruz community in Oaxaca, as well as a member of the Indigenous Peoples Defense Committee (CODEDI), an organization seeking to protect the indigenous peoples' rights to land, autonomy, and self-determination.

175. In 2018, the IACHR granted several precautionary measures on behalf of indigenous

<sup>258</sup> Communication from the Mexican State. "Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015," November 2018, pp. 47.

<sup>259</sup> IACHR, Press Release 114/18- [IACHR Welcomes Progress towards a Friendly Settlement in Case of Triqui Indigenous Human Rights Defender in Mexico](#), May 22, 2018.

<sup>260</sup> IACHR, Press Release 114/18- [IACHR Welcomes Progress towards a Friendly Settlement in Case of Triqui Indigenous Human Rights Defender in Mexico](#), May 22, 2018.

leaders and defenders in Mexico, given the threats, harassment, and other acts of violence to which they were subjected that in some cases had even led to internal displacement.<sup>261</sup> Here, the IACHR reiterates that acts of violence against human rights defenders not only impair the guarantees to which any human being is entitled; they also undermine the key role they play in society and trigger intimidation to deter them from defending human rights. Such acts are also detrimental to all the people they work for, leaving them even more vulnerable and defenseless.<sup>262</sup> The IACHR therefore repeats that for indigenous peoples the loss of a leader or defender has direct repercussions on the exercise of their other collective rights. In that regard, the Inter-American Court of Human Rights has stated that harm done to community leaders may also have a detrimental impact on the values, practices, and customs of the community or communities in which they provide leadership.<sup>263</sup>

176. In its observations to the draft of this Report, the State informed about the publication of the Law of the National Institute of Indigenous Peoples, whose purpose is to comply with this recommendation, in which indigenous peoples and communities are recognized as subjects of public law. It also establishes that the INPI will have a National Council of Indigenous Peoples, Representative Offices in the states that require it, Coordination Centers for Indigenous Peoples in each of the indigenous regions of the country. It also establishes a Mechanism for the Implementation and Protection of the Rights of Indigenous Peoples in the formulation and coordination of cross-cutting public policies.<sup>264</sup>

177. While some measures have been adopted, the IACHR notes that they are insufficient, inasmuch as they have had no concrete effect so far. That being so, the IACHR concludes that compliance with the present recommendation has been partial.

178. As regards the recommendation to *guarantee the availability of translators*, the State reported that, through the Indigenous Rights Program, the National Commission for the Development of Indigenous Peoples (CDI) has granted assistance in 7,339 cases in which the indigenous population has had to deal with the criminal justice system and/or administrative bodies. The State also reported that the National Roster of Indigenous Language Interpreters and Translators (PANITLI) lists 1,634 interpreters and translators for 79 linguistic variants of the National Indigenous Languages. The State further pointed out that thanks to the "Mexican Constitution in Your Language" project, the Constitution has been translated into 40 indigenous languages and explained in another 28. It mentioned that the Federal Public Defenders Institute (IFDP) has a unit to attend to indigenous persons comprise of 52 officials, 25 of whom serve as public defenders, while 27 are public servants providing ancillary services. Together, these civil servants provide legal counsel in 37 languages. Finally, the State added that one of the challenges encountered with regard to complying with the present recommendations is expanding the coverage of translators nationwide, with public servants with sufficient knowledge to be able to defend indigenous persons to provide interpretation or translation, as the case may be, and resolve any jurisdictional conflicts that may arise.<sup>265</sup> In its observations to the draft of this report, the State indicated that the INPI "provided 78 support with interpreters or translators in indigenous languages who participated in criminal and agrarian proceedings," and INALI has promoted 27 training processes for translators and interpreters of 131 linguistic variants, from February 2007 to March 2019, as well as training in 43 indigenous languages in the field of justice of 19 states.<sup>266</sup>

<sup>261</sup> The precautionary measures include: MC No. 685-16 on behalf of Lucila Bettina Cruz and her immediate family with respect to Mexico; MC No. 361-17 on behalf of tsotsiles indigenous communities displaced from communal land in Puebla and members of the Ku'untik' Human Rights Center with respect to Mexico; MC No. 882-17 on behalf of tsotsiles indigenous communities in Chalchihuitán and Chenalhó with respect to Mexico; MC No. 454-18 on behalf of Marbeli Vivani González López et al. with respect to Mexico, and MC No. 1165-18 on behalf of Sergio López Cantera with respect to Mexico.

<sup>262</sup> IACHR, Press Release No. 155/18 [IACHR Condemns Murders of Human Rights Defenders and Social Leaders in Colombia](#), July 19, 2018.

<sup>263</sup> I/A Court of H.R. Case of Norín Catrimán et al v. Series C No. 245, para. 357.

<sup>264</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 68, p. 18.

<sup>265</sup> Communication from the Mexican State. "Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015," November 2018, pp. 47 to 48.

<sup>266</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019. paras. 70 y 71, p. 18.

179. The IACHR welcomes the work done, through its Indigenous Rights Program, by the CDI, an entity that lends support on behalf of the indigenous population that has to deal with the criminal justice system and/or administrative bodies. The Commission likewise takes notes of the efforts being undertaken to hire interpreters and translators and to translate official documents into indigenous languages. Nonetheless, the IACHR notes that linguistic barriers persist and limit indigenous actors access to the judicial system; the number of interpreters and translators is insufficient not just in relation to the existing indigenous populations but also with respect to the variety of matters, in addition to criminal law, that require legal assistance. Under those circumstances, the IACHR urges the Mexican State to continue to strive, jointly with the indigenous peoples, to ensure that those communities can understand and make themselves understood in administrative, political, and judicial proceedings, by providing them, where necessary, with interpreters or other effective means.

180. In light of the above, the IACHR concludes that compliance with the present recommendation has been partial. Thus, although various measures have been adopted, they do not suffice, because they have not produced concrete results.

181. As regards the recommendation to **adopt measures needed to ensure free, prior, and informed consultations** with indigenous communities, the State reported that, as of February 2018, 89 consultations had begun on indigenous matters relating to development projects, constitutional amendments, and laws in the different states. Of those consultations, 39 had concluded. The State added that in March 2017, the Official Gazette (DOF) had published the Agreement establishing the rules governing prior consultation of indigenous peoples and communities, regarding actions and/or projects undertaken by the Secretariat for Agrarian, Territorial, and Urban Development and the sector coordinating or partnering with it (*así como su sector coordinado y agrupado*). The State mentioned that the Judiciary had heard cases on the subject and had set important precedents to guarantee indigenous peoples' and communities' right to consultation. As regards the existence of national mechanisms established to comply with this recommendation, the State reported that the CERD Working Group had been established to heed and follow up on recommendations made by the Committee for the Elimination of Racial Discrimination, as well as to keep track of the free, prior, and informed consultations.<sup>267</sup>

182. The IACHR welcomes the efforts under way in this area as well as the judicial precedents in keeping with international human rights law. It also takes note of the inter-agency mechanisms in place to monitor the status of free, prior, and informed consultations. Nevertheless, the IACHR observes that there are still structural issues with respect to free, prior, and informed consultation. It therefore reiterates the call made by the National Human Rights Commission of Mexico to guarantee the right of the indigenous populations to prior consultation regarding major development projects.<sup>268</sup>

183. For its part, the IACHR has received information regarding the execution of mega projects without the required free, prior, and informed consultation and about investment projects being executed, despite a court order prohibiting their continuation. The IACHR has also received background information to the effect that several consultation processes are reportedly being conducted in a manner that contravenes applicable constitutional and international standards. In those cases, there were no prior consultations. The State authorities failed to recognize the indigenous authorities and their own organizational practices, thereby triggering divisions within communities. Agreements reached in the process were not honored by State agents. Consultation was treated like a merely bureaucratic formality, particularly given the impunity surrounding the failure to execute judgments.<sup>269</sup>

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<sup>267</sup> Communication from the Mexican State. "Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to Mexico from September 28 to October 2, 2015," November 2018, pp. 48 to 50.

<sup>268</sup> CNDH México, Urge garantizar el derecho a la consulta previa a poblaciones indígenas, ante grandes proyectos de desarrollo, afirma CNDH, August 27, 2018.

<sup>269</sup> Due Process of Law Foundation (DPLF), Implementación de la consulta y consentimiento previo, libre e informado. Experiencias comparadas en América Latina y discusiones sobre una ley de consulta en México, October 10, 2018, pp. 50 to 53.

184. Against this backdrop, the IACHR takes note of the complaints filed publicly by representatives of the Mayan, Zapoteca, and Yaqui communities and of the observations of academics and researchers specializing in indigenous rights, who pointed out that the judiciary was not guaranteeing the right of indigenous communities to be consulted, which leave them defenseless against the imposition of development projects and vulnerable to constant violations of their human rights.<sup>270</sup> The IACHR likewise observes that in November 2018, indigenous communities in the municipality of Hopelchén, in Campeche, files a complaint against federal officials for having breached several administrative requirements, thereby impairing the rights of Mayan communities in connection with consultation of the indigenous community ordered by the second chamber of the SCJN in November 2015.<sup>271</sup>

185. The Commission reiterates that development activities must be accompanied by adequate and effective measures to guarantee that they are not conducted at the expense of the human rights of the persons and communities that may be particularly and adversely affected.<sup>272</sup> Here, the Inter-American Court has pointed out that "the consultation must not only serve as a mere formality, but rather it must be conceived as "a true instrument for participation," which should respond to the ultimate purpose of establishing a dialogue between the parties based on principles of trust and mutual respect, and aimed at reaching a consensus between the parties. Thus, it is an inherent part of every consultation with indigenous communities that a climate of mutual trust be established."<sup>273</sup>

186. In light of the above, the IACHR concludes that compliance with the present recommendation has been partial. While measures have been adopted, they are not sufficient for a comprehensive approach to the matter.

187. Finally, based on its monitoring during 2018, the IACHR notes that human rights violations against the indigenous peoples in Mexico continue. In that context, the violence triggered in connection with mega projects on ancestral land and territories without proper prior consultation is propitiating the criminalization of indigenous defenders and leaders. The IACHR therefore reiterates the urgent need to adopt measures to guarantee the rights of indigenous persons and peoples in connection with activities that affect their territories or when they require access to justice.

## 5. Persons deprived of liberty

- Correct the excessive use of pretrial detention, and apply it exceptionally, using other precautionary measures that do not deprive of liberty. In this context, guarantee that detained persons are immediately presented before a judge, so that detention without judicial order may be restricted in cases of alleged flagrante delicto and quasi flagrante delicto.
- Adopt all necessary measures to guarantee a strategy of reincorporation into society. In this sense, guarantee that financial resources are directed at humanizing and implementing measures that allow persons deprived of liberty to be reincorporated into society. In particular, regarding persons with disabilities, identify a strategy for social reincorporation through programs that include community service.
- Make publicly available the information regarding the standards of the American Correctional Association ("ACA") to certify prisons and penitentiaries.
- Implement normative and other measures to guarantee detention conditions that are adequate for the particular needs of groups in particularly vulnerable situations. In relation to women deprived of liberty, the State should guarantee that the adoption of corresponding measures takes into account a gender focus. Regarding persons with disability who are deprived of liberty, the Mexican State should guarantee the elimination of barriers in the surroundings that complicate the exercise of their rights,

<sup>270</sup> La Minuta, *En México no se garantiza el derecho a la consulta indígena*, November 14, 2018.

<sup>271</sup> Greenpeace, *Denuncian a funcionarios por violaciones en consulta indígena*, November 28, 2018

<sup>272</sup> IACHR, *Indigenous peoples, Afro-descendent communities, and natural resources: Human Rights Protection in the Context of Extraction, Exploitation, and Development Activities Extractive Industries Report*, 2015, para. 55.

<sup>273</sup> I/A Court of HR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*, Series C No. 245, para.185.

through reasonable accommodations.

- Adopt measures to address pretrial detention and the high levels of overcrowding. The measures may include, among others, an increase in the number of criminal judges, and the establishment of periodic review of case files to be able to identify cases with excessive duration of pretrial detention.
- Ensure that the National Criminal Sentencing Law includes international standards that guarantee the rights of persons deprived of liberty, both those who are being prosecuted and those who have been sentenced, with an emphasis on criminal due process and reincorporation into society.

188. Regarding the recommendation about **correcting excessive use of pretrial detention**, the Commission underscores the information provided by the State regarding the establishment of case law and a separate thesis (*tesis aislada*) of the SCJN determining the possibility for persons accused under a joint criminal proceedings system of requesting a review of that precautionary measure, pursuant to the content of transitory Article 5 of the National Code of Criminal Procedure.<sup>274</sup>

189. For its part, in a press release dated January 9, 2019, the Commission voiced its concern at the proliferation of constitutional and legislative amendment initiatives in Mexico seeking to broaden the range of offenses for which pretrial detention can be ordered automatically or ex officio.<sup>275</sup> That would run counter to compliance with the recommendation under review.

190. In this regard, in connection with the special session of the Congress, which began on January 16, 2019, the Chamber of Deputies debated the draft decree aimed at amending Article 19 of the Constitution, with a view to increasing the list of offenses warranting ex officio pre-trial detention. That was after the Chamber of Deputies had been sent the bill approved by the Plenary of the Senate with 92 votes in favor and 18 against on December 6, 2018. The crimes in respect of which pre-trial detention was to be applied automatically included: sexual abuse of minors, forced disappearance and disappearance committed by private individuals, any form of transportation theft (*robo de transporte*), the use of social programs for electoral purposes, offenses involving oil and gas, petroleum and petrochemical products, and corruption-related offenses. Judging by the arguments put forward by lawmakers in these debates, the main motivation for these initiatives was to satisfy citizens' demands for enhanced public security policies.

191. That being so, both the Mexican Office of the United Nations High Commissioner for Human Rights and the United Nations Working Group on Arbitrary Detention voiced their concern at the aforementioned bills.<sup>276</sup> The CNDH likewise repudiated this initiatives as entailing, among other defects, a "regression to the inquisitorial system, which was neither conducive to reinsertion into society [... nor to the presumption of innocence principle."<sup>277</sup>

192. The IACHR issues a reminder that pursuant to reiterated and constant pronouncements by the organs of the inter-American human rights system, basing application of mandatory pre-trial detention on the type of offense involved not only constitutes a violation of the right to personal liberty upheld in Article 7.3 of the American Convention;<sup>278</sup> it also makes pre-trial detention tantamount to an advance punishment,<sup>279</sup>

<sup>274</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 51-52.

<sup>275</sup> ACHR, Press Release 3/19 -IACHR Calls on the Mexican State to Refrain from Taking Legislative Measures That Run Counter to International Standards on Pretrial Detention Washington, D.C., January 09, 2019.

<sup>276</sup> Mandate of the United Nations Working Group on Arbitrary Detention, Letter Sent to the Mexican State, OL MEX 18/2018, November 30 2018, and UNHCHR, Letter to Lawmakers, OACNUDH/REP243/2018, November 7, 2018, p. 2.

<sup>277</sup> CNDH, Carta dirigida a la Presidencia del Senado, December 5, 2018, p. 11.

<sup>278</sup> IACHR, The Human Rights Situation in Honduras, OEA/Ser.L/V/II.Doc. Doc. 42/15, December 31, 2015, par. 558; I/A Court H.R. Case of Suárez Rosero v. Ecuador. Judgment of November 12, 1997. Series C No. 35, par. 98; I/A Court H.R. Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, par. 135; I/A Court H.R. Case of López Álvarez v. Honduras. Judgment of February 01, 2006. Series C No. 141, par. 81. In a manner similar to the Inter-American system, the European Court has ruled that "[a]ny system of mandatory detention on remand is per se incompatible with Article 5(3) of the [European] Convention." ECHR, Case of Ilijkov v. Bulgaria (Application No. 33977/96), Judgment of July 26, 2001 (Fourth Section), par. 84.

<sup>279</sup> CIDH, IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163.



which implies illegitimate interference of the lawmaker in the powers of appraisal for which only the judiciary has competence.<sup>280</sup> For pre-trial detention to be compatible with international standards regarding it, its application must take into consideration the right to presumption of innocence, bear in mind that it is exceptional, and be governed by the principles of legality, need, and proportionality. Accordingly, the Commission reiterates that depriving an accused of liberty can only be based on a procedural requirement, that is to say on the grounds of reasonable precautions to avoid flight or prevent obstruction of investigations.<sup>281</sup>

193. On this occasion, the IACHR reiterates its call to the Mexican State to bring its influence to bear on the respective legislative bodies to ensure that any constitutional amendment abides by inter-American norms and standards with respect to deprivation of liberty; the idea being to ensure observance of the principle of the presumption of innocence, which is the key judicial guarantee enshrined in criminal law and expressly recognized by several international human rights instruments.<sup>282</sup> In this context, and consonant with the recommendations of other United Nations bodies, the Commission, too, reiterates its call to the State to eliminate the detention requirement (*inexcusabilidad de los delitos*) for crimes contemplated in the second paragraph of Article 19 of the Constitution.<sup>283</sup> In light of the above, the IACHR observes that compliance with this recommendation is still pending.

194. Regarding the recommendation to **adopt all necessary measures to guarantee a strategy of reincorporation into society**, the IACHR points out that the most recent informant provided by the State has not been updated, with respect to its report for 2017.<sup>284</sup> For its part, the CNDH has repeatedly reported on the lack of programs for the reincorporation into society of persons deprived of their liberty in Mexican penitentiaries.<sup>285</sup> In particular, it reports that the low-capacity centers lack the infrastructure needed for the activities envisaged in the programs and do not provide a dignified environment, which would render effective social rehabilitation illusory.<sup>286</sup> In light of the above, the IACHR considers that compliance with this recommendation is still pending.

195. As for the recommendation to **make publicly available the information regarding the standards of the American Correctional Association (“ACA”) to certify prisons and penitentiaries**, the State has not provided information on measures adopted in 2018 with a view to complying with that recommendation.<sup>287</sup> For their part, civil society organizations warn of the need for transparency with respect to ACA certification standards. They complain that private sector intervention in the penitentiary sector is

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Doc. 105, July 03, 2017, par. 91; IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, par. 151; IACHR, Report on the Merits N° 86/09, Case 12.553: Merits. Jorge, Jose and Dante Peirano Basso. Uruguay. August 06, 2009, par. 141.

<sup>280</sup> IACHR, The Human Rights Situation in Honduras, OEA/Ser.L/V/II.Doc. Doc. 42/15, December 31, 2015, par. 558; IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, par. 137.

<sup>281</sup> CIDH, IACHR, Report on Measures Aimed at Reducing the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II.163. Doc. 105, July 03, 2017, par. 231. Recommendation A: “Measures of a General Nature relating to State Policy,” par. 1

<sup>282</sup> In particular, the presumption of innocence is contained in the Universal Declaration of Human Rights (Article 11.1), the International Covenant on Civil and Political Rights (Article 14.2), the American Declaration (Article XXVI), and the American Convention (Article 8.2). On this, see also IACHR, Report on the Use of Pretrial Detention in the Americas, OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, par. 16; IACHR. Report No. 50/00, Case 11.298, Merits, Reinaldo Figueredo Planchart, Venezuela, April 13, 2000, par. 118.

<sup>283</sup> IACHR, Press Release 3/19 –IACHR Calls on the Mexican State to Refrain from Taking Legislative Measures That Run Counter to International Standards on Pretrial Detention Washington, D.C., January 09, 2019.

<sup>284</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico,” pp. 51-52

<sup>285</sup> CNDH, Informe especial de la Comisión Nacional de los Derechos Humanos sobre los centros de reclusión de baja capacidad instalada en la República Mexicana, February 27, 2018; CNDH, Diagnóstico Nacional de Supervisión Penitenciaria 2017, May 2, 2018, pp. 26-8, 30, 49, 53, 58, 59, 67, 69, and 71; CNDH, Press Release DGC/243/18, “Emite CNDH recomendación general 33/2018, tendente a corregir limitaciones que contravienen el derecho de las personas privadas de la libertad a tener vinculación con el exterior,” August 26, 2018.

<sup>286</sup> CNDH, Informe especial de la Comisión Nacional de los Derechos Humanos sobre los centros de reclusión de baja capacidad instalada en la República Mexicana, February 27, 2018, par. 18.

<sup>287</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled “The Human Rights Situation in Mexico,” pp. 51-52.

surrounded with secrecy and as a result is conducive to corrupt practices.<sup>288</sup>

196. At the same time, and despite the observations regarding the lack of transparency surrounding them, the IACHR notes that the number of penitentiary establishments certified by the ACA continues to rise (as of October 2018, there were 92).<sup>289</sup> In this connection, the Legal Assistance for Human Rights Organization voices its concern that, in order to obtain more ACA certifications, the Mexican State may have developed a penitentiary police prioritizing security to the detriment of the human rights of inmates.<sup>290</sup> In light of the above, the IACHR observes that compliance with this recommendation is still pending.

197. Regarding the recommendation to **implement measures to guarantee detention conditions that are adequate for the particular needs of groups in particularly vulnerable situation, prison policies with a gender perspective, and the elimination of barriers for persons with disabilities**, the State pointed out that it had issued instructions to personnel in federal penitentiaries regarding the implementation of the 44 protocols approved by the National Conference of the Penitentiary System, which are aligned with national and international standards on the subject.<sup>291</sup> It likewise stressed that one of the challenges identified for complying with this recommendation is "keeping spaces available over the long term so as to prevent and avoid overcrowding in [...] Federal Social Rehabilitation Centers."<sup>292</sup> As for measures providing for a gender perspective, the State pointed to the long-term challenge of maintaining specialized medical care for women deprived of liberty in Federal Social Rehabilitation Center No. 16 "CPS Femenil Morelos."<sup>293</sup> On that matter, the IACHR notes that the State has not specified concrete and comprehensive measures guaranteeing the mainstreaming of a gender perspective across all facets of public policy with respect to penitentiaries.

198. For its part, the IACHR has information to the effect that that in 2018 detention conditions contrary to international standards persisted.<sup>294</sup> Thus, those conditions typically include failure to separate accused and convicted inmates; a shortage of security personnel and guards; lamentable physical conditions; inadequate infrastructure; ineffective social care programs; and a complete lack of any diversified approaches.<sup>295</sup> Also worrisome is inmates' self-governance and frequent acts of violence.<sup>296</sup> The CNDH draws special attention to the racial discrimination to which indigenous persons deprived of liberty are subjected.<sup>297</sup>

199. Regarding persons with disabilities, the State mentioned that the Federal Social Rehabilitation Center have specially fitted showers and toilets, areas for medical and psychological care, educational and social work activities, access ramps and facilities, adapted sports programs and fine motor skill stimulation activities.<sup>298</sup> The State added that on the ground floor of each cell block, there is a cell

<sup>288</sup> AsilLegal, Press Release, "[Centros penitenciarios certificados vs. derechos humanos](#)", October 2, 2018; México evalúa. [¡Alto a certificación fraudulenta y privatización de prisiones en México! La grave crisis penitenciaria exige una verdadera política pública](#). September 01, 2017.

<sup>289</sup> David Ortega, "[Corrupción y olvido imperan en penales mexicanos](#)", Debate, October 16, 2018; United States embassy and consulates in Mexico, [Quince penitenciarias mexicanas reciben reconocimiento por cumplir con normas internacionales](#); August 20, 2017.

<sup>290</sup> AsilLegal, Press Release, "[Centros penitenciarios certificados vs. derechos humanos](#)", October 2, 2018.

<sup>291</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 51 and 52.

<sup>292</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 51 and 52.

<sup>293</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 51-52.

<sup>294</sup> Human Rights Council [Working Group on the Universal Periodic Review](#), 31st session, A/HRC/WG.6/31/MEX/3, 5 to 16 November 2018, par. 26.

<sup>295</sup> CNDH, [Informe Especial de la Comisión Nacional de los Derechos Humanos sobre los centros de reclusión de baja capacidad instalada en la República Mexicana](#), February 27, 2018; CNDH, [Diagnóstico Nacional de Supervisión Penitenciaria 2017](#), May 2, 2018.

<sup>296</sup> Observatorio de prisiones, [Violencia en prisiones](#), July 16, 2018; See also, Excelsior, "Reos de Apodaca y Topo Chico protestan contra mandos de seguridad", February 23, 2018

<sup>297</sup> CNDH, [Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015](#). November 30, 2018, p.15.

<sup>298</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights

designed and fitted out for persons with disabilities.<sup>299</sup> For its part, the CNDH warns that there are, however, a number of factors that amount to mistreatment of and discrimination against persons with disabilities, including: a) the lack of a regulatory framework up to international standards; b) the lack of specialized personnel; c) inappropriate classification; and d) a lack of specific treatment programs.<sup>300</sup>

200. In light of the above, the IACHR concludes that compliance with this recommendation has been partial and reiterates to the Mexican State, as the guarantor of the fundamental rights of persons deprived of liberty, it has a legal duty to adopt concrete and urgent measures to ensure that they can exercise those rights.

201. Regarding the recommendation to **adopt measures to deal with pre-trial detention and high levels of over-crowding**, the information provided by the State addresses only the Federal penitentiary system. There it reports that there is room for more inmates, given that the penitentiaries could accommodate 38,506 people and the prison population is currently less than half that (17,970).<sup>301</sup> The State adds that, with Federal Social Rehabilitation Center No. 18 "CPS Ramos Arizpe" due to open shortly, overall prison capacity will be even larger.<sup>302</sup> For its part, CNDH reports that, while installed capacity in the national penitentiary system is larger than the number of people incarcerated,<sup>303</sup> overcrowding is still a problem at some detention centers, due to faulty classification of inmates.<sup>304</sup> The CNDH underscores the overcrowding at 48 low-capacity penitentiaries, where the situation is critical and prison conditions are awful. That Commission also draws attention to the situation in the state of Jalisco, where there are 5,668 detainees in facilities with installed capacity for 2,118:<sup>305</sup> an overcrowding ratio of 167%.

202. As regards the need to increase the number of sentence-enforcement judges, the State reports that in July 2017 General Decision (Acuerdo General) 7/2017 of the Plenary of the CJF arranged for the appointment of district court judges with sentence enforcement powers to Federal Criminal Justice Centers.<sup>306</sup> In its observations to the draft of this report, the State indicated that there are currently 26 federal judges for the execution of court decisions and 44 judges of the District of Federal Criminal Proceedings.<sup>307</sup> The information provided by the State does not mention any actions undertaken to review the files of prosecuted persons. In light of the above, the IACHR concludes that compliance with this recommendation has been partial.

203. Finally, with respect to the recommendation to ensure that the **National Criminal Sentencing Law includes international standards that guarantee the rights of persons deprived of liberty, with an emphasis on criminal due process and reincorporation into society**, the IACHR notes that the law was published on June 16, 2016<sup>308</sup> and meets international standards. Thus, UNHCHR in Mexico welcomed the passing of that law as "progress toward protecting the human rights

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Situation in Mexico," p 52.

<sup>299</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 52.

<sup>300</sup> CNDH, Situación de las personas con discapacidad psicosocial e inimputables en centros penitenciarios de la República Mexicana, February 10, 2016, pp. 20-21.

<sup>301</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 53.

<sup>302</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 53.

<sup>303</sup> The CNDH reports, in particular, room (installed capacity) for 212,082 inmates in the whole of the Mexican Republic, compared to a current prison population of 204,617. CNDH, Informe especial de la Comisión Nacional de los Derechos Humanos sobre los centros de reclusión de baja capacidad instalada en la República Mexicana, February 26, 2018, par. 20.

<sup>304</sup> CNDH, Informe especial de la Comisión Nacional de los Derechos Humanos sobre los centros de reclusión de baja capacidad instalada en la República Mexicana, February 26, 2018, par. 20.

<sup>305</sup> CNDH, Recomendación no. 18/2018, June 28, 2018.

<sup>306</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," pp. 51-52.

<sup>307</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 72, p. 19.

<sup>308</sup> Ley Nacional de Ejecución Penal, published on June 16, 2016, Article 1.

of persons deprived of liberty, as well as being an important step toward transforming Mexican criminal justice and human rights systems."<sup>309</sup>

204. In light of the above, and given that law in question meets international standards, the IACHR considers that there has been full compliance with this recommendation and urges the State to ensure that all the law's precepts enter into force and to adopt such measures as are needed to ensure adequate and prompt implementation of the rights upheld therein.

## 6. Migrants and internal forced displacement

- Comply with the series of recommendations formulated in the Report Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico.
- Create a national survey to “characterize” internal forced displacement in Mexico and, consequently, adopt a national policy and measures to provide a response to this problem in accordance with international standards on the subject, particularly the United Nations Guiding Principles on Internal Displacement.
- Adopt specific legislation at the federal and state level to address internal displacement, in accordance with the UN Guiding Principles on Internal Displacement.
- Ensure at the federal level, that there is an institution in charge of the protection of persons who are victims of forced displacement.

205. Regarding the recommendation to **comply with the series of recommendations formulated in the Report on "Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico,"** the Commission notes that the Mexican State only provided information regarding measures on migration regularization and labor rights, and the training provided. With respect to migration regularization and labor rights, the Mexican State reported that as of October 31, 2018, 9,490 Regional Visitor Cards and Border Worker Visiting Cards had been issued for nationals of Guatemala and Belize. At the same time, administrative procedures for the Temporary Migration Regulation Program (PTRM) were completed in 2018. With that, temporary (4-year) regularization was granted to 5,730 foreign nationals, while 1,493 Temporary Resident Cards were issued between January and September, 2018.<sup>310</sup> The IACHR takes a positive view of these measures given that they provide migrants with regular, orderly, and safe migrations channels as well as allowing them to stay in Mexico with recognized migration status, all of which makes them less vulnerable and better able to exercise their rights, especially economic, social, and cultural rights, such as the right to work, education, and health.

206. At the same time, the State reported that 2,970 public servants had received training on the "Protocol to Ensure Observance of the Principles and Protection of the Rights of Children and Adolescents undergoing Administrative Migration Procedures." The State also provided information regarding 22 Migrant Protection "Beta Groups" that have helped with counseling migrants, locating them, social assistance, legal counseling, and the rescue and repatriation of migrants.<sup>311</sup> The Commission acknowledges the importance of the training provided regarding the human rights of persons in a human mobility context, as recommended by the Commission. Accordingly, it urges the State to continue providing such training and to extend their scope to include such topics as the right to seek and receive asylum, access to justice for migrants, the human rights of migrants, and care for victims of serious crimes, and so on.<sup>312</sup> In its observations to the draft of this report, the State indicated that the National Migration Institute conducted several human rights training sessions, some of them to public servants, others in collaboration

<sup>309</sup> United Nations, *Noticias ONU "México: ONU acoge con beneplácito la nueva Ley Nacional de Ejecución Penal"*, August 1, 2016.

<sup>310</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 53.

<sup>311</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p 53-54.

<sup>312</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, paras. 409.4 and 409.11.

with the UN Refugee Agency, the CNDH, CONAPRED, CONAVIM and CONADIS; and others in collaboration with the International Organization for Migration, the Federal Police and INMUJERES.<sup>313</sup>

207. With regard to violations of the human rights of migrants in Mexico, civil society organizations pointed out that in 2018 the State continue to pursue its policy of monitoring and administering migratory movements from a national security, not a human rights, perspective.<sup>314</sup> They reported that migrants, asylum-seekers, and refugees face numerous obstacles to access to justice, so that these people are advised by civil society or legal representation organizations, in a context of almost complete impunity.<sup>315</sup>

208. Civil society organizations likewise reported the existence of a militarized border control system in Southeast Mexico which externalizes the southern border of the United States, shifting it to the border between Mexico and Guatemala.<sup>316</sup> On this, the Fray Matías de Córdova Human Rights Center has pointed out that border control has been stepped up (with the participation of the Armed Forces) ever since the United States contributed US\$112 million in 2014 to Plan Mérida (now called the Mesoamerican Initiative) in the form of technology to strengthen and secure the border between Mexico and Guatemala, as well as the Southern Border Program.<sup>317</sup>

209. As regards the situation of defenders of migrants' rights, the United Nations Special Rapporteur on the situation of human rights defenders expressed his concern at the risks they run, particularly those along the route taken by the "la Bestia" train, mainly due to the activities of armed groups, traffickers, and organized crime groups, who attack, extort, kidnap, and murder migrants and their defenders. The Special Rapporteur underscored information of migration officials and private security firms harassing human rights activists and defenders who help migrants, asylum-seekers, and refugees, as well as trying to discredit their work.<sup>318</sup> The Commission already drew attention to these issues in its 2013 and 2015 reports.

210. In its observations to the draft of this Report, the State indicated that "the INM delivered, until February 20, 2019, 15,662 Visitor Cards for Humanitarian Reasons, of which 11,378 were granted to Honduran nationals, 1,970 to Salvadoran nationals, 1,932 to Guatemalan nationals, 341 to Nicaraguan nationals, 12 to US nationals, 8 to Haitian nationals, 8 to Venezuelan nationals, 6 to Cuban nationals, 5 to Brazilian nationals, one to an Ecuadorian national and another to a Colombian national. In addition, the State noted that on February 26, 2019, the Mexican Commission for Refugee Aid (COMAR) and the National Institute of Migration (INM) signed the "Mechanism of Coordination of Strategic Actions" to reduce the risks that migrants could face and to expand the tools that favor the identification of possible applicants for recognition of refugee status."<sup>319</sup>

211. At the same time, the Commission has continued to monitor with concern the generalized practice of detaining undocumented ("irregular status") migrants. It has also observed the increased harshness of migration policies since the start of the Southern Border Program, announced by the Government in July 2014. Thus, according to official data, in 2018. As of November, there had been 131,931 cases of detention and 106,721 deportations: up by 51.27% and 40.66%, respectively, over the figures for

<sup>313</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019., para. 73, p. 19.

<sup>314</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, paras. 409.4 and 409.11.

<sup>315</sup> IACHR, *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*. OEA/Ser.L/V/II. Doc. 48/13. December 30, 2013, paras. 409.4 and 409.11.

<sup>316</sup> Civil Society Organizations, UPR Report 2018 [<https://colectivoepu.mx/wp-content/uploads/2018/08/informeEPUINGweb.pdf>] par. 5.

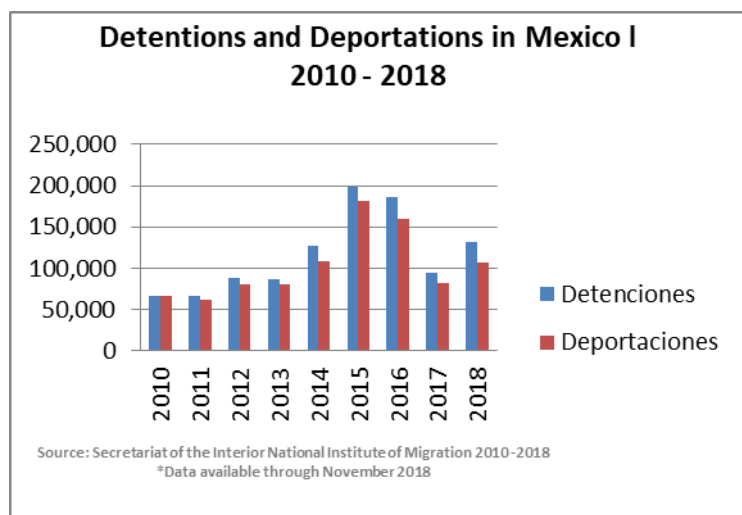
<sup>317</sup> Fray Matías de Córdova Human Rights Center, *Aportes para el Informe Anual 2018 de la CIDH, Los derechos humanos de las personas migrantes, solicitantes de refugio, refugiadas y sus familias en la frontera sur de México*, December 1, 2018., pp. 2-3.

<sup>318</sup> Report of the Special Rapporteur on the situation of human rights defenders on his mission to Mexico, 12 February 2018, [[https://www.hchr.org.mx/images/doc\\_pub/A\\_HRC\\_37\\_51\\_Add\\_2\\_EN.pdf](https://www.hchr.org.mx/images/doc_pub/A_HRC_37_51_Add_2_EN.pdf)] para. 74.

<sup>319</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 75-76, p. 19.



the same period in 2017.<sup>320</sup> Likewise, in 2018, as of November, 3,076 children and adolescents had been detained.<sup>321</sup>



212. Here, the Commission observes with concern that most of those detained and deported come from the Northern Triangle of Central America (Honduras, El Salvador, and Guatemala), countries plagued with massive human rights violations and widespread violence in certain cities and areas within those countries, mostly caused by "maras" and other gangs, so that deportation and refoulement could put people's lives at risk. In that connection, Amnesty International reported that the National Institute of Migration (INM) systematically ignores the principle of non-refoulement, which prohibits sending people back to circumstances in which they risk persecution or other serious violations of their human rights. Amnesty International reported that for 40% of the 297 people it studied there was solid evidence of a violation of the right to non-refoulement.<sup>322</sup>

213. The Commission is also concerned at the detention of children and adolescents and notes that, although Article 111 of the Implementing Regulations for the General Law on the Rights of Children and Adolescents prohibits their detention, regardless of whether or not they are traveling with an adult, the Migration Law has not been amended and, in practice, they continue to be detained in migration centers.<sup>323</sup> Here, the Commission issues a reminder that States may not resort to deprivation of the liberty of children in order to secure the purposes of a migration process nor can they justify doing so on grounds of noncompliance with requirement for entering and staying in the country, or the fact that the child is alone or separated from his or her family, or to keep the family together, particularly since they can and should have less intrusive and less harmful alternatives and at the same time accord priority to comprehensive protection of the rights of the child.<sup>324</sup>

214. The Commission also received information regarding the judgment of the Eighth District Court for Administrative Matters in Mexico City recognizing the right of civil society organizations to defend human rights and the right of persons detained in migration centers to receive legal assistance and representation. That appeal for protection under the constitution (*amparo*) has been pushed by the Mexican Commission for the Defense and Promotion of Human Rights after being refused entry by the INM for the

<sup>320</sup> Migration Policy Unit of the Secretariat of the Interior, *Boletines Estadísticos*, 2017 and 2018.

<sup>321</sup> Migration Policy Unit of the Secretariat of the Interior, *Boletines Estadísticos*, 2017 and 2018.

<sup>322</sup> Amnesty International, Mexico: *Las autoridades migratorias devuelven ilegalmente a miles de personas centroamericanas a una posible muerte*, January 23, 2018.

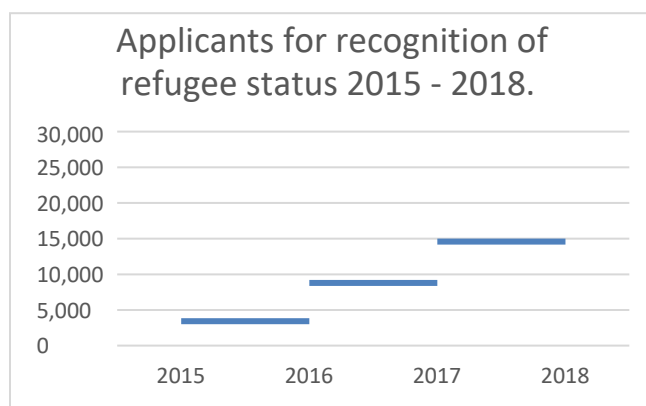
<sup>323</sup> Civil Society Organizations, UPR Report 2018 [https://colectivoepu.mx/wp-content/uploads/2018/08/informeEPUINGweb.pdf] para. 6.

<sup>324</sup> I/A Court of H.R., *Advisory Opinion OC-21/14: Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, August 19, 2014, par. 283.6.

purpose of offering and providing free legal representation services to detainees.<sup>325</sup> The Commission welcomes that judgment and reminds the Mexican State of the importance of guaranteeing access to legal representation to persons held in migration centers and their right to denounce crimes and human rights violations, so that any restrictions on civil society organizations going about their work are especially worrisome.<sup>326</sup>

215. The IACHR also issues a reminder that it is essential to safeguard autonomous and independent monitoring mechanisms, by allowing civil society organizations to have access to detention centers to ascertain conditions of detention. That includes guaranteeing them access to all the installations in detention centers; access to information and documents relating to the establishment and to the persons deprived of liberty; and the possibility of interviewing both detainees and personnel in private, as established in Principle XXIV of the Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas.<sup>327</sup>

216. As regards applications for recognition of refugee status, in 2018 the Mexican Commission for Refugee Assistance (COMAR) registered the highest ever number of persons applying for recognition of refugee status (29,600 people); of them 7,285 were children and adolescents; 13,613 were Honduran nationals, 6,386 were Venezuelans, 6,135 Salvadorans, 1,340 Guatemalans, and 1,262 Nicaraguans.<sup>328</sup> The Commission underscores and appreciates the recognition by the State of refugee status for almost all the Venezuelan nationals seeking asylum, many of them pursuant to the broader definition of refugee established in the 1984 Declaration of Cartagena.<sup>329</sup> That measure is in line with the concern expressed by the IACHR regarding Venezuelan nationals and its call to States in the region to adopt measures for providing humanitarian treatment and international protection for persons coming from Venezuela, given that country's grave humanitarian crisis.<sup>330</sup>



Source: Migration Policy Unit of the Secretariat of the Interior

217. The Commission continued to receive information from civil society organizations regarding concerns with the procedures for recognizing refugee status. They include the lack of information

<sup>325</sup> Mexican Commission for the Defense and Promotion of Human Rights, [Juez determina que INM violó derecho a defender los derechos humanos de la CMDPDH al impedir su acceso a estaciones migratorias](#), July 5, 2018.

<sup>326</sup> [Informe alternativo sobre el cumplimiento de México de la Convención Internacional sobre la Protección de los derechos de todos los trabajadores Migratorios y de sus Familiares para el Comité de los Trabajadores Migratorios y de sus Familiares de Naciones Unidas](#), p. 15.

<sup>327</sup> IACHR, Press Release 119/17 - [IACHR Expresses Deep Concern for Deaths and Detention Conditions at Migrant Detention Centers in the United States](#), Washington, D.C., August 11, 2017.

<sup>328</sup> Secretariat of the Interior, [Boletín Estadístico de la condición de refugiado en México](#), 2018.

<sup>329</sup> COMAR, [Transparencia Focalizada](#), Estadísticas 2013 - 2017.

<sup>330</sup> IACHR, Press Release 43/17 - [IACHR Concerned about Situation of Venezuelan Migrants and Calls on States in the Region to Implement Measures to Protect Them](#), Washington, D.C. January 25, 2017.

about the right to seek and receive asylum; the lack of identification of people who might need international protections; the lack of counseling and cost-free legal representation; restrictions placed on the provision of legal representation; and concern at the 30-day deadline for applying for asylum. Civil society organizations also reported a lack of regulations for actually applying the right to seek and receive asylum at airports, and maritime and land borders, as well as rejections at borders, especially of Venezuelans, Colombians, and people from the Middle East.<sup>331</sup> In its observations to the draft of this Report, the State indicated that COMAR carries out "brigades" to assist migrants, in Tijuana, Mexicali, Saltillo, and Ciudad Hidalgo, in order to provide information and distribute printed material on the right to request the recognition of refugee status.<sup>332</sup> The IACHR considers such practices reported by civil society are extremely worrisome since they risk violating the rights to seek and receive asylum, as well as the right to non-refoulement, recognized in American Convention on Human Rights.

218. The Commission was also told that since the earthquake on September 19, 2017, COMAR suspended the deadlines and terms of the procedures it was carrying out.<sup>333</sup> Thus, in December 2018, COMAR reported that it had a backlog of 22,000 applications.<sup>334</sup> Despite that situation, the Draft Expenditure Budget for 2019 cut COMAR's allocation by almost five million. Nevertheless, the Commission observes that there are plans to redistribute budget allocations so that more money is available for COMAR. In addition to that, more personnel and offices are being made available to cope with the situation.<sup>335</sup> The Commission welcomes any measures that may be taken to endow COMAR with adequate budgetary resources to guarantee people the right to seek and receive asylum on Mexican soil.

219. In addition to the above, in 2018, the IACHR monitored the three caravans of migrants and asylum-seekers that arrived in Mexico, with some 7,000 people, mostly from Honduras and El Salvador, who had opted to leave their countries for multiple reasons, including in particular the widespread violence, especially that triggered by organized crime; corruption and impunity; poverty; and lack of opportunities. Given the dangers of traveling, Central Americans decided to organize caravans intended to reach the United States and, in some cases, to remain in Mexico. The first caravan reached Mexico on October 18 and is estimated to have comprised 4,600 people from Honduras, El Salvador, and Guatemala, including many young families and more than 400 children. The second caravan consisted mainly of 1,050 Hondurans, 95% of whom were young men. The third is estimated to have been made up of 1,500 people, mostly young Salvadoran men.<sup>336</sup> According to information published by the United Nations High Commissioner for Refugees (UNHCR), by mid-November 2018, 3,331 people from the caravans had applied for asylum in Mexico.<sup>337</sup>

220. The Mexican State reported on the measures it adopted to cope with the caravans, such as several training courses and awareness campaigns, authorization of the Mesoamerican Fair in Tapachula, in the state of Chiapas, at which COMAR registered asylum-seekers; installation of the shelter in the "Palillo Martínez" Stadium in Mexico City and 4 shelters in Puebla; the organization of employment fairs in Tijuana and Mexicali, and the creation of a humanitarian bridge designed to provide humanitarian aid to people from Oaxaca to Mexico City. The State also provided information regarding the creation of the "Estás en tu casa" [Feel at Home] plan, as another regularization option, as well as the possibility of migrants returning to their country of origin. The State reported hiring 49 people to handle the situation and mentioned various

<sup>331</sup> Replies to the Consultation Questionnaire: Preparation of a report on due process and judicial protection in procedures for recognition of refugee status, supplementary protection, and statelessness by Sin Fronteras, the Fray Matías de Córdova Human Rights Center, and the Mexican Commission for the Defense and Promotion of Human Rights.

<sup>332</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 75-76, p. 19.

<sup>333</sup> Secretariat of the Interior, Acuerdo por el que se suspenden los plazos y términos de los procedimientos que lleve a cabo la Coordinación General de la Comisión Mexicana de Ayuda a Refugiados, October 31, 2017.

<sup>334</sup> Animal Político, México bate récord de solicitudes de asilo, pero recortan presupuesto para Comisión de Refugiados, December 18, 2018.

<sup>335</sup> Animal Político, México bate récord de solicitudes de asilo, pero recortan presupuesto para Comisión de Refugiados, December 18, 2018.

<sup>336</sup> UNHCR, Response to arrivals of asylum-seekers from the North of Central America, November 14, 2018.

<sup>337</sup> UNHCR, Response to arrivals of asylum-seekers from the North of Central America, November 14, 2018.

measures at the state level to safeguard the rights of migrants, including the right to health. For its part, the IACHR notes that the CNDH issued 14 precautionary measures to protect the rights of persons traveling in the caravans, including the right to seek and receive asylum, along with information and advice on how to apply. With respect to deportations of people in the caravans, the State reported that 98 foreign nationals were deported for violent behavior involving attempts to attack and harm Federal Migration agents and Federal Police officers, while "assisted returns" were arranged for 4,080 people. Finally, the State reported that prevention and protection measures had been adopted on behalf of human rights defenders and journalists.<sup>338</sup>

221. The Commission received information from civil society to the effect that during their journey migrants and asylum-seekers traveling in the caravans experienced very precarious condition, particularly as regards lack of access to food and water, health and sanitation services, and shelter, in addition to being outside and exposed to inclement weather, a rough route, and brushes with State authorities.<sup>339</sup> In addition, the arrival of the caravans prompted hostile reactions and measures by a number of authorities in countries of transit and destination, such as pronouncements about stopping the caravan, closing borders, and the arrest and deportation of some of the people in the caravans. At the same time, the caravans suffered xenophobic and discriminatory acts. Thus the IACHR noted that on November 18, 2018, a "March against the Migrant Caravan" was organized in Tijuana, Baja California, with people shouting, among other slogans, "Get out, Hondurans. We don't want you here," "Mexico for Mexicans," and "Maras get out." Water bottles were also tossed at people and the anti-riot police had to intervene to avoid acts of violence.<sup>340</sup> For his part, the Mayor of Tijuana, José Manuel Gastélum, referring to those traveling in the migrant caravans, proclaimed that "human rights were for human beings who play it straight" (*los derechos humanos son para los humanos derechos*), claiming that the migrants were belligerent and ill-behaved and were taunting the authorities.<sup>341</sup>

222. In addition, in their hearing before the IACHR on the human rights situation of persons traveling in the migrants and asylum-seekers caravan, participating organizations complained of security problems; the lack of humanitarian assistance; border management problems and the use of force; deportations with no review of international protection needs; obstacles to applying for asylum, including waiting lists in Tijuana and the United States decision to restrict asylum persons who cross borders at authorized crossing-points; xenophobia and discrimination on the part of both authorities and the general public; as well as a range of abuses and human rights violations.<sup>342</sup>

223. The IACHR also received information to the effect that there was cooperation between the United States Government and the Mexican Government that, in practice, obstructed exercise of the right to seek and receive asylum in the United States. On this, Amnesty International reported that, at least since April 2018, the U.S. and Mexican authorities have been requiring people to register in a waiting list in Tijuana, rather than allowing them to apply for asylum directly at the border. That list is coordinated by the asylum-seekers themselves and the Mexican authorities in accordance with daily U.S. limits on the number of people to be accepted on the list. Amnesty International reported that asylum-seekers without I.D.s were not allowed to be on the list of asylum-seekers and if they do not take advantage of their turn they risk losing it forever.<sup>343</sup> Amnesty documents an average wait-time of five weeks in Tijuana. It also stated that prior to the caravan, 80% of applications were by Mexican nationals.<sup>344</sup> In this regard, the Commission reminds the Mexican State that the American Convention on Human Rights recognizes the rights to freely leave any country, including one's own (Article 22.2); the right to seek and receive asylum (Article 22.7); and the right to non-refoulement

<sup>338</sup> United States of Mexico, Secretariat for Foreign Affairs, Communication from the Mexican State. Measures to protect the human rights of migrants and asylum-seekers traveling in the caravans, in response to a request for information pursuant to Article 41 of the American Convention on Human Rights, November 20, 2018.

<sup>339</sup> IACHR, Press Release No. 225/18, [IACHR expresses concern over the situation of the "Migrant Caravan" from Honduras and calls on the States of the region to adopt measures for their protection](#), October 23, 2018.

<sup>340</sup> BBC, [Caravana de migrantes en Tijuana: por qué la llegada de centroamericanos causa en la ciudad fronteriza una hostilidad contra los migrantes que no se había visto antes](#), November 19, 2018.

<sup>341</sup> El País, [El alcalde de Tijuana arremete contra la caravana de emigrantes](#), November 17, 2018.

<sup>342</sup> IACHR, Regional Hearing, "Human rights situation of the migrants in the caravan." 170th period of sessions, December 6,

<sup>343</sup> Amnesty International, [America: U.S.-government-endangers-asylum-seekers-with-unlawful-policies](#), November 26, 2018.

<sup>344</sup> Amnesty International, [America: U.S.-government-endangers-asylum-seekers-with-unlawful-policies](#), November 26, 2018.

(Article 22.8). Accordingly, the Commission calls upon the Mexican State to refrain from the aforementioned actions inasmuch as they violate those rights.

224. In its observations to the draft of this Report, the State indicated that "it does not coincide with the unilateral measure implemented by the United States authorities, regrading section 235 (b) (2) (c) of the Immigration Law and Nationality of that country, while it has endorsed its determination regarding the protection of migrants and the promotion of economic and social development that mitigates the structural causes of migratory flows". It added that "the Government of Mexico will continue to insist on the need to address the causes of migration from its roots, in the countries of origin of migrants, within the framework of the new migration policy, based on human rights."<sup>345</sup>

225. The Commission observes that the Mexican State has been adopting some measures designed to comply with some of the 69 recommendations in the report entitled "Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico," especially with regard to migration regularization programs and the granting of employment visas, training for authorities, the recognition of Venezuelan nationals as refugees under the Declaration of Cartagena definition, and measures implemented to cope with the caravans. However, the IACHR considers that given the magnitude of the situation and the lack of comprehensive information, compliance with the recommendations has been partial.

226. Now, with respect to the Commission's recommendations regarding **internal displacement**, the Commission observes that the Internal Displacement Monitoring Center reported that, toward the end of 2017, approximately 345,000 people in Mexico had been displaced due to violence. Of them, 29,000 were newly displaced on account of violent acts and 195,000 displaced as a result of natural disasters.<sup>346</sup> In 2017, Mexico was the country with the fifth largest volume of newly displaced persons, especially due to the displacement of 30,000 people as a result of the earthquake in November 2017.

227. In this regard, on February 24, 2018, the Commission granted precautionary measures on behalf of tsotsiles indigenous persons from the communities of Cruzton, Tzomolto'n, Bojolochojo'n, Cruz Cacanam, Tulantic, Bejelto'n, Pom, Chenmut, and Kanalumtic de Chalchihuitán, and the Majompepentic de Chenalhó community, in Mexico, due to the fact that they were at risk due to attacks, harassment, and threats from armed persons and due to the impairment of their rights caused by displacement from their communities of origin, to which they wanted to return.<sup>347</sup> On that same date, the Commission decided to request the adoption of precautionary measures on behalf of the tsotsiles indigenous persons displaced from communal lands in Puebla in the city of San Cristóbal de Las Casas, Chiapas and the members of the Ku'untik, Human Rights Center, in Mexico. The request for precautionary measures argues that the beneficiaries are at grave risk due to a series of threats, harassment, and acts of violence perpetrated by a group of armed individuals because of disputes of a territorial and political nature, as well as others, and due to the precarious conditions allegedly triggered by displacement.<sup>348</sup>

228. The Commission also recommended to the Mexican State that it prepare a national survey to "characterize" internal forced displacement in Mexico and, consequently, adopt a national policy and measures to provide a response to this problem in accordance with international standards on the subject, particularly the United Nations Guiding Principles on Internal Displacement. Accordingly, the Mexican State has been informing the Commission that internal displacement in Mexico does not match any of the factors associated with forced internal displacement, so that the matter should be treated from the perspective of victims of crimes and human rights violations.<sup>349</sup> For their part, in the hearing before the Commission on

<sup>345</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, para. 85, p. 20.

<sup>346</sup> Internal Displacement Monitoring Centre, *Global Report on Internal Displacement* 2017, p. 115.

<sup>347</sup> IACHR, Resolution 15/2018, Precautionary Measure No. 882-17, Tsotsiles indigenous communities of Chalchihuitán and Chenalhó, Mexico, February 24, 2018.

<sup>348</sup> IACHR, Resolution 13/2018, Precautionary Measure No. 361-17, Tsotsiles indigenous communities displaced from Puebla communal lands and members of the Ku'untik, Human Rights Center, Mexico, February 24, 2018.

<sup>349</sup> Communication from the Mexican State. Third Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico" of the Inter-American Commission on Human Rights, following its visit to



Internal Displacement and Human Rights in the Americas, national human rights organizations, including Mexico's CNDH, voiced their concern at the absence of a diagnostic assessment, statistics, legislation, and public policies focusing on dealing with the problem.<sup>350</sup>

229. Both the Inter-American Commission and the Inter-American Court have considered that the United Nations Guiding Principles on Internal Displacement are especially important for determining the scope and content of Article 22.1 of the American Convention on Human Rights in connection with internal displacement.<sup>351</sup> Thus, the I/A Court of H.R. has established that an evolving (progressive) interpretation of Article 22.1 of the American Convention supports the claim that this right can be violated not only by the existence of formal or legal constraints on circulation of the population, but also by de facto conditions preventing the population from moving around freely.<sup>352</sup> According to the Guiding Principles, States have four principal obligations toward internally displaced persons: (i) the obligation to prevent displacement; (ii) the obligation to protect and provide assistance to the displaced during the displacement; (iii) the obligation to lend and facilitate humanitarian assistance; and (iv) the obligation to facilitate the return, resettlement, and reintegration of the internally displaced persons under safe conditions.<sup>353</sup>

230. Accordingly, the Commission reiterates its recommendation to prepare a national survey (diagnostic assessment) to “characterize” internal forced displacement in Mexico and, consequently, adopt a national policy and measures to provide a response to this problem in accordance with international standards on the subject, particularly the United Nations Guiding Principles on Internal Displacement, and it considers that compliance with this recommendation is still pending.

231. As regards its recommendation to **adopt specific legislation at the federal and state level to address internal displacement, in accordance with the UN Guiding Principles on Internal Displacement**, the State has been reporting that at the state level there are two federative entities (Chiapas and Guerrero) that have passed laws on forced internal displacement.<sup>354</sup> Likewise, the Commission has welcomed the explicit recognition of the victims of internal displacement contained in Article 79 of the General Law on Victims. At the same time, it notes that inclusion of that recognition is not a full response to the needs of internally displaced persons. For that reason, the Commission reiterates its recommendation to adopt specific legislation at the federal and state level to address internal displacement in a manner based on the Guiding Principles on Internal Displacement and notes that compliance with that recommendation has been partial.

232. Finally, the Commission recommended that the Mexican State **ensure at the federal level, that there is an institution in charge of the protection of persons who are victims of forced displacement**. On this, the State provided no further information to the Commission. Therefore, compliance with the present recommendation is still pending.

## 7. Human Rights Defenders

- Strengthen the bodies in charge of protection of human rights defenders and journalists, so that their life and integrity can properly be guaranteed. At the same time, incorporate gender and multicultural perspectives in the design and adoption of protection measures for defenders and journalists.

233. In its report on *The Human Rights Situation in Mexico*, the Commission warned that, despite

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Mexico from September 28 to October 2, 2015.

<sup>350</sup> IACHR, *Internal Displacement and Human Rights in the Americas*, 167th period of sessions, March 3, 2018.

<sup>351</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 536.

<sup>352</sup> I/A Court HR. Case of Yarce et al. v. Colombia. Preliminary Objection, Merits, Reparations and Costs. Judgment of November 22, 2016, par. 214.

<sup>353</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 537.

<sup>354</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 537.

the progress associated with the adoption of the Law for the Protection of Human Rights Defenders and Journalists and the creation of the Protection Mechanism, it had received information regarding serious obstacles that threaten the effectiveness of the Mechanism and enforcement of the aforementioned law. Accordingly, the IACHR pointed out that, based on the information it had received, several of those difficulties have to do with the allocation of financial resources needed for the institution to go about its work and be guaranteed long-term financial stability; appropriate dissemination of the skills and procedures being developed; and the deployment of strategies to ensure coordination at different levels in state and federal institutions, given the perception that some of them lack the political will to cooperate.<sup>355</sup> Here, the Commission recommended that the Mexican State strengthen the bodies responsible for protecting human rights defenders and journalists, so that they can adequately guarantee their life and bodily integrity; that it guarantee their long-term financial sustainability and endow them with greater administrative autonomy; and that it encourage federative entities to cooperate. At the same time, the Commission urged the Mexican State to incorporate gender and multicultural perspectives in the design and adoption of protection measures for defenders and journalists.<sup>356</sup>

234. In its report to the Commission, the State pointed out that on June 1, 2018, the balance in the Fund for the Protection of Human Rights Defenders and Journalists was 227 million pesos. The State thus stresses that the protection measures budget increased from 20.8 million pesos in 2014 to 191.8 million pesos in 2017.<sup>357</sup> For its part, the CNDH informed the IACHR that in August 2018 it had requested the Secretariat of Finance and Public Credit to endow the mechanism with sufficient budgetary resources given the risk that by October its funds would run out, posing an imminent risk to its beneficiaries.<sup>358</sup> With respect to protection measures, the Mexican State pointed out that the number of cases reviewed and approved by the Governing Boards of the Mechanism had increased from 4 per session in 2012 to 40 cases per session in 2017. It further pointed out that the mechanism currently supports initiatives with a built-in civil society perspective and that it is pursuing a project with USAID designed to incorporate best practices into its organizational structure and its operations.<sup>359</sup> It added that the Mechanism prepared specific methodologies for individual and collective cases, with a gender perspective. In all these cases, the likelihood of beneficiaries' rights being impaired is analyzed in relation to their social, economic, family and workplace environment and that of the areas in which they live or work.<sup>360</sup>

235. With respect to implementation of strategies to ensure that the various institutions at the federal and state level coordinate with one another, the State told the IACHR about current cooperation between the Special Prosecutors' Office for Crimes against Freedom of Expression (FEADLE), the National Criminal Sciences Institute (INACIPE), the Criminal Investigation Agency, and the Federal Police aimed at forging a digital security strategy. The State also pointed to the constant coordination of efforts with FEADLE to protect against and prevent threats and acts of aggression and to the permanent sharing of information used for risk analyses within the Mechanism.<sup>361</sup>

236. The IACHR notes, with regard to funding, that in 2018 the Protection Mechanism faced a financial crisis. On November 2, 2018, the IACHR and international experts urged the Government of Mexico to adopt all measures needed to guarantee continuous and sufficient funding for the Federal Mechanism to Protect Human Rights Defenders and Journalists, so as to avoid future financial crises.<sup>362</sup> According to civil

<sup>355</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 436.

<sup>356</sup> IACHR, *Truth, Justice and Reparation: Fourth Report on the Situation of Human Rights in Colombia*, par. 539.

<sup>357</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 30.

<sup>358</sup> CNDH, *Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015 [Contribution to the review of compliance with recommendations made in the IACHR Report of 2015]*, November 30, 2018, p. 20.

<sup>359</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 30.

<sup>360</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 64.

<sup>361</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 64.

<sup>362</sup> IACHR, Press Release No. 236/18, [International Experts call upon Mexico to ensure continued and sufficient funding for the](#)

society organizations, this is the second time that the Protection Mechanism was left without funding, the first being in 2017.<sup>363</sup> The Commission issues a reminder that an integral part of the State's political commitment to its program for protecting human rights defenders is having an adequate number of staff trained to receive requests for protection, conduct risk analyses, adopt and implement protection measures, and monitor them to ensure that they are properly implemented.

237. Thus, the State must provide the budgetary and logistical resources needed to ensure that protection measures are in place for so long as the risk persists. Accordingly, the State must allocate budgetary funds to cover the costs of the personnel working in the program, as well as specific outlays related to the protection measures granted for at-risk persons, in such a way that the protection does not become a burden for for the human rights defender being protected.

238. Considering the progress made and the information regarding the financial crisis being faced by the Protection Mechanism, and given the importance of a financially stable Mechanism to ensure effective protection for human rights defenders, the IACHR considers that the Mexican State has achieved **partial compliance with this recommendation**.

## 8. Freedom of expression

- Recognize, at the highest levels of the State, the legitimacy and value of the work of journalists, and condemn attacks committed in reprisal for the exercise of freedom of expression.
- Define a single methodology to generate and publish detailed and disaggregated statistics regarding violence against journalists and investigations of attacks, as well as the protection measures adopted. Define a State authority in charge of capturing information and publishing statistics, and inform the various actors regarding the challenges that arise in the application of said methodology.
- Remove all obstacles so that, in practice, the Specialized Prosecutor's Office for Attention to Crimes against Freedom of Expression (FEADLE) may absorb investigation of crimes against journalists and against freedom of expression. This way, make more effective the exercise of federal jurisdiction over crimes within its competence and guarantee that the most serious violations of freedom of expression are always investigated by that Office.
- Maintain the FEADLE's character as a specialized prosecutor's office and vest it with sufficient financial and human resources so that it may achieve its objectives.
- Adopt special protocols for the investigation of murders pursuant to which the hypothesis of a relation to the journalistic profession is exhausted completely.
- Improve the existing relation between the federal and state jurisdictions with the objective of avoiding competence conflicts that impede or delay investigations.
- Allow victims, their families and, when applicable, assisting third parties to participate in the criminal processes with full guarantees, both for the search of the truth and for clarifying the facts, as well as at the time of demanding reparations.

239. In its report on *The Human Rights Situation in Mexico* and in its first follow-up report on the recommendations it contained, the IACHR voiced its concern at the sharp increase in attacks of all kinds, including murders, of journalists and media workers in Mexico. This Commission observes and maintains its consternation at the ongoing violence against journalists and media. At least 12 journalists were murdered account of their work. Other kinds of attacks also persist, such as threats, physical assaults, intimidation, harassment, and so on. The IACHR condemns those acts and points to the existence of a pattern of violence geared to obliterating the free circulation of information on topics of public interest and attacking those who exercise their right to freedom of expression. The IACHR also received information regarding attempted murders of journalists and about the disappearance of one of them. At the same time, what is particularly worrisome is information pointing to the alleged involvement of government officials and political leaders in

Protection Mechanism for Human Rights Defenders and Journalists in Mexico, November 8, 2018.

<sup>363</sup> Espacio OSC, El Espacio OSC hace un llamado al Gobierno federal para dotar de recursos y garantizar el funcionamiento del Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas, August 29, 2018

attacks on journalists.

240. In its observations to the draft of this Report, the State highlighted the coordination between the local prosecutor's offices and the Attorney General's Offices for the investigation of crimes against freedom of expression. In addition, it indicated that the CEAV has provided legal representation in 10 cases where the Special Office of the Prosecutor for the Care of Crimes Committed against Freedom of Expression (FEADLE) has tried in the New Criminal Justice System.<sup>364</sup>

241. The IACHR observes that those violent episodes occurred in a context of marked confrontation between political leaders in the electoral process that began in September 2017. Between the start of the election campaign and the general elections held on July 1, 2018, there were about one hundred politically motivated murders. In that context, too, there were dozens of attacks on journalists because of their coverage of the electoral process.

242. As the IACHR pointed out in its report on *The Human Rights Situation in Mexico* and in its first follow-up report on the recommendations it contained, the high levels of impunity surrounding crimes against journalists are a matter of utmost concern to the IACHR and its Special Rapporteurship. Both the Commission and the Inter-American Court have referred to the chilling effect of crimes against journalists on other media professionals as well as on other citizens wanting to report the abuse of power or other illicit acts of any kind.<sup>365</sup> This cowering effect can only be overcome by decisive action of the State to punish those responsible, pursuant to its obligation under both international and domestic law.<sup>366</sup>

#### a. Murders, disappearances, and attacks

243. Regarding the recommendation to **recognize, at the highest levels of the State, the legitimacy and value of the work of journalists, and condemn attacks committed in reprisal for the exercise of freedom of expression**, the IACHR received information about specific pronouncements by certain authorities, such as the governors of some Mexican states, on crimes against journalists. Nevertheless, based on the widespread violence observed, the IACHR deems it vital for the highest-level authorities to continue making public statements that help prevent violence against journalists and convey recognition of the work they do. In their declarations they should publicly condemn murders and any physical violence against journalists and eschew any statements that might increase the risk to journalists. The IACHR received information to the effect that, in January, the Governing Board of the Mechanism to Protect Human Rights Defenders and Journalists adopted a paper entitled "Guidelines for Recognizing the Work of Human Rights Defenders and Journalists" that echoes some of the recommendations made by the Special Rapporteurship for Freedom of Expression. According to the information published, "those guidelines constitute a public policy tool mainly addressing public servants, aimed at establishing the criteria, contents, and procedures for actions and for sending messages that explicitly recognize the work done by human rights defenders and journalists and help prevent attacks on them and that serve not only to protect them but also to strengthen the rule of law and democracy."<sup>367</sup> For the IACHR it is crucial that this document's suggestions be implemented appropriately and accompanied by constant training in the guidelines it offers, which constitute a timely and preventive response to the risky and unsafe environment in which journalists go about their

<sup>364</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA-00633, March 14, 2019, paras. 86 y 87, p. 21.

<sup>365</sup> I/A Court HR. *Case of Vélez Restrepo and Family v. Colombia. Preliminary Objection, Merits, Reparations, and Costs*. Judgment of September 03, 2012. Series C No. 248, par. 148; IACHR. Report No. 136/10. Case 12,658. Luis Gonzalo "Richard" Vélez Restrepo and Family (Colombia). October 23, 2010, par. 136; IACHR Report No. 50/99. Case 11.739. Héctor Félix Miranda (Mexico), April 13, 1999, par. 52; IACHR, Report No. 130/99, Case 11.740, Víctor Manuel Oropeza (México), November 19, 1999, par. 58. See also, IACHR, 2010 Annual Report, Report of the Special Rapporteur for Freedom of Expression. Chapter II: Special Report on Freedom of Expression in Mexico 2010. OEA/Ser.L/V/II. Doc. 5. March 07, 2011, par. 716.

<sup>366</sup> IACHR Report No. 136/10. Case 12,658. Luis Gonzalo "Richard" Vélez Restrepo and Family (Colombia), October 23, 2010, par. 136; IACHR, Report No. 50/99, Case 11.739, Héctor Félix Miranda (Mexico), April 13, 1999, par. 52; IACHR Report No. 130/99. Case No. 1.740, Víctor Manuel Oropeza (Mexico), November 19, 1999.

<sup>367</sup> Mexico. Mechanism to Protect Human Rights Defenders and Journalists. [Lineamientos para el Reconocimiento a la Labor de Personas Defensoras de Derechos Humanos y Periodistas](#).

work today.

244. The IACHR and its Special Rapporteurship observe with concern the surge in violence against journalists for reasons related to their work in a context of pervasive violence. Despite steps taken by the State, the violence against journalists continues, particularly in the form of murders for reasons directly related to their work as communicators. The following were murdered in 2018: journalist Carlos Domínguez, in the city of Nuevo Laredo, in the state of Tamaulipas, on January 13;<sup>368</sup> blogger Leslie Ann Pamela Montenegro del Real in the Costa Azul district, in the municipality of Acapulco, on February 5;<sup>369</sup> Leobardo Vázquez Atzin, on March 21 in Gutiérrez Zamora;<sup>370</sup> radio and television journalist Juan Carlos Huerta Martínez in Villahermosa, in the state of Tabasco, on May 15;<sup>371</sup> journalist Héctor González Antonio, whose body was found on May 23 on a plot of land in the Estrella district in Ciudad Victoria, in the state of Tamaulipas;<sup>372</sup> María del Sol Cruz Jarquín, on June 2, in Juchitán, Oaxaca;<sup>373</sup> journalist José Guadalupe Chan Dzib in Cancún, in the state of Quintana Roo, on June 29;<sup>374</sup> journalist Rubén Pat, in Playa del Carmen, in the municipality of Solidaridad, in the state of Quintana Roo, on July 24; journalist Mario Leonel Gómez Sánchez in Yajalón, in the state of Chiapas, on September 21; Gabriel Soriano Kuri, on October 24, in Acapulco, Guerrero;<sup>375</sup> Alejandro Márquez Jiménez, whose body was found near the airport in the municipality of Tepic, in the state of Nayarit, on December 1;<sup>376</sup> and Diego García Corona, in the municipality of Ecatepec, in Mexico state, on December 4.<sup>377</sup>

245. The IACHR was likewise told that journalist Agustín Silva, who disappeared on January 21, is still missing. According to the information available, on that day the journalist was due to meet with a source as part of a journalistic investigation he was engaged in. The next day, his car was found in a community called El Morrito, in the municipality of Asunción Ixtaltepec, in the state of Oaxaca, and there was no word of his whereabouts.<sup>378</sup>

246. During 2018, the IACHR continued to receive information showing a context and pattern of violence against journalists related to their work. Death threats, physical assaults, harassment, and intimidation were reported throughout the year. Some episodes had to do with the electoral context. The IACHR is concerned also by information pointing to the involvement of public servants in acts of violence against the press.

247. Civil society organizations have counted nearly 200 attacks on journalists. For example, the Rompe el Miedo [Overcome the Fear] platform, coordinated by Artículo 19, Data Cívica, R3D, and

<sup>368</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. January 19, 2018. [Press release R5/18. Office of the Special Rapporteur Condemns Murder of Journalist Carlos Domínguez in Mexico and Urges the State to Investigate Connection to Journalistic Activity.](#)

<sup>369</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. February 14, 2018. [Press release R28/18. Office of the Special Rapporteur Condemns Murder of Citizen Journalist in Mexico. Urges Authorities to Investigate Relationship to Publications and Punish Perpetrators.](#)

<sup>370</sup> UN News. Mexico December 04, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>371</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. May 24, 2018. [Press Release R115/18. Office of the Special Rapporteur Condemns Murder of Journalist in Mexico and Urges the State to Investigate Connection to Journalistic Activity.](#)

<sup>372</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 01, 2018. [Press Release R125/18. The Office of the Special Rapporteur condemns the murder of journalists in Mexico and notes with concern the situation of violence against media workers.](#)

<sup>373</sup> UN News. Mexico December 04, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>374</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 01, 2018. [Press Release R125/18. The Office of the Special Rapporteur condemns the murder of journalists in Mexico and notes with concern the situation of violence against media workers.](#)

<sup>375</sup> UN News. Mexico December 04, 2018. [ONU condena el asesinato del periodista Alejandro Márquez en Nayarit.](#)

<sup>376</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2018. [Press release 263/18. Office of the Special Rapporteur Condemns Murder of Journalists in Mexico and Calls on New Government to Redouble Efforts to Prevent Violence against Journalists.](#)

<sup>377</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. December 13, 2018. [Press release 263/18. Office of the Special Rapporteur Condemns Murder of Journalists in Mexico and Calls on New Government to Redouble Efforts to Prevent Violence against Journalists.](#)

<sup>378</sup> UN News. Mexico January 30, 2018. [ONU llama a autoridades a intensificar búsqueda del periodista Agustín Silva.](#)



SocialTic,<sup>379</sup> registered 185 attacks of different kinds against journalists, where the work they were doing was the main motive for the crime.<sup>380</sup>

248. The IACHR received information that on September 27, the National Commission on Human Rights condemned the attack on journalist Deimos Sánchez and his family by officials of the State Investigation Agency of the state of Oaxaca.<sup>381</sup> The IACHR and its Special Rapporteurship were also told of the allegedly arbitrary arrest of journalist Enrique Castro of *De peso*, on September 18, by the Municipal Police in Benito Juárez, in the state of Quintana Roo, just as he was covering a murder that had been committed. Reportedly, he was also subjected to maltreatment rated as "torture."<sup>382</sup>

249. The IACHR and its Special Rapporteurship received information regarding the attempted murder of journalist Rodrigo Acuña Morales, on November 23, in the state of Veracruz. He was left seriously wounded after two individuals shot at him.<sup>383</sup> Likewise, the IACHR was told about an act of intimidation using firearms against journalist Ana Ledezma on November 20, in Cozumel, in the state of Quintana Roo.<sup>384</sup>

250. According to the information available, in the afternoon of December 20, unknown persons left a cooler containing human remains opposite the offices of the *Expreso* daily newspaper in the city of Victoria, in the state of Tamaulipas, together with a message threatening the newspaper.<sup>385</sup> The National Commission of Human Rights expressed its concern and called upon the authorities to provide the necessary protection. That organization also stressed that Tamaulipas and the state of Guerrero post the second highest number of murders of journalists.<sup>386</sup>

251. For their part, regarding the electoral context, Reporteros Sin Fronteras and Propuesta Cívica reported 45 attacks on journalists between January and May, along with 4 attacks on media, related to the elections. Sixteen of the attacks were against women and 29 against men. Among the most serious attacks reported were 8 cases of threats, 7 beatings, 6 cases of defamatory campaigns, and 4 cases of legal harassment.<sup>387</sup> For its part, Artículo 19 registered at least 60 attacks on journalists.<sup>388</sup>

252. In light of the above and analysis thereof, compliance with this recommendation was partial. The IACHR urges the State to adopt effective and concrete protection measures, as a matter of urgency, to guarantee the safety of those exposed to special risk for exercising their right to freedom of expression, regardless of whether the threats come from State agents or private individuals. The measures need to guarantee that journalists will be able to practice their profession and exercise their right to freedom of expression. Likewise, the State must take steps to ensure that media workers who were forced to move away or go into exile because of the risk they were in can safely return to their homes. Should that not be

<sup>379</sup> Artículo 19. June 28, 2018. [Libertad de expresión afectada durante campañas: 81 agresiones contra la prensa y acoso de autoridades electorales](#). See: <https://informaterompeelmiedo.mx/integrantes/>

<sup>380</sup> Red Rompe el Miedo. Available at: <https://informaterompeelmiedo.mx/integrantes/>

<sup>381</sup> National Commission on Human Rights (CNDH). [Press Release DGC/282/18](#). September 27, 2018.

<sup>382</sup> Artículo 19. September 20, 2018. [Reportero es detenido arbitrariamente y sometido a tortura en Benito Juárez, Quintana Roo](#).

<sup>383</sup> RSF. November 26, 2018. [Veracruz- Hieren de gravedad al periodista Rodrigo Acuña Morales, tras un intento de asesinato](#); RSF. November 27, 2018. [RSF pide a las autoridades mexicanas que investiguen el intento de asesinato del periodista Rodrigo Acuña Morales](#); Zona Franca. November 23, 2018. [Rodrigo Acuña Morales, reportero del Diario de Tepetzintla, es atacado a balazos en Veracruz](#).

<sup>384</sup> Maya sin frontera. November 22, 2018. [Intentan asesinar a la periodista Ana Ledezma en Cozumel](#); Diario19. November 23, 2018. [Se pronuncia y demanda "Colectivo Marea Verde", Quintana Roo en favor de la periodista Ana Ledezma Canaan](#).

<sup>385</sup> Univisión Noticias. December 21, 2018. [Una hielera con una cabeza humana y el mensaje "Esto es lo que les puede pasar": así amenazan a un diario mexicano](#); Animal Político. December 20, 2018. [Periódico Expreso de Tamaulipas recibe amenazas frente a sus instalaciones](#).

<sup>386</sup> National Commission on Human Rights (CNDH). [Solicita CNDH medidas cautelares al Gobierno de Tamaulipas para proteger a los colaboradores del periódico Expreso, ante los mensajes amenazantes y la localización de una cabeza humana en las inmediaciones de ese rotativo](#). December 21, 2018.

<sup>387</sup> Propuesta Cívica. [#AlertaPrensa Monitoreo de agresiones contra la prensa en contexto electoral](#).

<sup>388</sup> Artículo 19. June 22, 2018. [A través de videos en redes sociales, periodistas de Torreón son víctimas de intimidación, desprestigio y amenazas](#).

possible, States must adopt measures that enable them to stay in a place of their choice under dignified conditions, protected by security measures and provide with the financial support needed to keep their jobs and sustain family life.

253. For the IACHR, it is vital that the Mexican State thoroughly, effectively, and impartially investigate the murders of journalists and throw light on the motives behind them, as well as juridically determine any connection those murders may have to journalistic activities and freedom of expression. The authorities must not preclude the practice of journalism as a motive for the murder and/or attack before the investigation has concluded.

254. By international human rights standards, the Mexican State is not only obliged to guarantee that its agents do not perpetrate acts of violence against journalists; it must also take reasonable steps to prevent attacks by private persons when it is aware, or should be aware, of the risk. The ninth principle in the IACHR Declaration of Principles on Freedom of Expression establishes that: "[t]he murder, kidnapping, intimidation of and/or threats to social communicators, as well as the material destruction of communications media violate the fundamental rights of individuals and strongly restrict freedom of expression. It is the duty of the state to prevent and investigate such occurrences, to punish their perpetrators and to ensure that victims receive due compensation".

255. Regarding the recommendation to **define a single methodology to generate and publish detailed and disaggregated statistics regarding violence against journalists and investigations of attacks, as well as the protection measures adopted and define a State authority in charge of capturing information and publishing statistics, and inform the various actors regarding the challenges that arise in the application of said methodology**, the State informed the IACHR that the statistical programs of INEGI include: the State Justice Administration Census, which provides information about crimes committed against human rights defenders and journalists that were reported to any justice administration authority at the state level" and "the National Human Rights Censuses at the federal and state level, which compile data on complaints filed for human rights violations against journalists." The State also reported that "an instrument is being developed in INEGI to gather private information on crimes and human rights violations against journalists, trade unionists, and human rights defenders. So far the instrument is geared to garnering information about the persons attacked, alleged violations derived from the files containing the complaints, the overall status of the file, and the types of crimes derived from the complaint and/or investigation process." The State added that "this instrument is expected to form the basis for an administrative register of human rights violations and crimes committed against journalists, trade unionists, and human rights defenders." Finally, the State mentioned that "the Protection Mechanism for Human Rights Defenders and Journalists, through the Prevention, Follow-up, and Analysis Unit and in collaboration with the Economic Research and Teaching Center (CIDE) and the Office of the President of the Republic, has developed a methodology for monitoring attacks and threats against journalists."<sup>389</sup>

256. As for the numbers of murders of journalists, federal institution databases differ. According to information in the public domain, as of October 3, the Protection Mechanism for Human Rights Defenders and Journalists had registered 15 murders of journalists.<sup>390</sup> According to statistics published by FEADLE, as of September, 7 murders of journalists related to their profession had been perpetrated.<sup>391</sup>

257. Based on the IACHR assessment, **compliance with the recommendation has been partial**. It is vital that States commit to keeping up-to-date and disaggregated statistics on violence against journalists. There can be no effective public policy if there is no clear knowledge of the characteristics of the phenomenon, which journalists are most vulnerable, where most risks are posed, who the aggressors are, and

<sup>389</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

<sup>390</sup> United Mexican States. Mechanism to Protect Human Rights Defenders and Journalists. [Personas Periodistas Asesinadas 2018](#). Undated.

<sup>391</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) Available at: [https://www.gob.mx/cms/uploads/attachment/file/397907/ESTADISTICAS\\_Sep\\_2018.pdf](https://www.gob.mx/cms/uploads/attachment/file/397907/ESTADISTICAS_Sep_2018.pdf)

the areas where this kind of violence is most prevalent, to mention just some of the indicators. Such information will be at the heart of any comprehensive policy to address the issue. Having a breakdown of up-to-date statistics means that actions can be taken early enough to prevent risks materializing.<sup>392</sup> Based on its assessment, the IACHR considers that compliance with the recommendation has been partial.

## b. Administration of justice and impunity

258. In its report on The Human Rights Situation in Mexico and its first follow-up report on the recommendations it contained, the IACHR acknowledged the Mexican State's efforts to adjust its regulatory framework and its institutions to address the challenge posed by impunity. However, it pointed out that reforms are ineffective when, in practice and despite the fact that victims and society in general are clamoring for justice, there is no response and, on the contrary, impunity rates continue to rise. That, in a context of constant, ongoing crimes and attacks on the press, sends a wrong message that there are no punishments for those who assault the press, leaving journalists and media workers defenseless.

259. The Commission has recognized efforts by the Mexican State to address the issue of impunity, which have translated into legislative amendment and the establishment of investigative units, such as the Special Public Prosecutors' Office for Crimes Committed against Freedom of Expression (FEADLE). In May 2013, the National Congress adopted a legal amendment regulating the jurisdiction (*facultad de atracción*) of the Federal Public Prosecutors' Office (Ministerio Público Federal)<sup>393</sup> and the competence of the federal justice system to prosecute and try crimes committed against journalists, persons or institutions, that "impair, restrict, or erode the right to information or freedoms of expression or the press."<sup>394</sup> The purpose of that amendment was to overcome the legal obstacle to FEADLE assuming competence and being more effective in throwing light on cases that may be linked to the exercise of journalism. However, the IACHR points in its recommendations to the need to eliminate the obstacles that in practice prevent FEADLE from handling cases of crimes committed against journalists and freedom of expression.

260. Regarding the recommendation to **remove all obstacles so that, in practice, the Specialized Prosecutor's Office for Attention to Crimes against Freedom of Expression (FEADLE) may absorb investigation of crimes against journalists and against freedom of expression and in that way, make more effective the exercise of federal jurisdiction over crimes within its competence and guarantee that the most serious violations of freedom of expression are always investigated by that Office**, the IACHR welcomes the progress made by the State in a number of aspects that will be described below.

261. According to information provided by the State, "based on implementation of the adversarial criminal justice system in the FEADLE, from February 2016 through July 31, 2018," use was made of FEADLE's authority to absorb and handle 11 investigations in Chihuahua, Coahuila, Guerrero, Jalisco, Puebla, San Luis Potosí, Sinaloa, Veracruz, and Yucatán"; "prosecution was initiated in 16 cases, with 23 persons being tried in Baja California, México, Nayarit, Quintana Roo, San Luis Potosí, Sinaloa, Tabasco, Tlaxcala y Yucatán"; agents in the Federal Public Prosecutors' Office requested 62 investigation techniques, 24 in 2017 and 38 thus far in 2018, an increase of 36%"; "between January 2017 and June 2018 agents of the Federal Public Prosecutors' Office were present at 78 hearings: 29 in 2017 and 69 in 2018, an increase of 67%"; "14 cases were resolved using alternative dispute settlement mechanisms"; "4 reparation agreements are being processed by the Decentralized Administrative Organ Specializing in Alternative Dispute Settlement Mechanisms in Criminal Matters (OEMA)"; "between July 2017 and July 2018, three convictions were handed

<sup>392</sup> IACHR, [Annual report for 2016. Report of the Office of the Special Rapporteur for Freedom of Expression](#), Chapter IV (SILENCED ZONES: Highly Dangerous Areas for the Exercise of Freedom of Expression). OEA/Ser.L/V/II CIDH/RELE/INF.16/17. March 15, 2017.

<sup>393</sup> United Mexican States. Decree amending and adding various provisions of the Federal Code of Criminal Procedures, the Organic Law of the Federal Judiciary, the Organic Law of the Office of the Prosecutor-General of the Republic, and the Federal Criminal Code. May 03, 2013.

<sup>394</sup> United Mexican States. Decree amending and adding various provisions of the Federal Code of Criminal Procedures, the Organic Law of the Federal Judiciary, the Organic Law of the Office of the Prosecutor-General of the Republic, and the Federal Criminal Code. May 03, 2013.

down, bringing the total to 6 (another 3 had been handed down between 2010 and 2017)."

262. The IACHR also took note of the 2017-2018 report of the Office of the Prosecutor-General of the Republic (PGR), which mentions that "between September 1, 2017 and June 30, 2018, 56 investigation files (*carpetas de investigación* - CI) were started in FEADLE and 15 on account of lack of internal jurisdiction (*incompetencia interna*) of other areas in the PGR: of those, 38 were for threats, 10 for homicide, nine for robbery; six for bodily harm, two for illicit access to computers and systems, three for illegal deprivation of liberty, two for misuse of office, one for harm done to another's property, one for interception communications, and one for tampering with mail."<sup>395</sup> The report also shows FEADLE engaging in administration of justice activities. Thus, based on the report, "the authority to absorb/handle cases was used in five investigations: in Chihuahua, Coahuila, Puebla, Sinaloa, and Yucatán"; 19 people were held for trial and six individual warrants were obtained"; "in coordination with state prosecutors' offices, 23 arrest warrants were obtained in eight investigations into homicides"; agents from the Federal Public Prosecutors' Office attached to FEADLE requested 47 investigative techniques (38 oral and nine in writing)"; agents from the Federal Public Prosecutors' Office attached to FEADLE attended 77 hearings." In addition, the report underscores a series of other activities performed.<sup>396</sup>

263. The IACHR was also informed that on March 27 the Attorney General's Office of the state of Veracruz reported that two people responsible for the 2015 murder of journalist and activist Moisés Sánchez Cerezo had been sentenced to 25 years in prison. According to the information received, those convicted "had pertained to the Municipal Police of Medellín."<sup>397</sup> For its part, on April 27, the Office of the Prosecutor-General of the Republic (PGR) that it had absorbed/taken on the investigation into the murder of journalist Miroslava Breach. In that particular case, the criminal division of the Higher Court of Justice of Chihuahua approved the ruling of a supervisory judge declaring the PGR competent to hear the case on the murder of the journalist.<sup>398</sup> In another case, on June 12, the PGR reported that the Special Public Prosecutors' Office for Crimes Committed against Freedom of Expression (FEADLE) had analyzed more than 5,000 articles in connection with the investigation into the murder of journalist Javier Valdez.<sup>399</sup>

264. Finally, the IACHR underscores the fact that, on July 31, the United Nations Human Rights Committee resolved that the Mexican State had violated the right to freedom of expression and other human rights of journalist Lydia Cachom who arbitrarily detained and tortured by police in 2005. The reason for her detention was the publication of the book entitled *Los demonios del Edén* [The Devils of Eden], in which the journalist revealed that businessmen and public servants were involved in child sexual exploitation networks. The resolution ordered the Mexican State to guarantee the right to justice, truth, and reparation. The resolution derived from a petition lodged by *Artículo 19* in 2014.<sup>400</sup> The IACHR urges the State to adopt the measures needed to guarantee adequate reparation, access to justice, and a diligent, effective, and impartial investigation that secures the right to truth and identification of the perpetrators and instigators, pursuant to the obligations arising out of the Human Rights Committee resolution.

265. Based on the IACHR assessment, **compliance with the recommendation has been partial**. Accordingly, the IACHR urges the State to further advance the measures adopted and strengthen the institutional power and capacity of FEADLE to comply with its mandate.

<sup>395</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [6to Informe de Labores 2017-2018](#). [2017-2018 Activities Report] September 01, 2018.

<sup>396</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [6to Informe de Labores 2017-2018](#). [2017-2018 Activities Report] September 01, 2018.

<sup>397</sup> United Mexican States. Attorney General's Office of the state of Veracruz [Obtiene FGE sentencias condenatorias contra dos homicidas de periodista y activista Moisés Sánchez](#). March 27, 2018.

<sup>398</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [Press release 410/18. Confirman que PGR atrae investigación del homicidio de la periodista Miroslava Breach](#). Undated.

<sup>399</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [Press release 646/18. Analiza FEADLE más de cinco mil notas periodísticas relacionadas al caso Javier Valdez](#). Undated.

<sup>400</sup> UN News. Mexico August 03, 2018. [ONU reconoce violaciones a los derechos de la periodista Lydia Cacho](#).

266. As regards the recommendation to **maintain FEADLE as a specialized prosecutor's office and vest it with sufficient financial and human resources so that it may achieve its objectives**, the IACHR acknowledges the progress made by the State at the federal level with strengthening FEADLE. Nevertheless, given the impunity surrounding crimes committed against journalists because of their work, challenges and a number of issues persist to ensure headway with the investigations. In that regard, the IACHR received information about moves by the PGR resulting, according to the 2017-2018 report, in an increase in 2018 of personnel in the Public Prosecutors' Office (*Ministerio Público*) as one of the steps taken to guarantee freedom of expression and protection for journalists.<sup>401</sup> On this last development, the State reported to the IACHR that "as a result of the commitment to strengthen the Special Public Prosecutors' Office for Crimes Committed against Freedom of Expression (FEADLE), staffing at the Federal Public Prosecutors' Office was increased from 10 public servants in 2010 to 22 for 2018."<sup>402</sup>

267. The State likewise informed the IACHR about the establishment of the Contextual Analysis Unit in FEADLE "responsible for analyzing the journalistic work of the victims of attacks and its links to the political and criminal situation of the region."<sup>403</sup>

268. The Commission notes that, according to the National Commission on Human Rights, of the various crimes against journalists, "in only 10% of cases was a conviction handed down; for the other 90% impunity was the outcome. In cases involving the disappearance of journalists and attacks on media installations, the impunity rate is 100%."<sup>404</sup>

269. Based on the IACHR assessment, **compliance with the recommendation has been partial**. For the IACHR, the mandate assigned to FEADLE is a fundamental ingredient of efforts to combat the impunity surrounding crimes against journalists. At the same time, it needs to be endowed with the human and material resources required to fulfill its mandate. The IACHR urges Mexican State authorities to step up and continue to boost the legal powers granted to FEADLE to conduct inquiries and legal proceedings relating to crimes against journalists, and to adopt far-reaching measures to combat impunity.

270. Finally, the IACHR issues a reminder that one of the factors that continues to let crimes against journalists go unpunished is failure to exhaust the line of investigation regarding the exercise of the victim's profession, because that hampers criminal prosecutions and helps masterminds go unpunished.<sup>405</sup> When the State's efforts focus on convicting the perpetrators, that sends a message to the victims of an apparent attempt to administer justice (*envía un mensaje a las víctimas de una aparente procuración de justicia*).

271. As regards the recommendation to **adopt special protocols for the investigation of murders pursuant to which the hypothesis of a relation to the journalistic profession is exhausted completely**, the IACHR welcomes the adoption of the "Protocol approved for the Investigation of Crimes committed against Freedom of Expression." According to published information, "the protocol will apply to all investigations into attacks on journalists because of their professional activities and was developed based on extensive participation and consultation of national and international organizations for the protection of human rights, as well as civil society specialists."<sup>406</sup> Civil society organizations stated that "the adoption of

<sup>401</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [6to Informe de Labores 2017-2018](#). [2017-2018 Activities Report] September 01, 2018.

<sup>402</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

<sup>403</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

<sup>404</sup> National Commission on Human Rights (CNDH). [Denuncia CNDH impunidad del 90% en homicidios de periodistas y demanda a las autoridades garantizar investigaciones profesionales y efectivas que consideren la labor de los comunicadores](#). November 02, 2018

<sup>405</sup> IACHR. Report of the Office of the Special Rapporteur for Freedom of Expression. [Violence against Journalists and Media Workers: Inter-American Standards and National Practices on Prevention, Protection and Prosecution of Perpetrators](#), 2013, par 169.

<sup>406</sup> United Mexican States. Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) [Press release 1072/18. Aprueban Protocolo Homologado de Investigación de Delitos cometidos contra la Libertad de Expresión](#).



this important tool is a first step toward the chief objective, which is to eradicate the impunity surrounding violence against the press in the country."<sup>407</sup> While that document was being drawn up, the Office of the Special Rapporteur sent the State a technical note highlighting positive aspects and making recommendations.<sup>408</sup>

272. The State reported to the IACHR that "the Protocol establishes that personnel in FEADLE must adopt a gender perspective in everything they do, constantly abiding by the right to equality" and that personnel in the Public Prosecutors' Office shall ascertain whether there was any gender-based inequality or unequal power relations in the exercise of freedom of expression." The State also reported that "in cases in which the victim or offended party so requests, the Public Prosecutor Office personnel shall attempt to assign staff of the requested sex to handle and monitor the ,whenever possible within the institution's resources."<sup>409</sup>

273. Based on its assessment, the IAHR considers that this recommendation has been complied with. Nevertheless, in the Commission's view, it is crucial that this tool be implemented appropriately and that FEADLE be endowed with the human, material, and financial resources required for it to fulfill its mandate, and that its public servants receive constant training.

274. With respect to the recommendation to **improve the existing relation between the federal and state jurisdictions with the objective of avoiding competence conflicts that impede or delay investigations**, the State informed the IACHR that "following the establishment of State Protection Units (UEP) in May 2017, in August, the National Coordination Protocol for the Protection of Human Rights Defenders and Journalists was adopted in order to ensure coordination with the Mechanism to Protect Human Rights Defenders and Journalists."<sup>410</sup>

275. Based on the monitoring conducted by the IACHR, it transpires that the chief purpose of this protocol is to "establish the processes, procedures, and articulation and coordination actions to be developed between the Federal Mechanism and the State Protection Units or State Mechanisms for implementing prevention and protection measures safeguarding the life, integrity, freedom, and security of human rights defenders and journalists."<sup>411</sup> Point 3.3 of the document on "referral to other institutions" provides that "if the facts indicate the commission of a crime against a beneficiary, that beneficiary shall be asked if she or he wishes to lodge a formal complaint, for which purpose the UEP or State Mechanism will lend assistance by referring the matter to the Public Prosecutors' Office or Attorney General's Office of the state or the URC will channel it to the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) or, where applicable, to the corresponding branch of the Office of the Prosecutor-General of the Republic."

276. Despite the information remitted by the State, the IACHR notes the lack of information regarding concrete steps to improve existing relations between the Federal and the state jurisdictions with respect to investigations into crimes committed against journalists and the media because of the profession they exercise. Based on the IACHR assessment, **compliance with the recommendation has been partial**. Nevertheless, for the IACHR it is crucial that the protocol be properly implemented and that officials be constantly trained about the obligations deriving from it and about the part that journalists play in a democratic society.

<sup>407</sup> Artículo 19. October 16, 2018. [Aprueban protocolo para la investigación de delitos cometidos contra la libertad de expresión..](#)

<sup>408</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. Letter to the Mexican State: Approved Protocol of the Public Prosecutors' Office Specializing in Crimes against Freedom of Expression (FEADLE) -Office of the Prosecutor-General of the Republic of Mexico. March 16, 2018. Available at: Archive of the Office of the Special Rapporteur for Freedom of Expression.

<sup>409</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

<sup>410</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

<sup>411</sup> Mexico. Secretariat of the Interior. [Protocolo de coordinación nacional para la protección de personas defensoras de derechos humanos y periodistas](#). August 11, 2017.

277. As regards the recommendation **that victims, their families and, when applicable, assisting third parties be allowed to participate in criminal proceedings with full guarantees, both for the search of the truth and for clarifying the facts, as well as when it comes to demanding reparation**, the State told the IACHR that "the SCJN considers that participation by the victim or offended party in criminal proceedings serves the purpose of improving their legal standing and boosting their active participation, above all in order to achieve reparation for the harm done to them by the offense."

278. The IACHR emphasizes that the "Protocol adopted for Investigating Crimes against Freedom of Expression" recognizes guaranteed participation by the victim and the right "to be informed of progress with the investigation, as well as to participate and actively collaborate with it, directly or through his or her representatives. The Protocol likewise amply recognizes the right of the victim to participate in periodic meetings, to make suggestions regarding the investigation, to take part in proceedings, and to be spared revictimization."<sup>412</sup>

279. Based on its assessment, the IACHR considers that **compliance with the recommendation has been partial**. For the IAVHR, it is basic that the State adopt effective measures to guarantee the participation of victims or their next of kind as representatives, and that it take steps to avoid stigmatization, particularly stigmatization by judicial bodies, public authorities, or public servants.

### III. Access to information

- Regarding the legal attributions that the Law of Access to Information assigns to the Presidency's Legal Advisor's Office, such attribution should be regulated according to international principles regarding access to public information and national security.
- Strengthen laws, policies and practices to ensure that judicial authorities have complete access to relevant information when they investigate and process cases on human rights violations attributed to the security forces.
- Adopt pertinent measures so that security agencies compile, systematize and publish periodically information regarding injuries to life and personal integrity as a consequence of the fight against organized crime. The information regarding such injuries should describe the place where they occurred, the date, information regarding the unit of the security force that was present when they occurred, information regarding its mandate and control. In addition, it should describe the causes of the injury and the inability to prevent them.

280. In its report on *The Human Rights Situation in Mexico*, the IACHR expressed appreciation for the passing of the General Law on Transparency and Access to Public Information as a demonstration of the Mexican State's commitment to transparency and the right to access information. However, it also voiced its concern at the information it had received alleging obstacles to gaining access to information about human rights violations. Furthermore, during its on-site visit, the IACHR took note of increased backtracking with respect to the policy on active transparency and public information with regard to the deaths of both civilians and military personnel in security operations, especially those involving intervention by the Armed Forces.<sup>413</sup>

281. With respect to the IACHR's recommendation **to regulate the legal authority that the Law of Access to Information assigns to the Presidency's Legal Advisor's Office, enabling it to appeal any decision taken by the National Access to Information Institute to declassify information if that decision might jeopardize national security interests**, the State reported that the commitment was "pending".<sup>414</sup> That being so, the IACHR once again **reiterates the recommendation**.

282. As for the recommendation to **strengthen laws, policies and practices to ensure that**

<sup>412</sup> United Mexican States. *Office of the Prosecutor-General of the Republic (Procuraduría General de la República - PGR) Protocolo Homologado de Investigación de Delitos Cometidos contra la Libertad de Expresión*. October 2018. P. 50.

<sup>413</sup> IACHR. *The Human Rights Situation in Mexico*. OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015 Par. 499 to 505.

<sup>414</sup> Communication from the Mexican State. Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico." Note OEA03121/4.2.0.1, November 30, 2018.

**judicial authorities have complete access to relevant information when they investigate and process cases on human rights violations attributed to members of the security forces**, the IACHR stresses that the Mexican State has a regulatory and institutional framework that allows for broad exercise of the right to access public information as well as the promotion of that right as an essential component for the exercise of freedom of expression. Nevertheless, the IACHR notes that, when it comes to serious violations of human rights, much still remains to be done to strengthen compliance with obligations to allow both active and passive transparency. The IACHR welcomes the fact that the "General Law on Archives", published on June 15, 2018,<sup>415</sup> establishes the obligation to "safeguard and preserve records relating to serious human rights violations, as well as to respect and guarantee access to them," which must be "unrestricted"; there being no right to confidentiality in the case of "serious human rights violations or crimes against humanity." Nevertheless, it worries the IACHR that the second paragraph in Article 36 provides that "documents containing sensitive personal data, as defined in laws and regulation on the matter, that have been ordered to be kept forever given their historical value, retain that "sensitive data" status in the archives for a period of 70 years from the date the document was created, and during that period access to them shall be restricted." In that context, information received earlier pointed out that Article 27 of the Federal Law on Archives -- which is currently repealed -- which provided for a 30 to 70 year period of restricted access to personal data, was used on several occasions to hide the names of public servants and other information about serious human rights violations.<sup>416</sup>

283. The IACHR welcomes the decision taken by the INAI that forced the PGR to provide information about "the number of preliminary inquiries absorbed by what was then the Public Prosecutor's Office Specializing in Crimes Committed against Journalists, between February and June 2010." On that, the then Commissioner Carlos Alberto Bonnin Erales mentioned that "complete and accurate delivery of official data on these crimes is conducive to institutional responsibility for generating information, which helps improve decisions taken for the formulation of public policies and makes efforts to improve conditions in Mexico more effective."<sup>417</sup> He added: "In order for a journalist to be fully free to practice his or her profession, investigations carried out into acts/circumstances that curtail her or his rights should be considered a legal obligation that the State must guarantee as a matter of prime importance." According to published data, a private citizen filed an application for access to information with the PGR asking to know "the number of preliminary inquiries and cases absorbed by what was then the Public Prosecutor's Office Specializing in Crimes Committed against Journalists, between February and June 2010: specifying the type of crime, federative entity, and current state of proceedings in each case." The PGR declared that the information requested did not exist and that it was not under any obligation to generate it. Given that refusal, the applicant filed an appeal for a review of the decision with the INAI.<sup>418</sup>

284. In addition, on March 18, INAI reported that it had ordered the Fund for the Protection of Human Rights Defenders and Journalists of the Secretariat of the Interior "to reveal the number of companies hired to implement prevention and security measures on behalf of those segments of the population, the type of contractual arrangement, and the public version of each legal instrument, from June 25, 2012 to December 6, 2017." According to the information provided, "a review of the matter showed that revealing the number of companies hired by the Fund and the type of contract does not endanger the life, security, or health of persons, because it would not identify the providers or the human rights defenders or journalists. Nor would it disclose the measures implemented as part of the protection mechanism."<sup>419</sup>

<sup>415</sup> United Mexican States. Chamber of Deputies. [Ley General de Archivos](#). June 15, 2018.

<sup>416</sup> Special Rapporteurship for Freedom of Expression of the IACHR / Special Rapporteur of the United Nations on the promotion and protection of the right to freedom of opinion and expression. [\[Joint\] Special Report on the Situation of Freedom of Expression in Mexico, June 2018](#). Par. 58.

<sup>417</sup> United Mexican States. The National Institute for Transparency, Access to Information and Personal Data Protection (INAI). [Press Release INAI/081/18](#). June 27, 2018. According to the press release, a private person had requested statistical information on cases absorbed by FEADLE (type of crime, federative entity concerned, and current state of proceedings). The PGR had declared the information non-existent and stated that it was not obliged to generate it.

<sup>418</sup> United Mexican States. The National Institute for Transparency, Access to Information and Personal Data Protection (INAI). [Press Release INAI/081/18](#). June 27, 2018.

<sup>419</sup> United Mexican States. The National Institute for Transparency, Access to Information and Personal Data Protection (INAI). [Press Release INAI/040/18](#). March 18, 2018.

285. Based on its assessment, the IACHR considers that **compliance with the recommendation has been partial**. Accordingly, the IACHR urges the State to continue significantly strengthening the right to access to public information and to push ahead with active and passive transparency mechanisms with regard to information concerning serious human rights violations.

286. As regards the recommendation to **adopt pertinent measures so that security agencies compile, systematize and publish periodically information regarding injuries to life and personal integrity as a consequence of the fight against organized crime**, and the recommendation that **the information regarding such injuries should describe the place where they occurred, the date, information regarding the unit of the security force that was present when they occurred, and information regarding its mandate and control**, the IACHR has not received information regarding concrete steps taken by the State. Given the lack of information, the IACHR considers that **compliance with this recommendation is still pending**. Accordingly, as the guarantor, INAI must ensure, by complying with its constitutional and legal mandate, that the authorities comply with their transparency obligations and access to information.

#### IV. Mechanism to Protect Human Rights Defenders and Journalists

- Require competent authorities to take into account international parameters regarding protection, especially the considerations outlined in the “Second Report on the Situation of Human Rights Defenders in the Americas” and the “Report on Violence against Journalists and Media Workers of the IACHR’s Special Rapporteurship for Freedom of Expression.”
- Provide all political support necessary for the adequate operation of the protection mechanism, which should include all the necessary financial resources so that it may develop its competencies efficiently in relation to protection, and so that it may be sustainable over time.
- Adopt all necessary measures to assign and train all necessary personnel for its adequate operation.
- Guarantee that risk assessments and the implementation of prevention and protection measures are done adequately and addressing the urgency of the situation. Therefore, assign protection and review schemes regarding the adequacy of the risk evaluation processes, guarantee an adequate participation, communication and consensus-building with the persons protected by the mechanism, as well as the beneficiaries of precautionary measures requested by the IACHR.
- Undertake an evaluation and adoption of differentiated protection measures for women, indigenous leaders, and environmental defenders.
- Urge the State to implement strategies so that the various institutions at the state and federal level work in a coordinated fashion to provide an integral response to all matters related to the protection of human rights defenders and journalists.
- The protection mechanism should implement a communication strategy regarding its competencies, the requirements to enter the program, among other necessary information, with the objective of making human rights defenders and journalists aware about the protection that the mechanism can offer. Similarly and in accordance with international standards, provide access to necessary information regarding the protection mechanism so that it may provide greater transparency regarding the work it is doing.
- Encourage the mechanism to adopt a process that allows it to issue protection measures directly and of its own initiative (ex officio) in those cases which, because of their gravity and urgency, require them immediately.
- Urge the State to double efforts to investigate acts that cause the entry and permanence of protected persons into the protection mechanism, with a view towards conducting thorough investigations as prevention policy of the State.
- Encourage the mechanism to adopt tools that allow it to evaluate the effectiveness of the implemented protection measures, as well as increase transparency of all its action to increase

the trust of beneficiaries. The foregoing shall be accompanied by a policy of prevention and participation by the population object of the Mechanism

287. In its report on *The Human Rights Situation in Mexico*, the Commission warned that, despite the progress associated with the adoption of the Law for the Protection of Human Rights Defenders and Journalists and the creation of the Protection Mechanism, it had received information regarding serious obstacles that threaten the effectiveness of the Mechanism and enforcement of the aforementioned law. Accordingly, the IACHR pointed out that, based on the information it had received, several of those difficulties have to do with the allocation of financial resources needed for the institution to go about its work and be guaranteed long-term financial stability; appropriate dissemination of the skills and procedures being developed; and the deployment of strategies to ensure coordination at different levels in state and federal institutions, given the perception that some of them lack the political will to cooperate.<sup>420</sup> Here, the Commission recommended that the Mexican State strengthen the bodies responsible for protecting human rights defenders and journalists, so that they can adequately guarantee their life and bodily integrity; that it guarantee their long-term financial sustainability and endow them with greater administrative autonomy; and that it encourage federative entities to cooperate. At the same time, the Commission urged the Mexican State to incorporate gender and multicultural perspectives in the design and adoption of protection measures for defenders and journalists.<sup>421</sup>

288. In following up on those recommendations, the IACHR appreciates the efforts and commitment by the State to protect a growing number of beneficiaries of the Protection Mechanism, who include beneficiaries of precautionary measures requested by this Commission and of provisional measures of the I/A Court of H.R. Despite the progress made, the IACHR was informed that in 2018 the Federal Mechanism for the Protection of Human Rights and Journalists faced a number of challenges, which were mentioned above in the section on "Human Rights Defenders".

289. As regards the recommendation to **require competent authorities to take into account international parameters regarding protection, especially the considerations outlined in the "Second Report on the Situation of Human Rights Defenders in the Americas" and the "Report on Violence against Journalists and Media Workers of the IACHR's Special Rapporteurship for Freedom of Expression,"** the IACHR again underscored the adoption of the "Guidelines for Recognizing the Work of Human Rights Defenders and Journalists", which incorporates some of the recommendations of the IACHR and its Special Rapporteurship for Freedom of Expression.

290. Based on the evaluation carried out, compliance with this recommendation was partial. Accordingly, the IACHR urges the State to forge ahead with strengthening and implementing its protection and prevention policies pursuant to the recommendations referred to above.

291. Regarding the recommendation to **provide all political support necessary for the adequate operation of the protection mechanism, which should include all the necessary financial resources so that it may develop its competencies efficiently in relation to protection, and so that it may be sustainable over time,** the State told the IACHR that, as of June 1, 2018, the remaining balance in the budget account of the Fund for the Protection of Human Rights Defenders and Journalists was 227 million pesos. The State thus stresses that the protection measures budget increased from 20.8 million pesos in 2014 to 191.8 million pesos in 2017.<sup>422</sup> For its part, the CNDH informed the IACHR that in August 2018 it had requested the Secretariat of Finance and Public Credit to endow the mechanism with sufficient budgetary resources given the risk that by October its funds would run out, posing an imminent risk to its beneficiaries.<sup>423</sup> With respect to protection measures, the Mexican State pointed out that the number of cases

<sup>420</sup> IACHR, [The Human Rights Situation in Mexico](#), OEA/Ser.L/V/II.Doc. 44/15, December 31, 2015, par. 436.

<sup>421</sup> IACHR, [The Human Rights Situation in Mexico](#), OEA/Ser.L/V/II.Doc. 44/15, December 31, 2015, par. 539 (34).

<sup>422</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 30.

<sup>423</sup> CNDH, Aportación en el marco de la revisión del cumplimiento de recomendaciones contenidas en el informe de la CIDH de 2015 [Contribution to the review of compliance with recommendations made in the IACHR Report of 2015], November 30, 2018, p. 20.



reviewed and approved by the Governing Boards of the Mechanism had increased from 4 per session in 2012 to 40 cases per session in 2017. It further pointed out that the mechanism currently supports initiatives with a built-in civil society perspective and that it is pursuing a project with USAID designed to incorporate best practices into its organizational structure and its operations.<sup>424</sup> It added that the Mechanism prepared specific methodologies for individual and collective cases, with a gender perspective. In all these cases, the likelihood of beneficiaries' rights being impaired is analyzed in relation to their social, economic, family and workplace environment and that of the areas in which they live or work.<sup>425</sup>

292. The IACHR notes, with regard to funding, that in 2018 the Protection Mechanism faced a financial crisis. On November 2, 2018, the IACHR and international experts urged the Government of Mexico to adopt all measures needed to guarantee continuous and sufficient funding for the Federal Mechanism to Protect Human Rights Defenders and Journalists, so as to avoid future financial crises.<sup>426</sup> According to civil society organizations, this is the second time that the Protection Mechanism was left without funding, the first being in 2017.<sup>427</sup> The Commission issues a reminder that an integral part of the State's political commitment to its program for protecting human rights defenders is having an adequate number of staff trained to receive requests for protection, conduct risk analyses, adopt and implement protection measures, and monitor them to ensure that they are properly implemented.

293. Thus, the State must provide the budgetary and logistical resources needed to ensure that protection measures are in place for so long as the risk persists. Accordingly, the State must allocate budgetary funds to cover the costs of the personnel working in the program, as well as specific outlays related to the protection measures granted for at-risk persons, in such a way that the protection does not become a burden for the human rights defender being protected. Considering the progress made and the information regarding the financial crisis being faced by the Protection Mechanism, and given the importance of a financially stable Mechanism to ensure effective protection for human rights defenders, the IACHR considers that the Mexican State has achieved partial compliance with this recommendation.

294. Regarding the recommendation to **adopt all necessary measures to assign and train all necessary personnel for its adequate operation**, the IACHR considers that **compliance with this recommendation is still pending**, given that new regulatory tools and protocols are due to be developed within the competent institutions, targeting the officials responsible for conducting the corresponding procedures and applying the protocols. The IACHR thus urges the State to take whatever steps are needed to ensure constant and continuing training for all personnel responsible for implementing protection measures.

295. With respect to the recommendation to **guarantee that risk assessments and the implementation of prevention and protection measures are properly carried out and take urgency into account, and that risk assessment processes, the assignment of protection arrangements, and reviews of their suitability allow for adequate participation, communication and consensus-building with the persons protected by the mechanism, as well as the beneficiaries of precautionary measures requested by the IACHR**, the State informed the IACHR that "a methodology was developed within the Mechanism for evaluating the implementation of protection measures, which includes consulting the beneficiaries and checking the implementation procedures followed by all those involved." The State also pointed out that the Risk Assessment Unit "periodically evaluates the suitability and effectiveness of the protection measures granted in each case." On prevention, the State reported that "the Mechanism has a Prevention, Follow-up and Analysis Unit with, inter alia, the following functions: 1) nationwide monitoring of attacks with a view to compiling and systematizing disaggregated information within a database and

<sup>424</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 30.

<sup>425</sup> Fifth Report of the Mexican State on follow-up to the recommendations contained in the Report entitled "The Human Rights Situation in Mexico," p. 64.

<sup>426</sup> IACHR, Press Release No. 236/18, [International Experts call upon Mexico to ensure continued and sufficient funding for the Protection Mechanism for Human Rights Defenders and Journalists in Mexico](#), November 8, 2018.

<sup>427</sup> Espacio OSC, El [Espacio OSC hace un llamado al Gobierno federal para dotar de recursos y garantizar el funcionamiento del Mecanismo para la Protección de Personas Defensoras de Derechos Humanos y Periodistas](#), August 29, 2018

producing monthly reports; 2) identifying patterns in the attacks and preparing risk maps; and 3) evaluating the effectiveness of the Protection Measures and making public policy proposals geared to prevention and to protecting human rights defenders and journalists." Finally, the State reported that "with the participation of organizations of journalists and human rights defenders, early warnings and contingency plans were issued in the states of Chihuahua and Veracruz."

296. Based on its assessment, the IAHR considers that compliance with this recommendation has been partial. That being so, the IACHR calls upon the State to redouble efforts to adopt measures that protect the work of journalists against specific risks and gender-based violence.

297. As regards the recommendation to undertake an evaluation and adoption of differentiated protection measures for women, indigenous leaders, and environmental defenders, the State told the IACHR that "within the Mechanism specific methodologies were developed with a gender perspective for individual and collective cases." In all these cases, the likelihood of beneficiaries' rights being impaired is analyzed in relation to their social, economic, family and workplace environment and that of the areas in which they live or work." Based on its assessment, the IAHR considers that compliance with this recommendation has been partial.

298. Regarding the recommendation to **urge the State to implement strategies so that the various institutions at the state and federal level work in a coordinated fashion to provide an integral response to all matters related to the protection of human rights defenders and journalists**, the State informed the IACHR about "cooperation among FEADLE, INACIPE, the Criminal Investigation Agency, and the Federal Police on developing a digital security strategy." It also pointed to the "constant coordination of efforts with FEADLE to protect against and prevent threats and acts of aggression and to the permanent sharing of information used for risk analyses within the Mechanism." Based on its assessment, the IAHR considers that compliance with this recommendation has been partial.

299. As regards the recommendation to **encourage the protection mechanism to implement a communication strategy regarding its competencies, the requirements to enter the program, among other necessary information, with the objective of making human rights defenders and journalists aware of the protection that the mechanism can offer** and, similarly and in accordance with international standards, to **provide access to necessary information regarding the protection mechanism so that it may provide greater transparency regarding the work it is doing**, the State informed the IACHR that the website: "<https://www.gob.mx/defensorasyperiodistas>" was up and running. As for the information posted on the site, "there are a number of documents for reporting on the mandate entrusted (*fideocomiso*) to the Mechanism, recognition of the work done by human rights defenders and journalists and, in particular, activities carried out." Based on its assessment, the IAHR considers that compliance with this recommendation has been partial.

300. With respect to the recommendation to **encourage the mechanism to adopt a process that allows it to issue protection measures directly and of its own initiative (ex officio) in those cases which, because of their gravity and urgency, require them immediately**, the State informed the IACHR that "on September 30, 2018, the Mechanism had admitted 612 requests for inclusion 461 of which were considered regular and 151 extraordinary (urgent)." Based on its assessment, the IAHR considers that compliance with this recommendation has been partial.

301. Regarding the recommendation to **urge the State to redouble efforts to investigate acts that cause protected persons to enter and stay in the protection mechanism, with a view to making it a State policy to conduct thorough investigations as a prevention method**, the IACHR received no information regarding concrete steps taken by the State. Given the lack of information, the IACHR considers that compliance with this recommendation is still pending.

302. As for the recommendation to **encourage the mechanism to adopt tools that allow it to evaluate the effectiveness of the implemented protection measures, as well as increase transparency**

**of all its action to increase the trust of beneficiaries, accompanied by a policy of prevention and participation by the Mechanism's target population,** the IACHR received no information regarding concrete steps taken by the State. Given the lack of information, the IACHR considers that compliance with this recommendation is still pending.

## V. CONCLUSIONS

1. The Commission reiterates to the Mexican State the recommendations contained in its 2015 Country Report. While significant progress has been made in respect of laws and the adoption of important public policies in Mexico, drafted in accordance with international human rights law, serious challenges remain with regard to violence and impunity.

2. Still particularly worrying in 2018 were the large number of -- poorly investigated -- disappearances and murders and the insecurity of the individuals or groups historically exposed to discrimination, such as women, children, migrants, indigenous peoples, and persons deprived of liberty, and those at risk because of their work, such as human rights defenders and journalists, who are murdered, disappeared, kidnapped, tortured, threatened, and harassed.

3. As the Commission pointed out in its Country Report, the challenge facing the Mexican State is to close the gap that still exists between its regulatory framework and recognition of human rights, on the one hand, and the reality faced by large number of the country's inhabitants when they seek prompt and effective justice, on the other.

4. Access to justice continues to be one of the major challenges facing the Mexican State. Efficient and effective justice is vital for combating impunity and central to any response to any human rights violation.

5. The Commission reaffirms its commitment to work with the Mexican State in the quest for solutions to the problems and challenges identified in this report and to lend it support with complying with its international human rights obligations.