

## **CHAPTER V**

### **FOLLOW-UP TO RECOMMENDATIONS MADE BY THE IACHR IN ITS COUNTRY OR THEMATIC REPORTS**

#### **FOURTH 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," "the Mexican State," or "the 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 at its own initiative, 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 proven ineffective over the years, the IACHR expressed particular concern in its Report over 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; and 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

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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.

that Mexico is considered one of the most dangerous countries in the world, other than those at war, for journalists.

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 in official figures. 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 valued 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 the effective investigation, prosecution, and punishment of those responsible for human rights violations.

7. The first, second, and third reports following up on the recommendations issued in the Country Report, corresponding to 2016, 2017, and 2018, respectively, included relevant comments received from the Mexican State, organizations, and civil society.

8. For this report, by communication of September 19, 2019, the IACHR asked the Mexican State to submit information regarding compliance in 2019 with the recommendations contained in the Country Report. The State's response was received on October 20, 2019.<sup>1</sup> The Commission assigns value to and thanks the State for the information received, which, where applicable, was included in the present report. In addition, the IACHR is grateful for the information submitted by civil society organizations and by the National Commission on Human Rights (CNDH: Comisión Nacional de los Derechos Humanos).

9. In its report on compliance with the recommendations in 2019, the Mexican State reiterated that<sup>2</sup>:

Today, Mexican is embracing a new paradigm of respect for, and promotion and protection of fundamental rights and freedoms, the result of an unprecedented democratic process that is being promoted by the current administration. This new paradigm places the person at the center of all public policies and promotes an equitable and prosperous society respectful of human rights.

10. The State further reiterated that in keeping with its policy on human rights, based on collaboration with the organs of the inter-American system and in compliance with its international obligations it "provides specific follow-up to the recommendations of the [IACHR]" and submitted information related to the period from March to September 2019. The State reaffirmed its commitment to collaborate and to strengthen the dialogue with the IACHR for following up on its recommendations, and stated its expectation of

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<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 03282, November 29, 2019.

<sup>2</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 1-2.

receiving concrete, specific, and attainable recommendations whose implementation is susceptible to evaluation and gradual measurement.<sup>3</sup>

11. The IACHR also received information submitted by the National Commission on Human Rights (Comisión Nacional de Derechos Humanos), the Centro de Derechos Humanos Miguel Agustín Pro Juárez, the Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, and Amnesty International – Regional Office for the Americas. In addition, the IACHR held meetings with representative of FUNDAR-Centro de Análisis e Investigación, SERAPAZ-Servicios y Asesoría para la Paz, Fundación para la Justicia y el Estado Democrático de Derecho, and the Movimiento “Por Nuestros Desaparecidos.” The IACHR has also used the information from the shadow report prepared by civil society organizations for the Sixth Review of Mexico before the Human Rights Committee and the Alternative Report of the Civil Society Organizations of Mexico to the UN Committee Against Torture 2012-2019, as well as other public information from the organs for protecting human rights that are part of the United Nations system.

12. In addition, the IACHR forwarded this report to the Mexican State for its comments on December 9, 2019, in keeping with Article 59(10) of its Rules of Procedure. By note No. OEA03831 of December 16, 2019 the State requested a two-week extension, which was granted by the IACHR on December 17, 2019. The State sent its response on January 13, 2020<sup>4</sup>; the relevant parts were incorporated into the final version of this report. This Report was approved by the IACHR on February 11, 2020.

13. In its observations on the draft of this report the State reiterated “its full willingness to attend to all the recommendations issued by that inter-American body, to which end it takes note of its assessment of the degree of compliance.” Moreover, it indicated that it “reiterates its commitment to follow up on and fully address the recommendations issued by the Inter-American Commission on Human Rights.”<sup>5</sup>

14. This follow-up report is divided into seven sections to consider the measures adopted by the State to implement the recommendations of the Commission and the pending challenges. The structure used in the IACHR report that is the subject of follow-up on the recommendations has been followed. Each section refers to the recommendations issued by the IACHR in the respective chapters and the main areas of progress and challenges identified by the IACHR, in light of the information submitted by the State and civil society organizations, as well as the information that the Commission has collected in monitoring the general human rights situation in the country. To this end, the Commission has drawn on the information received from the State in public hearings, investigations conducted at the Commission’s initiative, input from the mechanism of petitions and cases, precautionary measures, and requests for information under the power established at Article 41 of the American Convention on Human Rights, as well as information available from other public sources and the decisions and recommendations of specialized international agencies, among others. Finally, the IACHR presents its conclusions and recommendations.

## **II. FOLLOW-UP ON 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.

<sup>3</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 1-2.

<sup>4</sup> Diplomatic note OEA00088/4.2.0.1 Observaciones y comentarios del Estado mexicano al proyecto de Capítulo V sobre el seguimiento a las recomendaciones formuladas por la Comisión Interamericana de Derechos Humanos en el Informe sobre la “Situación de los derechos humanos en México.” January 13, 2020. [Hereinafter “Observations and comments by the State, January 13, 2020.”]

<sup>5</sup> Observations and comments by the State, January 13, 2020, p. 30.

- 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.

15. Next, the IACHR will refer to the first two recommendations, **develop a concrete plan for the gradual withdrawal of the Armed Forces from public security tasks and strengthen the capacity of police forces to carry out public security tasks according to international human rights standards.** In this respect, the State reported on the process of constitutional amendments on internal security that resulted in the creation of the National Guard (Guardia Nacional).<sup>6</sup>

16. By way of background, it should be noted that after the declaration of the unconstitutionality of the Law on Internal Security by the plenary of the Supreme Court of Justice of the Nation (SCJN, or also, hereinafter, Supreme Court) on November 15, 2018<sup>7</sup> the Mexican government initiated a reform process to establish the National Guard, as reported by the IACHR in its 2018 Annual Report.<sup>8</sup> Accordingly, on March 26, 2019, several articles of the Mexican Constitution were amended and repealed<sup>9</sup>, creating the National System of Public Security and the National Guard as “a civilian police institution”<sup>10</sup> attached to the Ministry of Security and Citizen Protection, and ordering the adoption of the respective general statutes. In addition, the reforms noted included the adoption of the Federal Law on the Use of Force and the Federal Law on Registry of Detentions.

17. The State reported that as the National Guard develops its structure, capacities, and territorial implementation, the president of the republic may make use of the permanent Armed Forces, in public security tasks on an extraordinary, regulated, overseen, subordinated, and complementary manner.<sup>11</sup> In effect, those transitory provisions determined that “the National Guard shall be constituted ... by the elements of the Federal Police, Military Police, and Naval Police” (second transitory article) and establishes a period of five years for the National Guard to consolidate its structure, capacities, and territorial implementation (fifth transitory

<sup>6</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 5-6.

<sup>7</sup> IACHR, Press Release 251/18 – [IACHR Welcomes Mexican Supreme Court of Justice Ruling on Unconstitutionality of Domestic Security Law](#). Washington DC, November 22, 2018.

<sup>8</sup> IACHR, 2018 Annual Report, para. 18.

<sup>9</sup> Articles 10; 16, paragraph 5; 21, paragraphs 9, 10, and 10(b); 31(III); 35(IV); 36(II); 73(XXIII); 76(IV) and (XI), and 89(VII); the eleventh, twelfth, and thirteenth articles are added to Article 21; and Article 73(XV) and Article 78(I) of the Constitution of Mexico are derogated.

<sup>10</sup> [Diario Oficial. Executive Branch. Ministry of Interior. Tuesday, March 26, 2019, first section, pp. 11 ff.](#)

<sup>11</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 5.

article). During that period, to form and start the operations of the National Guard, “the ministries in the areas of National Defense and the Navy shall participate, in keeping with the law, with the ministry of security, to establish its hierarchical structure, disciplinary regimes, carrying out responsibilities and tasks, and services, and for implementing the provisions on entry, education, training, professionalization, promotions, and benefits, which may be brought into line, as appropriate, with the provisions applicable in the area of the permanent Armed Forces” (sixth transitory article).

18. The Office of the United Nations High Commissioner for Human Rights (OHCHR) noted that the final report that approved the constitutional amendments on security preserved a civilian spirit and enshrined the exceptional, restricted, and limited nature of the military jurisdiction<sup>12</sup>, although it indicated that the Law on the National Guard still maintains the paradigm of involvement of the military institutions in security policies. In addition, as regards the Federal Law on the Use of Force, the OHCHR indicated that its basis of application does not include immigration agents among the authorities who exercise the use of force, there is ambiguity in the regulation of lethal force, and it has shortcomings in the transparency and accountability regime. Finally, the OHCHR also indicated that the legislative process following the constitutional amendments on security was not participatory.<sup>13</sup>

19. Amnesty International called attention to the broad powers of the National Guard in relation to internal security and criminal investigation, including intercepting private communications and immigration control.<sup>14</sup> The Comisión Mexicana de Defensa y Promoción de los Derechos Humanos (hereinafter “the CMDPDH”) has indicated that militarization continues to be used as a tool for public security, resulting in high levels of violence and grave human rights violations. As of this writing in late 2019, 62,954 members of the military have been deployed, a figure which, according to its report, is an all-time record.<sup>15</sup>

20. In this context, as regards the recommendation to remove the Armed Forces from public security tasks, the IACHR recalls that the Supreme Court’s determination that the Law on Internal Security is unconstitutional and in violation of Mexico’s international treaty commitments on human rights was the result of its finding that it sought to normalize the use of the Armed Forces in matters of public security.<sup>16</sup> In this context the Commission reiterates the pronouncement of the Inter-American Court to the effect that maintaining public order and citizen security should be primarily reserved for civilian police forces. Accordingly, any participation of the Armed Forces in security tasks should be extraordinary, subordinate and complementary, and regulated and overseen.<sup>17</sup>

21. In line with the foregoing, the IACHR finds that while the constitutional reforms determined that the National Guard is a civilian body with police functions, in its transitory regulation this new institution will be made up of military personnel and have a military-type structure, which casts doubt precisely on its civilian nature, especially if a Brigade General of the Mexican Army has been appointed as its chief officer, as Amnesty International notes.<sup>18</sup> The CMDPDH has indicated that the National Guard is *de facto* a military security body, which does not establish sufficient safeguards as should be in place for a civilian body.<sup>19</sup>

<sup>12</sup> United Nations, [La ONU.DH saluda los cambios positivos sobre Guardia Nacional. February 22, 2019.](#)

<sup>13</sup> OHCHR - Mexico. Avances y preocupaciones en las leyes sobre uso de la fuerza y registro de detenciones. May 24, 2019.

<sup>14</sup> Amnesty International, Document “México, insumos para el Informe Anual de la Comisión Interamericana,” October 31, 2019.

<sup>15</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 1-2.

<sup>16</sup> Communication from the Mexican State. Quinto Informe del Estado mexicano sobre el seguimiento a las recomendaciones del Informe “Situación de los Derechos Humanos en México,” pp. 2-12.

<sup>17</sup> I/A Court HR, Case of Alvarado Espinoza et al. v. Mexico, Judgment of November 28, 2018. Series C No. 370, paras. 181-182.

<sup>18</sup> Amnesty International, Document “México, insumos para el Informe Anual de la Comisión Interamericana,” October 31, 2019.

<sup>19</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 1-3.

22. According to the information submitted by the CMDPDH, the majority of the National Guard members are members of the Army: 35,232 are from the Military Police, 6,871 from the Naval Police, and 14,738 from the now-defunct Federal Police. In addition, 13,464 members are from the Army and 615 from the Navy, supporting the public security tasks of the National Guard. Regarding its command structure, 12 generals, 11 colonels, two rear admirals, three naval captains, and three lieutenant colonels head up 31 of the 32 state coordinating units of the National Guard across Mexico; most are from the Army, while five are from the Navy.<sup>20</sup> In its observations on the draft of this report the State indicated that personnel from the Ministry of National Defense (SEDENA, Secretaría de Defensa Nacional) and the Ministry of the Navy (SEMAR; Secretaría de Marina) were incorporated into the National Guard initially, and it is anticipated that new members will be recruited through public competitive hiring processes; they will gradually come to account for the majority of the National Guard. It also indicated that work has been done to approve and train the personnel with an approach based on public security and full respect for human rights.<sup>21</sup>

23. In addition, and in line with the recommendation to strengthen the police in public security tasks based on human rights standards, the IACHR observes that the legal changes, both constitutional and statutory, do not offer major gains in this area except as regards the use of force, which establishes an obligation to train the official forces in human rights, but exclusively on the use of weapons, methods and techniques related to the use of force and lethal force. In its observations on the draft of this report the State indicated that in December 2019, 1,605 men and 342 women completed training courses organized by the Lead Program for Professionalization. This program covers gender equity, attention to crime victims, criminal justice system, as well as issues related to police ethics, culture of legality, human rights, feminicides, arrests and post-arrest procedures, and police mediation and conflict management, among others. It also indicated that under National Security Strategy 2019-2024, the Commission on Human Rights for Implementing the National Model of Policing and Civic Justice seeks to draw up and update the provisions, protocols, and guides for protecting human rights in the updating and training of police through the Lead Program for Professionalization. In addition, it indicated that for the 2020 budget exercise, in the processes of coordinating funds for public security, at least 10% of the training budget should be earmarked for covering human rights and related issues.

24. The State also indicated that it enjoys the support of the Office of the United Nations High Commissioner for Human Rights, the International Committee of the Red Cross, and other international cooperation agencies.<sup>22</sup>

25. The Commission observes regulatory, constitutional, and statutory changes, as well as the creation of systems, procedures, and institutions related to public security that have been the subject of criticisms and whose main points have not been resolved. While these processes – which can be considered progress in implementing the recommendations – have already begun, the Commission also observes that they have been questioned through judicial proceedings as part of the internal institutional debate; the results are still pending a decision. Mindful of the foregoing, the IACHR concludes that the two recommendations being analyzed are pending implementation and it will continue to monitor the institutional and legal implementation mentioned, the reports on the deployment of the National Guard on the ground, and especially the constitutional challenges that have been brought to the laws on public security, particularly with respect to those points purportedly at odds with the rights and freedoms guaranteed in the American Convention.

26. As regards the recommendation to **adopt a General Law on the Use of Force in keeping with international human rights standards**, the State reported that after the constitutional reform process described above it adopted several provisions related to this area, including the Federal Law on the Use of Force and the Federal Law on the Registry of Arrests.<sup>23</sup> According to the State, the Law on the Use of Force

<sup>20</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 1-3.

<sup>21</sup> Observations and comments by the State, January 13, 2020, paras. 1-3.

<sup>22</sup> Observations and comments by the State, January 13, 2020, paras. 4-9.

<sup>23</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 5.

supplements the Manual on the Use of Force and is a guide for the action of armed forces personnel for respecting human rights in the performance of their functions. The State indicated that said law includes a training component in keeping with human rights standards.<sup>24</sup> In addition, in its observations on the draft of this report it noted that 22 high-level commanders of the Ministry of National Defense were trained, and that because of the trainings given to police personnel through the Ministry of Security and Citizen Protection, complaints of alleged human rights violations fell in 2018 to 466, compared to 808 complaints in 2017. The State did not present figures for 2019.<sup>25</sup>

27. In July 2019 the National Commission on Human Rights (hereinafter “CNDH”: Comisión Nacional de Derechos Humanos) brought four constitutional challenges before the Supreme Court with respect to some clauses of the laws stemming from the constitutional reforms already described: on the National Guard, on the use of force, on the Registry of Arrests, and on the National System of Public Security. In summary, the CNDH challenged the authority to stop or otherwise engage with citizens (arrest, asking them for information, intervening in private communications, and locating their geographic position in real time, among others), inspection of foreign citizens (entry and exit from the country, and verifications with respect to residents), and the use of lethal weapons against those who participate in public demonstrations.<sup>26</sup>

28. The IACHR observes that the text of said Law indicates that its aim is to regulate the use of force and lethal force by the State’s public security institutions, and by the Armed Forces when they act in public security tasks. According to the Law, the use of force is governed by the principles of absolute necessity, legality, prevention, proportionality, and accountability, and with full respect for human rights. It also defines what is considered to be a “lethal threat” that would authorize the use of lethal force and cause death, and it classifies the conduct that merits the use of force based on its intensity.<sup>27</sup>

29. In addition, at its chapters IX and X, respectively, it includes the obligation to issue detailed reports that describe the operations in which force is used, and lethal weapons, as the case may be, and the institutionalization of training and professionalization relating to the use of force (weapons, methods, and techniques), human rights, non-discrimination, gender perspective, and police ethics and doctrine, among other aspects.<sup>28</sup>

30. The CMDPDH warned that the Law on the Use of Force authorizes the Armed Forces to carry out public security tasks without the requirements of exceptionality set out at Article 27 of the American Convention. It allows for the use of firearms without considering proper certification of the armed agents; it is lax in the way in which it considers the firearms permitted in peacetime and for public security tasks, among other circumstances. It is of the view that the Law also inhibits the right to demonstrate and to associate peacefully and it authorizes the use of force when, in the view of the authorities, the demonstration or public assembly turns violent.<sup>29</sup>

31. Based on the foregoing, and given that the State has already adopted a General Law on the Use of Force, the IACHR considers that that part of the recommendation has met with partial substantial

<sup>24</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 7.

<sup>25</sup> Observations and comments by the State, January 13, 2020, paras. 10-11.

<sup>26</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (IACHR) en 2015. October 2019.

<sup>27</sup> [Federal Law on the Use of Force, May 27, 2019.](#)

<sup>28</sup> [Federal Law on the Use of Force, May 27, 2019.](#)

<sup>29</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 3-4.

compliance, while the constitutional challenges brought by the CNDH are resolved and the Law begins to be effectively implemented.

32. As regards the recommendation to **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 loss of life**, the IACHR observes that the Federal Law on the Use of Force spells out the obligation of security agents to produce reports on situations in which force was used, as already outlined in this Report. Such detailed reports should provide the data on the agent who used force, the level of force used, and the facts that led to the deployment of force being analyzed, including data on the lethal weapons used and their handling.

33. That law also indicates that the security institutions should present annual public reports that make it possible to learn about the activities that have involved the use of force. These reports, according to the law, should contain the data on detentions, results of bodily evaluations done of the persons detained, and the number of persons deceased, among others.

34. In this respect the State indicated that according to Article 222 of the Federal Code of Criminal Procedure, the authorities responsible for public security have the obligation to ensure and protect the crime scene until the competent authorities arrive. In addition, it noted the obligation of the Armed Forces to report any incident in which it is presumed that a crime has been committed (pursuant to Article 43 of the Federal Law on Use of Force), and that those elements, including the members of the National Guard, are subject to the regime of administrative liability. In addition, the State referred to the system of accountability that requires the submission of what are called detailed reports, whose content, in case of the use of lethal force, must: (a) spell out the reasons for making use of the firearm or explosive; (b) identify the number of shots or quantity of explosive detonated; (c) specify the type of injuries, the number and identity of the persons injured, and the material damages caused, and (d) specify the number and identity of the persons who have lost their lives, if any.<sup>30</sup>

35. Both the IACHR and the OHCHR have emphasized the need for Mexico to supplement its efforts in the area of citizen security by adopting and implementing accountability measures by a body independent of all the security forces in relation to public security operations and tasks in which anyone has died.<sup>31</sup> While the Federal Law on the Use of Force establishes the legal obligation to produce reports, this same law divides the information produced into the detailed reports and the public reports. This proposed division would appear to establish that only one type of information produced will be public, which is restrictive as regards the more technical or specific information that may be required by the citizenry for social oversight of security operations. In its observations on the draft of this report the State indicated that citizens may request that information in exercising their right of access to the information through the National Transparency Platform and the systems for requesting information of the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI).<sup>32</sup>

36. The Commission also reiterates that its recommendation aims towards that accountability in this area should be entrusted to a body independent of the security forces, precisely to ensure impartiality in handling the information reported. Based on the foregoing, the IACHR observes that the recommendation has met with partial compliance.

37. Amnesty International has also noted the existence of ambiguities in the Federal Law on the Use of Force, given that it does not clearly establish that any use of force, and not just lethal force, is the last

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<sup>30</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 5.

<sup>31</sup> IACHR, *Situation of Human Rights in Mexico*, 2015. United Nations, *Recommendations on Mexico made by the UN High Commissioner for Human Rights, Mr. Zeid Ra'ad Al Hussein, following up on his official visit to the country in October 2015*, October 20, 2016.

<sup>32</sup> Observations and comments by the State, January 13, 2020, paras. 12-13.



alternative to which its agents may have recourse; nor does it require public servants in charge of enforcing the law to make the necessary efforts to deactivate or diminish the tension or the conflict they face, with the objective of not using force. In its view, the law does not establish clear rules for protecting third persons, as called for by international human rights law.<sup>33</sup>

38. As regards the recommendation to **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**, the Mexican State indicated that the CNDH sent an official communication to the Ministry of the Navy for the competent authority to approve the communiqués issued by its Unit for Social Communication so that the information disseminated related to operations is accurate and reliable.<sup>34</sup> In addition, the State referred to the detailed report provided for in Article 32 of the Federal Law on the Use of Force, mentioned above.

39. The CMDPDH referred to an operation carried out in Culiacán, Sinaloa against the Sinaloa Cartel in which the son of Joaquín Guzmán Loera (alias “el Chapo Guzmán”) was briefly detained, and then released by those who were holding him, in response to threats of reprisals against their families. The CMDPDH noted that at the press conference after the failed operation statements and value judgments on the legality of how the government agencies acted preceded the investigations. For example, they cite Luis Cresencio Sandoval, Minister of National Defense, who issued statements on the actions of the security forces without a prior investigation, saying “that priority was accorded at every moment to protecting the higher legal interest, such as the life of the civilian population, also respect for human rights and the adequate use of force, and avoiding any type of massacre.” It also quoted Alfonso Durazo Montañón, Minister of Public Security, who indicated at the same press conference, “first, I think that the members of the security forces in the country, particularly the Armed Forces, the Army and the Navy, which are highly valued institutions, have done a great job for years.”<sup>35</sup>

40. Although the participation of the CNDH indicates that there are organs that are promoting the implementation of this recommendation, the information submitted is scant when it comes to evaluating the status of its implementation. Rather, the examples that have been presented indicate that the Mexican authorities’ practice of referring to the legality of the operations before an investigation is carried out have not been entirely eradicated, especially if these examples come from press conferences on major operations, such as the one in Culiacán, Sinaloa. In its observations on the draft of this report the State indicated that the SSPC instructed all personnel, in the performance of their duties, not to design public policies for social communication that impair the rights of third persons, nor to show photographs or provide personal data of detainees in the media.<sup>36</sup> Despite the aforementioned, and taking into account the information submitted by the State, the Commission considers that the recommendation has met with partial compliance.

41. As regards the recommendation to **ensure that in cases of forced disappearances, extrajudicial executions and torture, lines of investigation relate not only to the material perpetrators, but also include the responsibility of those in the chain of command**, the State referred to the General Law on Disappearance and the General Law on Torture. It indicated that both laws establish that the criminal liability for committing those crimes extends to superiors, and in that regard it also referred to the Code of Military Justice, which punishes the lack of *notitia criminis* by members of security forces, without prejudice to their rank or hierarchical position. This type of regulation is also included in the Manual on the Use of Force. In addition, the State reiterated that the recommendations of the CNDH to the Ministry of the Navy have been useful for initiating the investigations by the Office of the Attorney General. Finally, the State said that the adoption of the Federal Law on the Use of Force has established a regime of responsibilities that establishes

<sup>33</sup> Amnesty International, Document “México, insumos para el Informe Anual de la Comisión Interamericana,” October 31, 2019.

<sup>34</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 5.

<sup>35</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 4-5.

<sup>36</sup> Observations and comments by the State, January 13, 2020, para. 14.

that superiors will be responsible when they should have or have knowledge that the agents under their command have made unlawful use of force, or the tools or firearms of which they are in charge, and do not stop it or report it to the corresponding authorities.<sup>37</sup> In its observations on the draft of this report the State added training actions on human rights for naval commanders of the SEMAR, following up on recommendations of the CNDH.<sup>38</sup>

42. The IACHR notes that the Federal Law on the Use of Force regulates, at chapter XI, the Regime of Responsibilities. That law establishes that the commanders of the institutions that include public security forces should verify that their subordinates act in keeping with the law, ensure that the unlawful use of force is punished, and uphold the obligation of all members of public forces to report to the competent authority any knowledge they come to have of the unlawful use of force. In effect, the IACHR finds that the establishment of a regime of liabilities is a step forward in fighting impunity in the area of public security; the situations regulated are delimited to the use of public force in official operations and by identified agents. Nonetheless, acts of torture, forced disappearance, and extrajudicial executions may be committed in clandestine operations, with the omission or acquiescence of state agents, or by third persons.

43. In addition, while the legal framework provides for investigations into forced disappearance including the chain of command, the IACHR notes that more evidence is required to evaluate the impact of the regime of liabilities on the use of force, and how it has interacted with the other obligations to report serious violations by members of the forces subject to hierarchical control. In view of the foregoing, the IACHR considers that the recommendation has met with partial compliance.

44. As regards the recommendation to **create systems for 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 State indicated that in the case of children and adolescents, the General Law on Children and Adolescents provides for the creation of the National Information System and Special Information Systems, whose administration is entrusted to the Executive Secretariat of the Integral System of Protection for Children and Adolescents (hereinafter “the SIPINNA”) and the local protection systems. According to the State, the System is going through a moment of transformation and will soon compile, through 148 indicators, data from the Specialized Technical Committee on Information for Integral Protection of the Rights of Children and Adolescents (hereinafter “the CTEIPIDNNA”).<sup>39</sup> In addition, it indicated that the collection of information on 46 indicators from the 31 states plus Mexico City is under way (mostly on special protection, violation of the privacy of children and adolescents, etc.) for their validation and entry to the National Information System.<sup>40</sup>

45. The State also referred to efforts made to reinforce the work of the CTEIPIDNNA. In its report one observes that in 2019 the CTEIPIDNNA approved the road map for adopting its 2019-2024 work plan, and the review of the battery of indicators in the National Information System, and the process for approval of the proposed technical standard based on the “Guidelines for incorporating the perspective of children and adolescents in the statistical projects of the National System on Statistical and Geographic Information.”<sup>41</sup> In addition, the State reported that it has a record of children and adolescents who are migrating at immigration stations or with provisional stays, and a record of children and adolescents who are migrating who are at shelters of the National System for the Integral Development of the Family, the State System for the Integral

<sup>37</sup> Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 10.

<sup>38</sup> Observations and comments by the State, January 13, 2020, para. 15.

<sup>39</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 12.

<sup>40</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 12.

<sup>41</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 13.

Development of the Family, the Municipal System for the Integral Development of the Family, and civic associations, and that both data bases are updated periodically.<sup>42</sup>

46. Moreover, the State made reference to the National Council for the Prevention of Discrimination (hereinafter “CONAPRED”) and its census-related function in the context of the National Survey on Discrimination (hereinafter “ENADIS”), a tool that gives visibility to the accumulation of social disadvantages that affect persons who belong to social groups that have suffered historical discrimination, and which are present in different areas of social and everyday life. According to what was reported, the latest ENADIS is from 2017 and made it possible to generate indicators for designing the public policy to prevent and fight discrimination in areas such as health, education, work, social development, fighting poverty, culture, citizen participation, and the enjoyment of civil and political rights, among others. According to the information received, ENADIS collected information on women, children, adolescents and youths, older persons, indigenous persons, Afro-descendants, persons with disabilities, remunerated domestic workers, persons of diverse religious backgrounds, foreign persons, and LGBTI persons, and prejudices and stereotypes with respect to migrants and trans persons.<sup>43</sup>

47. In line with the foregoing, the State reported that the CONAPRED developed the National System on Discrimination (hereinafter “SINDIS”), which constitutes a virtual tool providing objective, historical, and verifiable information on discrimination, and offering important inputs for monitoring gains in attaining the right to equality and non-discrimination in Mexico. In addition, the State reported on other bodies that also compile and systematize information on vulnerable populations such as the Executive Commission for Attention to Victims (hereinafter “CEAV”) through the National Registry of Victims (hereinafter “RENAVI”). Specifically, the RENAVI has been useful for identifying the type of discrimination that the LGTBI population faces in securing services.<sup>44</sup>

48. The IACHR notes that the State has also indicated that the Office of the Attorney General (hereinafter “FGR”) has two categories of systems of statistical information and support for investigating and prosecuting federal crimes that correspond to the specialty of each of its substantive units, and that stem from the complaints filed concerning crimes committed to the detriment of women, children and adolescents, migrants, human rights defenders, and LGBT persons, among others. According to the State, these systems make it possible to monitor, in general terms, inquiries from their beginning, processing, determination, criminal proceedings before the judicial authority, and judgments, among others.<sup>45</sup>

49. As regards persons migrating through Mexico, the State indicated that the Unit for Investigation of Crimes against Migrants maintains internal records with general data on victims, which are part of the investigations; the information on age should be looked at to determine whether the person is a child or adolescent.<sup>46</sup>

50. With respect to persons deprived of liberty, the State referred to the existence of the National Survey on the Population Deprived of Liberty (hereinafter “ENPOL”); and on human rights defenders and journalists, it referred to the periodic statistical reports of the Human Rights Defenders and Journalists

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<sup>42</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 18.

<sup>43</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 15-16.

<sup>44</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 17-18.

<sup>45</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 17-18.

<sup>46</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 19.

Protection Mechanism.<sup>47</sup> The IACHR will specifically refer below to the suspension of the ENPOL and the lack of a budget for that mechanism for 2019. Finally, with respect to women, the State reported that the National Institute of Statistical and Geographic Information (hereinafter “INEGI”) has the Integrated System of Statistics on Violence against Women (hereinafter “SIESVIM”), which systematizes information on the types of violence brought to bear against women, the magnitude, forms, and intensity of such violence, so that it can be a reference for supporting and upholding the definition, monitoring, and evaluation of public policies aimed at eradicating violence against women. This system is made up of 272 indicators, each designed with its corresponding technical data sheet.<sup>48</sup>

51. In relation to Afro-descendants, as noted above, the IACHR commends the fact that “ENADIS” included the variable related to this population in 2017, with the result that 4.7 per cent of the total population of people aged from 15 to 59 in Mexico recognized themselves as Afro-descendants<sup>49</sup>. The Commission also highlights the approval of the constitutional reform of Article 2 by the Senate of the Republic of Mexico, which grants recognition to the Afro-descendant population in the Constitution<sup>50</sup>. The Commission hopes that the Mexican State will establish channels of communication with civil society organizations within the framework of the design, implementation, monitoring and evaluation of census policies, particularly with regard to the inclusion of the Afro-descendant variable in the 2020 Census, which will be carried out by the National Institute of Statistics and Geography (INEGI); in order to ensure that the question of ethnic and racial self-recognition is appropriate for both indigenous and Afro-descendant peoples.<sup>51</sup>

52. In these terms, the IACHR observes that the State has developed a complete system for compiling and analyzing data on violence against women. In addition, the IACHR finds that there are instruments that make it possible to learn about some aspects of violence against children and adolescents, migrants, and LGTBI persons, and African descendants. In addition, the IACHR has noted the report of the State regarding the ENPOL and reports of the Protection Mechanism for human rights defenders and journalists, with the considerations that will be explained below. In view of the foregoing, given that the information systems on persons deprived of liberty, human rights defenders, and journalists face a critical situation, the IACHR considers that these groups have been neglected when it comes to registering data on violations of their rights. The same holds for indigenous persons and peoples, with respect to whom the IACHR has not identified a specific instrument for measurement, but only tangential references. In its observations on the draft of this report the State indicated that the regional planning process had been included in seven indigenous regions, and that in the preliminary assessment submitted to the assemblies of indigenous authorities information was included on the number of crimes in the regular criminal courts per 1,000 population and the homicide rates, reported by the Executive Secretariat of the National Public Security System (SESNSP).<sup>52</sup>

53. In view of the foregoing, the Commission considers that the recommendation has met with partial compliance.

54. As regards the recommendation to **re-direct the approach to the issue of drugs**, the State reported that at present the National Guard is responsible for public security activities and operations. In addition, it reported that according to the General Bureau for the Promotion of a Culture of Human Rights, Complaints, and Inspection of the FGR, in 2019, 3,292 public servants were trained through 86 courses on human rights, with a total of 981 class hours. The State also indicated that pursuant to the Regulation of the

<sup>47</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 19.

<sup>48</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 19-20.

<sup>49</sup> CONAPRED, [Encuesta Nacional sobre Discriminación \(ENADIS\)](#), 2017.

<sup>50</sup> Diario Oficial. Poder Ejecutivo Secretaría de Gobernación, [Decreto por el que se adiciona un apartado C al artículo 2o. de la Constitución Política de los Estados Unidos Mexicanos](#), 9 agosto 2019.

<sup>51</sup> CIDH. Audiencia, México: [Criterio Racial en censo 2020](#), 172 Período de sesiones. Jamaica. 9 mayo 2019.

<sup>52</sup> Observations and comments by the State, January 13, 2020, paras. 17-18.

Organic Law of the FGR, the General Bureau for the Prevention of Crime and Community Services, it carried out 1,013 courses and lectures on crime prevention and drug addiction. Finally, it indicated that the National Development Plan (2019-2024) proposes to reformulate the antidrug effort to reduce the levels of consumption by lifting prohibitions of substances and reorienting spending to programs for reinsertion and detoxification.<sup>53</sup> In its observations on the draft of this report the State noted that the National Development Plan (2019-2024) proposes to reformulate the antidrug effort and to reduce levels of consumption by lifting prohibitions on substances and redirecting spending on reinsertion and detoxification programs.<sup>54</sup> It also indicated that in May 2019 it adopted the “Together for Peace” (“Juntos por la Paz”) strategy, which seeks to have an impact on the biopsychosocial determinants that prevent and reduce the use of psychoactive substances in children and adolescents.<sup>55</sup>

55. The CMDPDH reported on the “Preliminary Proposed Legal Opinion on the Law for Regulation of Cannabis,” presented in October 2019. That preliminary proposal takes up anew some of the demands of civil society experts, such as growing for one’s own use, associated growing, and a regulated market. Nonetheless, the CMDPDH has called attention to the proposed model being worrisome for the Mexican context. In its view the preliminary proposal puts forward a high-level regulation, excludes vulnerable groups, and tends to favor only the large companies in relation to market access. In addition, the CMDPDH indicated that the preliminary proposal in question is not harmonized with the General Law on Health and the Federal Criminal Code, setting aside the opportunity to address the decriminalization of users, the training of police bodies, and the justice system to cease the persecution, harassment, and extortion with the pretext of investigating possession of marijuana.<sup>56</sup>

56. In view of the foregoing, the IACHR concludes that the recommendation has met with partial compliance.

#### **B. Persons missing 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 with 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 children who are disappeared and forcibly disappeared.

<sup>53</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 12-24.

<sup>54</sup> Séptimo Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pág. 12 -24.

<sup>55</sup> Observations and comments by the State, January 13, 2020, para. 19.

<sup>56</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, pp. 4-5.

- 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.

57. On the recommendation that calls on the State to **adopt a General Law on Disappearances and Forced Disappearances, and ensure the laws and practices comply with the relevant international standards**, as was indicated earlier, the State adopted the General Law on Forced Disappearance and Disappearance Committed by Private Persons (hereinafter “the General Law”) on November 17, 2017; it came into force on January 16, 2018. In view of the foregoing, the State carried out the first part of the recommendation.

58. As regards all the other measures to ensure that the practices are in line with the relevant international standards, the State reiterated the purpose of the General Law and indicated that its implementation corresponds to the authorities of the three levels of government, and that it should be interpreted in keeping with international standards.<sup>57</sup> With respect to the National Search Commission (hereinafter “CNB”) it indicated that it has several means of communication (0800 line and real-time messaging systems), which operate 24 hours a day, 365 days a year, for reporting disappearances, highlighting that according to this methodology the search is not conditioned on the filing of a complaint.<sup>58</sup>

59. In addition to the foregoing, the IACHR considers relevant the public announcement by the Ministry of Interior of seven measures to search for disappeared persons: (i) searching for disappeared persons is a government priority; (ii) acceptance of the competence of the United Nations Committee on Enforced Disappearances to take stock of communications; (iii) invitation to the Committee on Enforced Disappearances to make an official visit in 2020; (iv) compliance with international decisions and friendly settlements; (v) signing scientific cooperation agreements; (vi) introducing a legal initiative to establish the extraordinary forensic mechanism; and, (vii) strengthening the CNB with persons commissioned from the Search Unit of the Ministry of Citizen Protection.<sup>59</sup>

60. The CNDH noted that while in the last two years the State has undertaken various legislative actions to address the crisis of disappearances and to provide services to victims, at present “the laws are not being adequately applied or enforced.”<sup>60</sup> According to the “Thematic Shadow Report on Forced Disappearance and Disappearance by Private Persons in Mexico,” drawn up by civil society organizations specialized in the area, on occasion of the sixth review of Mexico before the Human Rights Committee, the tools for stopping the forced disappearance of persons have not been sufficient to address the humanitarian crisis.<sup>61</sup>

61. The CNDH also identified as gains in the area of forced disappearance the partial reestablishment of the National System for Searching for Persons, the Issuance of the Approved Protocol for

<sup>57</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 21-22.

<sup>58</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 22.

<sup>59</sup> La Jornada. [Instruye AMLO siete acciones para búsqueda de desaparecidos](#). August 30, 2019; Animal Político. [Las siete acciones de búsqueda de desaparecidos propuestas por AMLO](#). August 30, 2019.

<sup>60</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (IACHR) en 2015. October 2019.

<sup>61</sup> Informe Sombra Temático sobre Desaparición Forzada y por Particulares en México. Document prepared by the Centro de Derechos Humanos de la Montaña, Tlachinollan, Centro de Justicia para la Paz y el Desarrollo A.C. (CEPAD), Fundar, Centro de Análisis e Investigación, Red por los Derechos de la Infancia en México (REDIM), Red Nacional de Organismos Civiles de Derechos Humanos “Todos los Derechos para Todas y Todos” (Red TDT) in the context of the Sixth Review of Mexico before the Human Rights Committee, p. 3. [hereinafter “Shadow Report...”]

Investigating the crimes of forced disappearance and disappearance committed by private persons; installation of the CNB and 23 Local Search Committees<sup>62</sup>, and the creation of the Office of the Special Prosecutor for Investigating Crimes of Forced Disappearance in the FGR, and 26 Offices of the Special Prosecutor in the states and Mexico City.<sup>63</sup>

62. After the adoption of the General Law and the formation of the CNB, the IACHR recognizes the complexity of implementing the legal mandate with respect to the creation of the National Search System (hereinafter “SNB”: Sistema Nacional de Búsqueda). That mandate incorporates and creates a series of organs, tools, and mechanisms of coordination at the state and federal levels. In general, the IACHR attributes positive value to the reestablishment of the SNB on March 23, 2019, though that act did not include the participation of the Attorney General. In addition, the IACHR took note that the State reduced the budget for searching for persons<sup>64</sup>; approximately 50% was allocated to the CNB, while the rest was earmarked for the other processes of the SNB.<sup>65</sup>

63. Based on the information submitted for this report, the IACHR considers that a key aspect of the General Law, in light of the Commission’s recommendations, is the adoption of measures for starting up the SNB and the tools for managing information on disappeared persons. In these terms, in this report the Commission will review the status of the implementation of the organs that have functions, according to the General Law, in the SNB:

- a. Local Search Committees (hereinafter “CLB”): in its observations on the draft of this report the State indicated that as of December 2019, 28 CLBs have been established; still pending is the establishment of the CLBs in Aguascalientes, Guanajuato, and Yucatán. It also reported that more than 248 million Mexican pesos were executed to this end.<sup>66</sup>
- b. National Program of Exhumations and Identification: This Program is the lead instrument designated by the General Law for identifying deceased persons whose creation is entrusted to the Office of the Attorney General (hereinafter “PGR”: Procuraduría General de la República). According to a public document from the PGR from the previous year, this organ was unable to make progress with the implementation of the National Program due to the failure to establish the SNB.<sup>67</sup>
- c. National Search Program: According to the General Law, the period for establishing said Program lapsed on September 12, 2018. In this regard, the IACHR notes its participation as an observer in meetings for constructing the methodology of the National Search Program; in the discussion the areas on which the National Plan would be designed were presented including the following items: guidelines and rules, context, family members’ participation, information management, transparency and accountability, coordination, and awareness-raising. There

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<sup>62</sup> Commissions established in the following states: Baja California, Campeche, Chihuahua, Mexico City, Coahuila, Colima, Durango, México, Guerrero, Hidalgo, Jalisco, Michoacán, Morelos, Nayarit, Nuevo León, Querétaro, San Luis Potosí, Sinaloa, Tabasco, Tamaulipas, Tlaxcala, Veracruz, and Zacatecas.

<sup>63</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019.

<sup>64</sup> The budget for 2019 was 400 million Mexican pesos, which implied a reduction of 69 million pesos of fiscal year 2018.

<sup>65</sup> Movimiento por nuestros desaparecidos en México. Alternative report to the United Nations Human Rights Committee. September 10, 2019, p. 2.

<sup>66</sup> Observations and comments by the State, January 13, 2020, para. 21.

<sup>67</sup> PGR. [La PGR presentará el Programa Nacional de Exhumaciones, ante la Conferencia Nacional de Procuración de Justicia.](#)

was also major emphasis on including prior knowledge and the search methodologies deployed by the organizations of family members of disappeared persons.<sup>68</sup>

- d. Special Prosecutors' Offices (Fiscalías Especializadas) for investigating and prosecuting the crimes of forced disappearance of persons and disappearance committed by private persons (hereinafter "the Special Prosecutors' Offices"): civil society organizations have reported that there is no information certain with respect to implementation of the mandate of the General Law regarding the creation of Special Prosecutors' Offices, and that rather, the Office of the Special Prosecutor for Investigating Crimes of Forced Disappearance of the FGR saw a 28% reduction to its 2019 budget compared to the previous year.<sup>69</sup> Nonetheless, SERAPAZ indicated that the following states do not yet have Special Prosecutors' Offices: Aguascalientes, Baja California Sur, Chiapas, Guanajuato, Morelos, Oaxaca, Puebla, Quintana Roo, Sonora, Tabasco, and Yucatán.<sup>70</sup> In its observations on the draft of this report the State indicated that the Offices of Special Prosecutors (Fiscalías Especializadas) have sufficient human and financial resources.<sup>71</sup>
- e. National Citizen Council: the Council was installed in 2018, yet as of the production of this report the IACHR has no information about its activities.
- f. Search groups: The IACHR does not have information with respect to the establishment, operation, or startup of the search groups.

64. In addition, with respect to the tools for information management provided in the General Law, the following information has been received:

- a. National Registry of Persons Disappeared and not Located (hereinafter "RNPED": Registro Nacional de personas desaparecidas y no localizadas): The State indicated that the CNB has developed a strategic plan to "normalize" the RNPED to administer and coordinate its operation at the national level, and that at present the FGR, the state offices of attorneys general, and offices of special prosecutors are validating and updating the RNPED.<sup>72</sup> In this respect, the IACHR was informed that the RNPED has not been updated since April 2018<sup>73</sup> and that the census methodology has not been disseminated to the civil society organizations or the organizations of family members of persons disappeared.<sup>74</sup> At the press conference, the head of the CNB announced the implementation of a new system for reporting disappeared persons through the means of capturing such information (Internet and telephone). According to the information, the new platform will feed the RNPED, but not only capturing the information reported for statistical purposes; in addition, registration triggers the search and investigation actions, independent of whether a report was filed. The registry can be established by the local authorities or by citizens, even anonymously.<sup>75</sup> In its observations on the draft of this report the State added that the platform is part of a strategy for pulling

<sup>68</sup> Meeting held October 7, 2019, at the offices of the Centro de Investigación y Docencia Económicas (CIDE).

<sup>69</sup> Shadow report..., p. 4.

<sup>70</sup> Meeting held Thursday, October 17, 2019 with representatives of FUNDAR – Centro de Análisis e Investigación, SERAPAZ-Servicios y Asesoría para la Paz, and Fundación para la Justicia y el Estado Democrático de Derecho.

<sup>71</sup> Observations and comments by the State, January 13, 2020, para. 22.

<sup>72</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 23.

<sup>73</sup> Shadow report ..., p. 3; and Movimiento por nuestros desaparecidos en México. Alternative report for the United Nations Human Rights Committee, September 10, 2019, p. 3.

<sup>74</sup> Meeting held Thursday, October 17, 2019 with representatives of FUNDAR – Centro de Análisis e Investigación, SERAPAZ-Servicios y Asesoría para la Paz, and Fundación para la Justicia y el Estado Democrático de Derecho.

<sup>75</sup> CNB, [Conferencia de prensa de lanzamiento del RNPED](#), November 7, 2019.



together the RNPED, the first main line of which is to create the technological tool, and the second is for the different authorities to input information to the Registry automatically. It also carried out a campaign to disseminate faces and names for the search, and to raise awareness, through the campaign, of the situation of disappeared persons.<sup>76</sup>

- b. National Forensic Data Bank: According to the General Law, the Bank is under the FGR and its purpose is to pull together information relevant for searching for and identifying disappeared persons, but as of the date of adoption of this report it has not been created, even though the legal time for doing so has lapsed.<sup>77</sup>
- c. National Registry of Deceased Persons not identified and not claimed: According to the General Law the Registry is the instrument that has pulls together the forensic information that has been processed on the human remains found in the national territory. Establishing that Registry is a responsibility of the FGR, yet as of the adoption of this report it has not been established, even though the legal time for doing so has lapsed.<sup>78</sup>
- d. National Registry of Graves: As of the date of the adoption of this report, that Registry has not been created even though the legal time for doing so has lapsed<sup>79</sup>, though on August 30, 2019 the CNB indicated that since 2006 3,024 clandestine graves have been found, from which 4,974 bodies have been exhumed.<sup>80</sup>
- e. Administrative Registry of Arrests: According to what the CNDH indicated on May 27, 2019, the Federal Law on Registry of Arrests and Administrative Registry of Arrests is in the implementation phase. The Federal Law on Registry of Arrests was published and the Administrative Registry of Arrests is in the implementation phase.<sup>81</sup>
- f. AMBER alert: The IACHR did not identify up-to-date information with respect to the steps for activating the AMBER alert in the event of a disappearance of persons. In its observations on the draft of this report the State indicated that the AMBER alert is applied after an evaluation, on a case-by-case basis.<sup>82</sup>
- g. Standardized Search Protocol: The State reported that it will take into account, in establishing it, various theoretical and practical inputs; it will be designed with a differentiated approach and will be in line with the international standards of the United Nations.<sup>83</sup> The Commission notes that according to the General Law the time for adopting the Search Protocol has lapsed

<sup>76</sup> Observations and comments by the State, January 13, 2020, paras. 26-28.

<sup>77</sup> Movimiento por nuestros desaparecidos en México. Informe Alternativo para el Comité de Derechos Humanos de las Naciones Unidas. September 10, 2019, p. 3.

<sup>78</sup> With respect to the National Forensic Data Base and the National Registry of Unidentified and Unclaimed Deceased Persons, the State indicated in its observations (paragraph 35) that both tools continue to be in the process of being “established and improved upon” and indicated that in April 2019 the directors of Expert and Forensic Medical Services nationwide were interviewed to collect information for this purpose.

<sup>79</sup> Movimiento por nuestros desaparecidos en México. Informe Alternativo para el Comité de Derechos Humanos de las Naciones Unidas. September 10, 2019, p. 3.

<sup>80</sup> Noticieros Televisa. [Existen 3.024 fosas clandestinas en México, informa gobierno de AMLO](#), August 30, 2019; Milenio. [En 13 años, se hallaron 3 mil 24 fosas clandestinas: con AMLO, 522](#), August 30, 2019; Amnesty International, Document “México, insumos para el Informe Anual de la Comisión Interamericana,” October 31, 2019.

<sup>81</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019, p. 7.

<sup>82</sup> Observations and comments by the State, January 13, 2020, para. 23.

<sup>83</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 25.

and several organizations have expressed their concern over that delay due to the lack of guidelines for conducting searches in the national territory with an approach focused on locating persons alive as well as searching for persons who have been disappeared for a long time.<sup>84</sup> In its observations on the draft of this report the State reported that the Protocol is being drawn up and will take into account the information from the digital registry to provide input for the context analysis, so as to make it possible to design specific search strategies with a differential approach.<sup>85</sup>

- h. Standardized Investigation Protocol: The State referred to the “Standardized Protocol for Searching for Disappeared Persons and Investigating the Crime of Forced Disappearance.”<sup>86</sup> According to its report, this Standardized Protocol includes activating an Urgent Search Mechanism that indicates that once the information is entered by the Center for Citizen Reports and Attention (CEDAC: Centro de Denuncia y Atención Ciudadana) to the National System of Prosecutorial Information (SNIPD –Sistema Nacional de Información Ministerial (SNIPD)), it triggers that National Network for Searching for Disappeared Persons – which in the case of children and adolescents provides for the issuance of the AMBER Alert.<sup>87</sup> In addition, the IACHR finds that, pursuant to implementation of the General Law, since 2018 the “Standardized Protocol for Investigating Crimes against Forced Disappearance of Persons and Disappearances Committed by Private Persons” has been active and operating.<sup>88</sup> The IACHR was informed that this Protocol was adopted without consulting the organizations of victims or civil society, does not have approaches differentiated by vulnerable population, and has not been disseminated to the states.<sup>89</sup>

65. In addition, the CNDH<sup>90</sup> characterized as of the utmost importance the August 5, 2019 opinion of the Human Rights Committee of the United Nations related to the communication brought by the family members of Christian Téllez Padilla, who disappeared in Veracruz on October 20, 2010. The Committee found that Mr. Téllez was the victim of forced disappearance and determined that the State should conduct an exhaustive, rigorous, impartial, independent, and effective investigation to determine the circumstances of his disappearance.<sup>91</sup> In its observations on the draft of this report the State indicated that the FGR has commissioned two intelligence analysts from December 9 to February 5, 2020 to address the matter, and that it has set up a working group made up of the Ministry of Interior, the CNB, and the Office of the Federal Prosecutor of Veracruz.<sup>92</sup>

66. Based on the aggregate information, the Commission observes that with respect to the recommendation related to **adopting all necessary measures to ensure that both at the federal and state**

<sup>84</sup> Movimiento por nuestros desaparecidos en México. Informe Alternativo para el Comité de Derechos Humanos de las Naciones Unidas. September 10, 2019, p. 2; Shadow report..., p. 3.

<sup>85</sup> Observations and comments by the State, January 13, 2020, paras. 25 and 29-30.

<sup>86</sup> [Standardized Protocol for the Search for Disappeared Persons and Investigating the Crime of Forced Disappearance.](#)

<sup>87</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 25-26.

<sup>88</sup> [Standardized Protocol for Investigating the Crimes of Forced Disappearance and Disappearance Committed by Private Persons](#)

<sup>89</sup> Meeting held October 17, 2019 with representatives of FUNDAR – Centro de Análisis e Investigación, SERAPAZ – Servicios y Asesoría para la Paz, and Fundación para la Justicia y el Estado Democrático de Derecho; Movimiento por nuestros desaparecidos en México. Informe Alternativo para el Comité de Derechos Humanos de las Naciones Unidas. September 10, 2019, p. 9.

<sup>90</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019.

<sup>91</sup> Human Rights Committee, [Views adopted by the Committee under article 5 \(4\) of the Optional Protocol concerning communication No. 2750/2016.](#) August 5, 2019.

<sup>92</sup> Observations and comments by the State, January 13, 2020, paras. 33-34.

**level the laws and practices comply with international standards on the subject**, the State has adopted measures aimed at implementing the General Law, specifically for implementing the National Search System by forming the Local Search Committees and the Special Prosecutors' Offices, with the qualifications stated above. In this scenario, the IACHR notes that the adoption and establishment of the National Program of Exhumations and Identification, the National Search Program, the National Citizen Council, and the Search Groups is still incipient. One reaches the same conclusion with respect to the information management tools and bodies, as indicated above, with special emphasis on the Standardized Search Protocol. In view of the foregoing, the Commission finds that the recommendation has met with partial substantial compliance.

67. As regards the recommendation to **establish mechanisms for immediate search for disappeared persons**, while the State described the search mechanisms undertaken by the CNB using telephones and the Internet, the Standardized Search Protocol has yet to be adopted, and the IACHR does not have information with respect to performance by the CLB of its functions. Finally, the Commission also finds that the State has reported on the Standardized Search and Investigation Protocol that was adopted before the entry into force of the General Law. The IACHR observes that in keeping with the current legislation, the applicable instrument is the Standardized Investigation Protocol, yet it has been subject to criticisms by civil society organizations precisely due to the failure to include them in its design. The IACHR expects that these observations will be addressed by the State in the next version, resulting from the Permanent Verification Mechanism of the National Conference for Seeking Justice. In view of the foregoing, the IACHR considers that the recommendation has met with partial compliance.

68. As for the recommendation to **improve the National Registry of Disappeared Persons to become a single registry of disappearance with genetic and protected information**, as already indicated, the State has undertaken the task of updating that Registry. As the Commission had noted earlier, the RNPED had its latest update of data on April 30, 2018; as of that date it included 37,435 disappeared persons.<sup>93</sup> According to what has been stipulated by the General Law, the subsequent figures were under the CNBP, but the RNPED has been relaunched recently, thus the new methodology for feeding into it cannot be evaluated yet. Additionally, the IACHR observes with concern that the recommendation is aimed at the Registry integrating genetic and protected information, which in effect is provided for in the General Law based on the National Bank of Forensic Data and the National Registry of Persons Deceased Not Identified and Not Claimed. Nonetheless, as detailed above, these are not yet in operation.

69. This recommendation is closely related to the current process for establishing the Special Mechanism for Forensic Identification (hereinafter "the Special Mechanism"). The importance of this matter for the IACHR was reflected in it calling the public hearing, during its 172<sup>nd</sup> Period of Sessions, on "Forced disappearances and the proposed Special Mechanism for Forensic Identification in Mexico."

70. At the public hearing the civil society representatives emphasized the need to create the Special Mechanism due to the existence of a crisis that was described as the saturation and generalized distrust in the work of the State's forensic services, the result of institutional deterioration and the context of impunity that have led to alarming figures of unidentified bodies and thousands of persons disappeared to whom the justice system has not been able to respond due to lack of sufficient preparation.<sup>94</sup> In the public hearing it was also noted that the serious forensic crisis answers to four complex phenomena. First, the fragmentation and poor quality of existing forensic information; second, the volume of evidence, for despite the discrepancies with respect to all of the remains counted, it is possible to project that several thousand bodies will have to be studied; third, the technical problems, due to multifragmentation and thermic alteration, which make it difficult to count individuals; and fourth, the traceability of the remains, given that there are different burial places, both official and clandestine, that must be exhumed.<sup>95</sup>

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<sup>93</sup> Government of Mexico, Executive Secretariat of the National System of Public Security, National Registry of Missing or Disappeared Persons.

<sup>94</sup> IACHR. Public hearing on forced disappearances in Mexico, 172<sup>nd</sup> period of sessions of the IACHR. May 10, 2019.

<sup>95</sup> IACHR. Public hearing on forced disappearances in Mexico, 172<sup>nd</sup> period of sessions of the IACHR. May 10, 2019.

71. The State reported on the state commitment to establish the tasks of searching for and identifying persons in the context of Mexico's forensic emergency as the Government's principal priority.<sup>96</sup>

72. In addition, according to the Movimiento por Nuestros Desaparecidos México, the need for this Special Mechanism also answers to the capacity of the State to process and identify corpses under its custody, which has been outstripped, causing serious contamination of the evidence, which affects the chances of determining the causes of death in the corpses in custody, and the possible investigation, clarification, and subsequent punishment of the persons responsible for those deaths, in the case of criminal events. In the face of this situation, they indicated that it is necessary for the lag in forensic identification to be addressed through an agency that enjoys technical and decision-making autonomy, with a high component of international participation, both technical and financial, and with sufficient resources to carry out its mandate.<sup>97</sup>

73. In addition to the public hearing, the IACHR has participated as an observer in the discussion on creating the Specialized Mechanism during 2019, regarding its design, functions, and responsibilities on several occasions, along with the civil society organizations, the CNB, the Office of the Special Prosecutor for Human Rights, and the Ministry of Interior, and finds that the main challenges in relation to that mechanism revolve around the two main issues: the legal nature of its creation, and the scope of its mandate.

74. Finally, on December 5, 2019, the State publicly announced the adoption of the agreement to establish the Special Mechanism as a result of the dialogue described above.<sup>98</sup> The Commission views the formal decision to establish the Mechanism in a positive light and will monitor its normative and institutional development for starting up its work. The IACHR hopes that the Mechanism adequately answers to the expectations and proposals of the specialized organizations, victims' family members, and victims' organizations as regards its independence and autonomy. In addition, it encourages it to adopt a multidisciplinary technical and scientific strategy in keeping with consolidated international standards in this area. The IACHR expresses its willingness to continue providing technical support in the process of constructing the Mechanism, in keeping with its mandate.

75. Based on the foregoing, the IACHR notes the lack, at this time, of a national, unified, and updated registry, integrated with the Forensic Data Base and its corresponding National Registry of Deceased Persons Not Identified and Not Claimed, in keeping with the General Law. In light of this situation, the IACHR understands that the recommendation has met with partial compliance.

76. As regards the recommendations to **strengthen existing mechanisms in terms of early alerts and urgent searches in cases of disappearances of women and children**, and to **strengthen the National Registry of Data of Missing or Disappeared Persons, so that it may provide precise and reliable information about women and children**, the State reported on integrating a gender perspective in the draft Standardized Search Protocol, the process of drawing up immediate action guides with a differentiated approach, including women, as well as the in the General Law of the National Security System, which provides that alert systems and immediate action protocols need to be implemented to search for and locate minors who have been kidnapped, with members of the system receiving the assistance of the emergency services, communications media, telecommunications service providers, nongovernmental organizations, and citizens in general.<sup>99</sup>

77. The IACHR has continued receiving worrisome reports on disappearances of women, girls, and adolescent females, attesting to the inefficacy of the existing mechanisms and the need to strengthen

<sup>96</sup> IACHR. [Public hearing on forced disappearances in Mexico, 172<sup>nd</sup> period of sessions of the IACHR](#), May 10, 2019.

<sup>97</sup> Movimiento por nuestros desaparecidos en México. Informe Alternativo para el Comité de Derechos Humanos de las Naciones Unidas. September 10, 2019. P. 2; Shadow report ..., p. 5.

<sup>98</sup> Ministry of Interior, [Aprueban el primer Mecanismo Extraordinario de Identificación Forense en el país; los recursos serán ilimitados asegura Olga Sánchez Cordero](#), December 5, 2019

<sup>99</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," October 2019, p. 25.

them.<sup>100</sup> According to public figures from the National Registry of Missing and Disappeared Persons, as of January 2019, of the total of 40,180 missing persons, 25% are women.<sup>101</sup> In addition, of the 32 states (including Mexico City) that make up the Mexican Republic, the situation in the state of México is particularly worrisome given that it has the largest number of disappearances of girls and women as a percentage of total disappearances: while this ratio is 25% nationally, it is 46% in the state of México.<sup>102</sup>

78. In addition, the IACHR views with concern the information referring to obstacles that continue to exist to accessing justice in cases of disappearance of women, resulting in a situation of impunity.<sup>103</sup> According to the information received by the Commission, the barriers to access to justice encountered by the family members of disappeared women when they begin their search are the complexity of existing procedures for activating the Protocolo Alba and the AMBER alert; the reiterated refusal of the law enforcement and justice authorities to initiate the search immediately, reporting the need to wait 72 hours before giving notice of the case; as well as the lack of harmonization of the legislation for defining, investigating, and punishing the disappearance of women, including the failure to adopt criminal statutes on forced disappearance and disappearance in some of the criminal codes of the states.<sup>104</sup> In its observations on the draft of this report the State indicated that 24 states are implementing the Protocolo Alba and that 17 states have established a Technical Committee.<sup>105</sup>

79. As regards strengthening the RNPED, the IACHR notes the absence of an official consolidated registry of disappeared women, adolescent females, and girls in some states, which stands in the way of evaluating the magnitude of the phenomenon and adopting the appropriate policies.<sup>106</sup>

80. The Commission observes that part of the humanitarian crisis around the disappearance of persons in Mexico includes the lack of a methodology that distinguishes forced disappearances from those attributed to private persons or organized crime, as well as those in which the whereabouts of the person are unknown for causes other than a crime, making possible gender-based distinction.<sup>107</sup> In its observations on the draft of this report, the State said that the new platform that feeds the RNPED allows to register these differences and establishes a workflow of the process that must be observed when a person disappears.<sup>108</sup> Noting the aforementioned, the IACHR finds that the recommendation has met with partial compliance.

### Follow-up on the Ayotzinapa Matter

81. In 2019 the Mechanism for Follow-up on the Ayotzinapa Matter (MESA) adopted a new Work Plan to continue follow-up on the precautionary measures granted (MC/409-14) and on the recommendations

<sup>100</sup> Amnesty International, The State of the World's Human Rights, Annual Report 2017/2018, 2018, p. 314.

<sup>101</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México," October 2019, para. 16.

<sup>102</sup> Id(dh) eas, Violations of the rights of women due to disappearance of women and girls in the State of Mexico, thematic hearing held in the context of the 172<sup>nd</sup> period of sessions of the IACHR, May 9, 2019.

<sup>103</sup> Amnesty International, The State of the World's Human Rights, Annual Report 2017/2018, 2018, p. 314.

<sup>104</sup> Id(dh) eas, Informe alternativo sobre la desaparición de mujeres en el Estado de México, June 2018; Cortalínea, En la Ciudad de México, impunes los casos de mujeres desaparecidas, March 7, 2019; La Jornada, Desapariciones de mujeres en CDMX se concentran en cuatro alcaldías, June 25, 2019; Infobae, En el Estado de México se emitió una segunda Alerta de Violencia de Género por el alto número de mujeres desaparecidas, October 2, 2019.

<sup>105</sup> Observations and comments by the State, January 13, 2020, para. 37-39

<sup>106</sup> United Nations – Committee on Enforced Disappearances, Concluding observations on the report submitted by Mexico pursuant to Article 29(1) of the Convention, with the addition of the Follow-up Observations of the Committee on the additional information submitted by Mexico pursuant to article 29(4) of the Convention, CED/C/MEX/FU/1, November 19, 2018, para. 46.

<sup>107</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México," October 2019, para. 21.

<sup>108</sup> Observations and comments by the State, January 13, 2020, para. 55.

of the GIEI and the MESA formulated in their reports, and it began a new phase of technical assistance and permanent presence in Mexico.

82. In December 2018 the Mexican State created the Commission on Truth and Access to Justice for the Ayotzinapa Case (COVAJ) as a policy coordination mechanism to advance, from the appropriate offices and mechanisms, in addressing the requests of the students' family members for the purpose of clarifying the truth. The COVAJ invited the Inter-American Commission to participate in its activities. The IACHR has saluted the creation of this Commission and regularly attends its sessions, and even asks that special sessions be held when it considers it appropriate. The State has reported that through its Ministry of Foreign Affairs an agreement has been signed with the Office of the High Commissioner for Human Rights of the United Nations to provide technical assistance and advisory services to the COVAJ.<sup>109</sup>

83. On March 14, 2019, the MESA presented to the COVAJ its Final Report and Work Plan for 2019, in the person of President of the IACHR, Commissioner Esmeralda Arosemena de Troitiño. The Work Plan reinforces technical assistance to the State by establishing the Technical Accompaniment Group (GAT: Grupo de Acompañamiento Técnico), made up of persons from the Executive Secretariat of the IACHR, and in Mexico on a permanent basis. This permanent presence in the country to take on the activities of the Work Plan is one of the special characteristics of this new phase of the Mechanism. In addition, the technical accompaniment provided by the Commission includes the participation of experts who were part of the Interdisciplinary Group of Independent Experts (GIEI), specifically Ángela Buitrago and Francisco Cox, and in line with the request of the parents of the disappeared students, who requested the presence of those experts to contribute to the investigative work.<sup>110</sup>

84. The State reaffirmed its willingness to carry out the precautionary measure through the new phase of assistance provided by the IACHR, through the agreement on the Special Mechanism for Cooperation and Technical Assistance to accompany the COVAJ. The State described the objectives of the 2019 Work Plan mentioned above: to verify and to provide technical assistance for carrying out the recommendations issued by the Interdisciplinary Group of Independent Experts (GIEI) and the Special Mechanism for Follow-up on the Ayotzinapa Matter (MESA), in relation to precautionary measure MC-409-14, on search, investigation, attention to victims, and structural measures as well as measures of non-repetition; and to provide technical assistance and support for capacity-building on matters related to human rights, including issues related to disappearance, search, investigation, attention to victims, and integral reparation, previously agreed upon by the parties.<sup>111</sup>

85. At the request of the fathers and mothers of the disappeared students who raised the need to involve independent experts with a greater capacity to take action in the investigation, the IACHR asked the State to re-install the GIEI. Accordingly, on January 9, 2020, the COVAJ agreed that the GIEI would be re-installed with the prerogatives and mandates necessary for performing its functions.

86. In following up on the main lines of the precautionary measure one notes the special interest of the IACHR in making progress in the search for the disappeared youths. In this respect, the Truth Commission has taken investigative steps in conjunction with the Special Unit of the Office of the Attorney General, although the students' whereabouts have not been determined. The IACHR has taken note of the requests for information and for visits to places made by the Mexican authorities in coordination with the Truth Commission to determine the students' whereabouts.

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<sup>109</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 27.

<sup>110</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 27.

<sup>111</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 26.

87. The State reported, as results of the COVAJ, a visit to the 27<sup>th</sup> Infantry Battalion in Iguala, Guerrero; accompanying searches; sharing information; drawing up and publishing its operational guidelines; and holding its regular and special sessions.

88. The State also indicated that by AGREEMENT A/010/19 of the FGR, on June 26, 2019 the Office of Investigation was replaced by the Special Unit for Investigation and Litigation of the Ayotzinapa Case (hereinafter “the Special Unit”). The IACHR has welcomed the establishment of the Special Unit and the referral to and centralization of several matters related to the case in that Unit. The Commission has learned that in 2019 the Special Unit made two filings of criminal charges, which are being litigated at this time.

89. The State referred to the legal situation of the 32 individuals considered persons of interest in the Ayotzinapa Case who were released in the course of 2019. In the case of 30 persons it noted that the release orders, without prejudice, were granted since their ties to the alleged criminal organization were not shown, and due to the exclusion of their statements as self-incriminating allegedly because of acts of torture. The State indicated that those procedural orders were not final rulings nor decisions on the merits, and that if there are other criminal cases against them “these persons could continue to be deprived of liberty.” With respect to two persons, the State indicated that they were absolved due to the lack of evidence of their participation in the crimes of organized crime and kidnapping. It also indicated that given the complexity of the facts attributed to the accused, absolution for a specific crime does not mean that other criminal proceedings against them will not continue.<sup>112</sup>

90. Marking five years since the students’ disappearance, the Commission issued a press release in which it expressed its concern over the lack of results in terms of justice and truth. The Commission regretted that there are still no answer as to what happened and who was involved in the events of that tragic September 26, 2014. To date no one has been convicted for the crime of forced disappearance, nor have the reported irregularities in the investigation been clarified. In addition, the IACHR expresses its concern over the judicial decisions that led to the release of persons purportedly associated with the events and who could have valuable information about the students’ whereabouts. It also reiterated the persistence of problems in the investigation such as a fragmented, incomplete investigation; lack of arrests and indictments for forced disappearance; lack of arrests of state actors for acts or omissions. The Commission has also noted the importance of going deeper into the investigation into the members of the 27<sup>th</sup> Battalion, and of determining the possible participation of various municipal police, state police, and federal police bodies.

91. On the foregoing, the State indicated that the search efforts deployed have accorded priority to the active participation of the Ministry of National Defense on “several points of interest stemming from the analysis of information by the COVAJ, and with the support of the former members of the GIEI, which has resulted in major advances in locating the students’ whereabouts. In addition, it reported that based on the analysis of information, maps have been prepared of actors of interest whose likely geographic location has been determined. This has been done with the objective of establishing their degree of participation in the facts and their association with the criminal proceeding.<sup>113</sup> The IACHR notes that according to what was indicated by the COVAJ in the session of December 18, 2019, in the course of 2019, 18 search exercises were performed, including 214 points searched in 107 working days, which has yielded as a result the finding of new bony remains that are awaiting DNA analysis by an independent laboratory outside Mexico.

92. In the area of attention to victims, the IACHR has monitored the progress made by the State authorities in plans to support health care for the parents of the 43 students, which includes a plan for emergency situations. In addition, it has followed up on the cases of students Edgar Vargas and Aldo Gutiérrez, and taken measures to assist the family members, such as putting in place care plans. In the context of her second official visit, Commissioner President Esmeralda Arosemena de Troitiño and the delegation of the IACHR went to Ayutla de los Libres, in the state of Guerrero, to visit Aldo Gutiérrez, a young man wounded the night of September 26, 2014, and his family. The Mechanism visited the house where Aldo Gutiérrez is, which

<sup>112</sup> Observations and comments by the State, January 13, 2020, paras. 40-42.

<sup>113</sup> Observations and comments by the State, January 13, 2020, para. 43.

was designed and built so that he could receive the medical care he needs in a place situated near his family members. The delegation also met the personal physician and family members and their representatives to discuss the evolution of his health since he was transferred from Mexico City to his new home.

93. Related to the structural measures, the Commission has followed up on the proposal to establish a Special Mechanism for Forensic Identification for Mexico. On May 9, 2019, as already indicated, a hearing was held on Forced Disappearances and the Proposed Special Mechanism for Forensic Identification for Mexico, at the request of several organizations that represent groupings of family members of disappeared persons in Mexico. Civil society said that there is a forensic crisis and highlighted the importance of establishing a special mechanism to tackle it, as indicated in the section on recommendations on forced disappearance. On July 30, 2019, the IACHR called a meeting to follow up on the thematic hearing to continue the dialogue and make progress in the process of understanding between civil society and the State. The Office of the United Nations High Commissioner in Mexico and the Office of the International Committee of the Red Cross (ICRC) in the country both accompanied the process.

94. The IACHR will continue participating and performing its monitoring and technical assistance functions with respect to the tasks entailed in searching, investigating, assisting victims, and establishing structural measures of non-repetition, pursuant to the precautionary measures for 43 disappeared students and their families, and its mandates pursuant to the American Convention and other inter-American human rights treaties.

### 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 levels the laws and practices comply with international standards on the subject, particularly the Inter-American Convention to Prevent and Punish Torture and the Optional Protocol to the UN Convention Against 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 investigations and inside police vehicles as a measure to prevent torture and other cruel, inhuman and degrading treatment.
- Establish federal and state-level guidelines regarding the collection of uniform statistics concerning gross human rights violations. In particular, the State should improve its system to compile information that is disaggregated and transparent and that follows a consistent methodology.
- Eliminate “*arraigo*” and *quasi flagrante delicto* (*flagrancia equiparada*) from the Mexican legal framework.

95. On the recommendation to **adopt a General Law against Torture and ensure that the practices comply with the relevant international standards**, the IACHR notes that the General Law to Prevent, Investigate, and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter “the General Law on Torture”) was published in the Diario Oficial de la Federación on June 26, 2017. With the publication of the law, the State has complied with the first part of the recommendation.



96. As regards the other measures included in the recommendation, the State reported that the General Bureau for the Promotion of a Human Rights Culture, Complaints and Inspection of the Office of the Special Prosecutor for Human Rights of the FGR promotes the culture of protecting human rights by “continuously and permanently giving training courses” to the agents of the federal prosecutorial service (Ministerio Público de la Federación), the federal prosecutorial police (Policía Federal Ministerial), expert and administrative personnel both federal and state. In addition, the trainings are given to staff of the Ministries of National Defense (hereinafter “the SEDENA”), Navy, Federal Police, Deconcentrated Administrative Organ for Prevention and Social Readaptation, state and federal prosecutors, and secretariats of public security of the states.<sup>114</sup>

97. According to the Alternative Report of the Civil Society Organizations of Mexico, in the context of the seventh periodic review of Mexico before the Committee Against Torture of the United Nations (hereinafter “the Alternative Report”), implementing the General Law on Torture entails many challenges.<sup>115</sup> In particular, civil society organizations indicated that approximately half of the 32 states of Mexico have not established special prosecutorial units for investigating torture, even though the legal period for their implementation has lapsed, as has been indicated in this report. In addition, they called attention to possible setbacks in eradicating torture due to the risk posed by the militarized model of the National Guard and the increase in the list of crimes that call for presumptive pretrial detention.<sup>116</sup> In the Alternative Report civil society expresses its concern over the evolution of the “abbreviated procedure” for early termination of the criminal trial resulting from the amendment to Article 20(A)(VII) of the Constitution and the coming into force of the Federal Code of Criminal Procedure, since civil society organizations have documented the occurrence of torture and other cruel, inhuman and degrading treatment committed by prosecutorial agents to force the accused to accept the liability of which they are accused and to waive an oral trial.<sup>117</sup>

98. In its observations on the draft of this report the State noted that it “reviewed and elevated” the profile of the public officials who make up of the Office of the Prosecutor against Torture (Fiscalía contra la Tortura). It also indicated that since October 2019 that Office has been engaged in a Process of Evaluation and Certification in the Standard of Competence “Promoting Attention for Torture Victims in keeping with the Istanbul Protocol.”<sup>118</sup>

99. On the other hand, the CMDPDH called attention to the fact that not all the states of the Republic have prosecutorial units that address the issue of torture in particular, as required by law. According to its information, at the federal level the Office of the Prosecutor against Torture has been implemented; yet its operation has been characterized as “precarious” for it was only allocated 457,758 Mexican pesos (just over US\$ 24,000) to operate in 2019.<sup>119</sup>

100. The CNDH indicated that torture is still a scourge in Mexico and that from 2013 to January 2019 it has opened 285 case files on complaints related to torture and 3,239 on complaints for cruel, inhuman or degrading treatment. A high concentration of such complaints are found in the states of México, Guerrero, Tamaulipas, Mexico City, Veracruz, and Michoacán for acts of torture, and in Tamaulipas, Veracruz, Michoacán,

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<sup>114</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 30.

<sup>115</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012 – 2019](#), p. 14.

<sup>116</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012 – 2019](#), p. 15.

<sup>117</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012 – 2019](#), p. 20.

<sup>118</sup> Observations and comments by the State, January 13, 2020, paras. 45-46.

<sup>119</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, p. 8.

Mexico City, state of México, and Oaxaca for acts of cruel, inhuman and degrading treatment. In all cases the CNDH applied the corresponding forensic psychological evaluations in keeping with the Istanbul Protocol.<sup>120</sup>

101. The Committee Against Torture of the United Nations, while noting that the General Law against Torture is in line with the international definition of said conduct, expressed concern that the statutory definition does not expressly address “acts of torture committed with the aim or purpose of obtaining information or a confession from a third person or acts intended to intimidate or coerce persons other than the victim.” In addition, the Committee lamented the fact that despite holding consultations in 2019, the National Program against Torture has not been adopted as per the legal mandate; that the National Mechanism for the Prevention of Torture has had scant impact; and that the reform processes to strengthen it are not evident.<sup>121</sup>

102. In its report “Patrones de Impunidad” (“Patterns of Impunity”), the Centro PRODH indicated that in February 2019, the Office of the Special Prosecutor for Investigating the Crime of Torture of the FGR had 4,814 investigations into that crime. According to its study, from January 2018 to January 2019, criminal actions have been pursued on two occasions and, as of February 2019, only nine persons had been arrested as the result of the arrest warrants issued. In addition, that report indicates that said Office of Special Prosecutor has only 46 prosecutors.<sup>122</sup>

103. Considering the adoption of the General Law, the IACHR concludes that the recommendation has met with partial substantial compliance. Nonetheless, it reiterates the importance of the State adopting the measures necessary to guarantee that the respective practices, in terms of their programmatic and normative implementation in the different branches of government, are in keeping with that General Law and the relevant international standards.<sup>123</sup>

104. As regards the recommendation to ensure that the **General Law against Torture excludes evidence and confessions obtained through torture, and that the prosecution must prove the lawfulness of any evidence challenged**, the IACHR observes that said Law provides, at its Article 51, exclusion or nullity of the evidence when it has been obtained through acts of torture or by any other violation of human rights.<sup>124</sup> In addition, that provision stipulates that “in all cases, the prosecution shall have the burden of showing that the evidence has been obtained lawfully.”<sup>125</sup> Accordingly, the IACHR considers that the recommendation has met with full compliance.

105. Without prejudice to the foregoing, it is worrisome that the Committee Against Torture has reported that it accessed information that indicates that the use of torture to obtain confessions continues to be usual and that the confessions obtained through torture are used against the accused as evidence of guilt before the courts.<sup>126</sup> In addition, the IACHR reiterates its concern, shared by the civil society organizations<sup>127</sup>, over the adoption by the Supreme Court of a jurisprudential thesis that provides that only in cases of self-

<sup>120</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019, p. 8.

<sup>121</sup> Committee Against Torture, [Concluding observations on the seventh periodic report of Mexico](#). Approved by the Committee at its 66<sup>th</sup> session, April 23 to May 17, 2019, p. 4.

<sup>122</sup> Centro PRODH, [Patrones de Impunidad. Deficiencias en la Investigación de Violaciones a Derechos Humanos y Alternativas en el Poder Judicial](#), p. 35.

<sup>123</sup> IACHR, [Annual Report Mexico](#), 2017, para. 84.

<sup>124</sup> *Id.*, para. 85.

<sup>125</sup> [General Law to Prevent, Investigate, and Punish Torture and other Cruel, Inhuman or Degrading Treatment or Punishment](#), Diario Oficial de la Federación, June 26, 2017, Article 51.

<sup>126</sup> Committee Against Torture, [Concluding observations on the seventh periodic report of Mexico](#). Approved by the Committee at its 66<sup>th</sup> session from April 23 to May 17, 2019, p. 4.

<sup>127</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012-2019](#), p. 19.

incrimination must one remand a criminal proceeding in which the person convicted asserts that his or her conviction was based on evidence fabricated by the use of torture.<sup>128</sup> In this respect, in its observations the State indicated that the Supreme Court has also considered the existence of situations that merit a new trial even though there was no confession.<sup>129</sup>

106. 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 reported that on May 27, 2019, the Federal Law on the Registry of Arrests was published. That statute provides for the creation of a National Registry of Arrests as part of the National System of Information on Public Security.<sup>130</sup> In its observations on the draft of this report the State reported that on November 22, 2019, the Guidelines for the functioning, operation, and conservation of the National Registry of Arrests were published; they regulate its operations so that it can be used on a standardized basis throughout Mexican territory.<sup>131</sup>

107. According to information produced by the State, the Registry will be a data base, operated by the Ministry of Security and Citizen Protection, that will pull together the information provided by the public security institutions on the persons detained and under its custody. The platform will be accessible through a system of consultation that will show a public version of the information contained. In addition, the Law establishes the obligation to register the person immediately, or at the closest administrative unit, once the person arrested is placed under the custody of the public security institutions.<sup>132</sup>

108. The OHCHR welcomed the adoption of this law and indicated that its proper implementation will be a fundamental safeguard for persons deprived of liberty. Nonetheless, it called attention to the non-inclusion of deprivations of liberty by order of the military jurisdiction among the foregoing situations.<sup>133</sup> That institution, before adoption of the law, had indicated that it was necessary to include in the operation the registry of arrests carried out under the military jurisdiction, since it was not justifiable for that process not to include the deprivation of liberty by elements of the Armed Forces.<sup>134</sup> The IACHR reiterates that the law has been the subject of a constitutional challenge brought by the CNDH whose resolution is still pending.<sup>135</sup>

109. In line with the foregoing, the Centro PRODH indicated that said law addresses the obligations of the Armed Forces with confusing language and a fragmented regulation, at Article 19 and transitional Article 5, given that those provisions are subject to at least two interpretations. According to the Centro PRODH, one of these interpretations appears to justify the armed forces not having the obligation to give immediate notice of the detention to the competent police authority or to provide the information needed for it to generate the corresponding record.<sup>136</sup>

110. The CMDPDH observed with concern that the Law provides, in its transitory articles, for reforms of the Law on Migration for the purpose of creating a record of detained migrants. In its view, the Law

<sup>128</sup> IACHR, [Annual Report, Mexico](#), 2018, para. 77.

<sup>129</sup> Observations and comments by the State, January 13, 2020, para. 47.

<sup>130</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 32.

<sup>131</sup> Observations and comments by the State, January 13, 2020, para. 75.

<sup>132</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 32.

<sup>133</sup> OHCHR – Mexico, [Avances y preocupaciones en las leyes sobre uso de la fuerza y registro de detenciones](#), May 24, 2019

<sup>134</sup> OHCHR – Mexico, [Nota informativa: Consideraciones preliminares sobre la Ley Nacional sobre el Uso de la Fuerza y la Ley Nacional de Registro de Detenciones](#), May 23, 2019.

<sup>135</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México, publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019.

<sup>136</sup> Centro PRODH, Information following up on the Report "Situation of Human Rights in Mexico" 2015. Information sent October 2, 2019, p. 12.

on Migration does not establish specific grounds for immigration detention. In other words, the deprivation of liberty of migrants does not find parameters in the law that make it possible to evaluate the suitability, necessity, and proportionality of the detention on a case-by-case basis. For the same reason, this transitional provision would have consequences for persons seeking international protection, and could unleash automatic and arbitrary arrests.<sup>137</sup>

111. In view of the foregoing, while the Registry has been legally approved, the IACHR observes that to consider this recommendation implemented the constitutional challenge by the CNDH must be resolved, and the Registry has to be implemented. Accordingly, the IACHR considers that the recommendation has met with partial substantial compliance.

112. As regards the recommendation to **ensure that trained personnel apply the Istanbul Protocol and investigate cases in which judges do not order the investigation of complaints or indicia of torture**, the State reiterated what was reported earlier<sup>138</sup> and indicated that “the profile of the public servants who make up the Office of the Special Prosecutor for Investigating the Crime of Torture was reviewed and upgraded; they have experience and knowledge on human rights and on how to investigate the crime of torture.”<sup>139</sup>

113. In this respect, the Committee Against Torture described the shortcomings in applying the medical-psychological evaluations of the alleged victims of torture and cruel, inhuman and degrading treatment, given that these evaluations are neither timely nor exhaustive, which gives rise to doubts with respect to the impartiality of expert physicians and psychologists. The Committee also expressed concern that negative results on the psychological tests lead to the automatic archiving of complaints of torture.<sup>140</sup>

114. On this same issue, the Alternative Report indicated that expert reports by physicians and psychologists have become a specific mechanism that blocks the investigation and punishment of acts of torture precisely because the investigations on the occurrence of these crimes are limited to the results of these expert reports, which are produced by personnel of the PGR.<sup>141</sup> On this same issue, the CMDPDH noted that it identified a trend on the part of the then-PGR to rejecting the Istanbul Protocols when carried out independently, which, in its view, is at odds with victims’ right of access to justice.<sup>142</sup>

115. Considering the information available, the IACHR understands that there have not been sufficient gains for finding that there has been progress in carrying out this recommendation. Accordingly, the IACHR concludes that it continues to meet with partial compliance.

116. As regards the recommendation to establish **the mandatory use of cameras during interrogations and patrols**, the State did not submit information pertaining to 2019 and indicated that it

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<sup>137</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, p. 9.

<sup>138</sup> In its fifth Report of the Mexican State on compliance with and follow-up to the recommendations contained in the report “Situation of Human Rights in Mexico” of the previous year, the State forwarded the “Protocol for Action for Those Who Impart Justice in Matters that Involve Acts Constitutive of Torture and Mistreatment,” issued by the Supreme Court, which provides for the use of protocols such as the Istanbul Protocol.

<sup>139</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 32-33.

<sup>140</sup> Committee Against Torture, [Concluding observations on the seventh periodic report of Mexico](#). Adopted by the Committee at its 66<sup>th</sup> session from April 23 to May 17, 2019, p. 8.

<sup>141</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012 – 2019](#), pp. 14, 54.

<sup>142</sup> CMDPDH, Seguimiento sobre el cumplimiento de las recomendaciones del Informe “Situación de Derechos Humanos en México,” November 8, 2019, p. 10.

reiterated the information provided earlier.<sup>143</sup> The IACHR finds that this information does not make it possible to analyze the level of progress in carrying out the recommendation. The Committee Against Torture regretted that the State did not provide it information on the interrogation procedure.<sup>144</sup> Given the lack of progress on this point, the IACHR finds that the recommendation has not yet been implemented.

117. As regards the recommendation to **ensure uniform statistics and improve the system for compiling information**, the State reported on the creation and organization of the National Registry of the Crime of Torture as a tool of investigation and information in cases in which there are reports and investigations of torture. According to what was reported, this Registry will be coordinated by the PGR, which will pull together data bases from the law enforcement and justice institutions, the CNDH, the state protection agencies, the CEAV, and the local commissions for attention to victims, and also the cases before international mechanisms.<sup>145</sup>

118. With respect to the incidence of torture, the Committee Against Torture indicated that the State should guarantee that the National Survey of the Population Deprived of Liberty (hereinafter “the ENPOL”) is carried out regularly and publish its results.<sup>146</sup> The Alternative Report indicated the need to get back to the ENPOL to take stock of the experiences of persons detained, prosecuted, and deprived of liberty. According to the National Institute of Statistics and Geography, the ENPOL for 2019 was to be cancelled.<sup>147</sup>

119. In these terms, as the State has not reported on progress in implementing the Registry of the Crime of Torture, which was provided for by legal mandate in 2017 and has yet to be implemented, in addition to the fact that a statistical instrument as important as the ENPOL has been suspended, the IACHR continues to find that its implementation is still pending.

120. As regards the recommendation to **eliminate “arraigo” and quasi flagrante delicto (flagrancia equiparada) from the law**, the IACHR already noted that *flagrancia equiparada* has been found unconstitutional since 2015 by the Supreme Court, thus that part of the recommendation has been fully implemented. With respect to the institution of *arraigo*, the State discussed the existence of two bills presented on June 26, 2019 and September 3, 2019 respectively, to amend the Constitution and repeal paragraph eight of Article 16 of that law, which instituted it.<sup>148</sup> The IACHR values the legislative debate to do away with the institution of *arraigo*. Nonetheless, it concludes that this recommendation has met with partial substantial compliance.

#### 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; the investigations from the crime scene should be performed by experts who are independent of the police or military institutions.
- 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.

<sup>143</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 34.

<sup>144</sup> Committee Against Torture, [Concluding observations on the seventh periodic report of Mexico](#). Adopted by the Committee at its 66<sup>th</sup> session from April 23 to May 17, 2019, p. 5.

<sup>145</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 34.

<sup>146</sup> Committee Against Torture, [Concluding observations on the seventh periodic report of Mexico](#). Adopted by the Committee at its 66<sup>th</sup> session from April 23 to May 17, 2019, p. 3.

<sup>147</sup> [Informe Alternativo de las Organizaciones de Sociedad Civil de México al Comité Contra la Tortura de la ONU 2012 – 2019](#), p. 22.

<sup>148</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 35.

- 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 in cases 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.

121. As regards the recommendation **to undertake an investigation in keeping with international standards in those cases in which there has been loss of life at the hands of members of the security forces with experts who do not belong to those forces**, the State reported that on June 21, 2018 several reforms to the Code of Military Justice and the Military Code of Criminal Procedure were promulgated in the Diario Oficial de la Federación that reinforce the alignment of the military justice system with the new criminal justice system; yet it did not submit information on 2019.<sup>149</sup>

122. With respect to this recommendation, what was already indicated about shortcomings in the Federal Law on the Use of Force is once again relevant (*infra xx*). The Centro PRODH has noted that this law does not include mechanisms to ensure adequate control of the use of force and lethal force. It finds that the shortcomings range from the planning phase, given that Article 36 incorporates a pre-authorization of the lethal use of force, and makes discretionary the use of audiovisual equipment for recording the operations on the ground as well the issuance of reports after the use of force that are delivered by the agents to their superiors. The security institutions have the duty to publish an annual report that summarizes their operations on the use of force, but does not publish the reports of their agents, as appears from Article 35 of the Law.<sup>150</sup>

123. The Centro PRODH also noted that the regime of liabilities for the unlawful use of force does not clearly provide for the obligation to begin an independent investigation of the scene or of the use of force to determine whether it was unwarranted.<sup>151</sup>

124. Given the lack of up-to-date information from the State, and the questions that have been raised about the new regulation on operations involving the use of force, especially in the case of the Armed Forces, the IACHR considers that this recommendation is still pending implementation.

125. On the recommendation to ensure that the armed forces **register statistics regarding persons who are killed or wounded in their operations, and initiate the relevant investigations**, the State reported that it has a data base in which are recorded the figures of dead and wounded in armed forces

<sup>149</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 35.

<sup>150</sup> Centro PRODH, Information following up on the Report "Situation of Human Rights in Mexico" 2015. Information sent on October 2, 2019, pp. 3-4.

<sup>151</sup> Centro PRODH, Information following up on the Report "Situation of Human Rights in Mexico" 2015. Information sent on October 2, 2019, pp. 3-4.

operations and that it provides all facilities for the investigative organs to perform their functions.<sup>152</sup> In addition, the IACHR goes back to its observations regarding the Federal Law on the Use of Force (*infra xx*) at Article 35. While that provision stipulates the obligation of the security institutions to present annual public reports reporting on the number of persons who have died due to the use of force and data from the bodily evaluation of the persons detained, broken down by sex, these public reports are the result of the processing of information internally by the security agency itself.

126. In these terms, the IACHR considers that drawing up these records entails partial substantial compliance with the recommendation. Nonetheless, for determining total compliance the IACHR considers it necessary to analyze the implementation of these reports and the quality of the information published in response to the questions raised by the Centro PRODH with respect to the possibility that the public report under Article 35 of the Law could be out-of-step with the detailed non-public reports that the agents themselves file after the operations in the terms of Article 32 of that Law.<sup>153</sup>

127. As regards the recommendation to establish a **national registry of unidentified remains and clandestine graves**, the State reported that from March to September 2019, 17 operations were carried out to identify human remains in all Mexico -- 10 of which were positive -- and that the CNB in coordination with the FGR has initiated the assessment of forensic services. It also reported that it is proposing to draw up a law on forensic issues.<sup>154</sup> The IACHR reiterates its observations on the National Registry of Graves and RNPED provided for in the General Law on forced disappearance (*infra xx*). The IACHR welcomes the operations aimed at identifying human remains and placing them in custody in the context of the humanitarian crisis related to finding unidentified corpses in Mexico in the terms already indicated in this report (*infra XX*). Nonetheless, the time for creating the National Registry of Graves, as per the legal mandate, has lapsed, and the RNPED has recently been relaunched to be updated. In these terms, the Commission considers that this recommendation is pending implementation.

128. Concerning the recommendations to establish a **national, autonomous institution of forensic services and to exhume and identify remains strictly abiding by the dignified treatment of the victims' families**, the State indicated that it proposed the creation of five autonomous regional forensic institutes that will be in the states of Coahuila (also covering Chihuahua, Durango, and San Luís Potosí), Nuevo León (also covering Tamaulipas), Sonora (also including Baja California, Baja California Sur, and Sinaloa), Veracruz (also covering Puebla, Oaxaca, and Chiapas), and Mexico City (also covering Morelos and Guerrero).<sup>155</sup> In addition, it noted that from December 2017 to August 23, 2019, 352 clandestine exhumation sites and 594 clandestine graves have been located, and 706 bodies have been exhumed, 206 of which have been identified and 122 delivered in a dignified manner to the family members.<sup>156</sup> The Centro PRODH indicated that to date these recommendations have not been implemented.<sup>157</sup>

129. With respect to this matter, the IACHR finds it necessary to reiterate, with respect to the gains in the creation of the Special Forensic Mechanism, that while the mandate of the Mechanism is to address the humanitarian crisis in forensic matters, in effect the reinforcing and strengthening of the current forensic services is necessary and is naturally concomitant to the attention given to that crisis to keep it from worsening.

<sup>152</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 36.

<sup>153</sup> Centro PRODH, Information following up on the Report "Situation of Human Rights in Mexico" 2015. Information sent on October 2, 2019, pp. 3-4.

<sup>154</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 36-37.

<sup>155</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 38.

<sup>156</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 38.

<sup>157</sup> Centro PRODH, Information following up on the Report "Situation of Human Rights in Mexico" 2015. Information sent on October 2, 2019, p. 15.

The Commission finds extremely worrisome the news coverage of the refrigerated trucks abandoned with 380 bodies, found last year in Jalisco; it was attributed to the Jalisco Institute of Forensic Sciences (Instituto Jalisciense de Ciencias Forenses). One year later, the State Commission on Human Rights of Jalisco indicated that given their advanced state of decomposition, it will never be possible to identify 85 of those bodies.<sup>158</sup>

130. The IACHR values what was reported by the State and its projects for the future creation of autonomous institutions by regions, yet it notes that serious challenges persist when it comes to complying with these recommendations, and that based on the information submitted one cannot anticipate any type of specific or significant progress. Accordingly, it considers that it has not yet met with compliance. The IACHR places itself at the State's disposal to collaborate on its policy for exhumations and the identification of human remains.

131. As regards the recommendations to **continue and expand the work of the Forensic Commission for the Identification of Remains in cases found along the routes followed by migrants and to adopt all necessary measures to create a Transnational Mechanism of Access to Justice for Migrants and their Families**, the State reported that the Collaboration Agreement for identifying remains located in San Fernando, Tamaulipas and Cadereyta, Nuevo León, entered into by the FGR, the Argentine Forensic Anthropology Team, and non-governmental organizations from several countries in 2013 continues to be in force today, for since it was signed none of the parties has expressed interest in considering it concluded. In addition, the State indicated that it anticipates updating the Protocol for prosecutorial action in investigating crimes committed by and against migrants in vulnerable conditions and those subject to international protection, which today provides elements that facilitate the investigation and prosecution of crimes committed by or against migrants and their families; and to take actions aimed at repairing the harm to the victims or persons offended.<sup>159</sup>

132. The Commission also takes note of the report of 100 days of the work of the National Search Committee, which presents the beginning of the first regional search plan in the northeast, in the states of Tamaulipas, Nuevo León, Coahuila and Durango, which, according to information from the State, has included the participation of families of disappeared persons, institutions of state governments, and accompaniment of international organizations.<sup>160</sup>

133. While the State has taken some actions with respect to the recommendations, thus far they have still met with only partial compliance.

134. With respect to the recommendation to **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**, the State reported that the Mechanism for Mexican Foreign Support in the Search and Investigation (Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación) continues to operate to guarantee access to justice for migrants and their families who are in another country and who cannot file a complaint in Mexican territory, and that while the Mechanism was not specifically established for the exchange of forensic information, it does play an auxiliary role in the investigations.<sup>161</sup>

135. For that reason, while the State has taken some actions with respect to the recommendation, the IACHR maintains its assessment that the recommendation has met with partial substantial compliance and encourages the State to continue efforts to implement and strengthen the mechanism.

<sup>158</sup> El Universal. [Dejaron que cuerpos de "tráiler de la muerte" se pudrieran, no podrán ser identificados](#), May 22, 2019.

<sup>159</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 38-39.

<sup>160</sup> Ministry of Interior, [Informa Comisión Nacional de Búsqueda de Personas avances a 100 días de gestión](#), May 28, 2019.

<sup>161</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 39-40.



## 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 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 civilian courts, independent 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 compliance with treaty obligations.

136. With respect to the recommendations to **strengthen the prosecutors' offices throughout the country** and **establish a cooperation plan between prosecution authorities at the federal and state levels**, the State indicated that from March to September 2019, in all 306 public servants who perform law enforcement and justice-related functions received training in the area of human rights (personnel from SEDENA and SEMAR, the Federal Police, the Deconcentrated Administrative Agency for Prevention and Social Readaptation, the state and federal prosecutors' offices, secretariats for public security of the states at the three levels of government). It also noted that as a matter of law cooperation between the state and federal levels is governed by the General Law on Forced Disappearance of Persons and Disappearance Committed by Private Persons, the General Law to Prevent, Punish, and Eradicate Crimes of Human Trafficking and for the Protection and Assistance of the Victims of such Crimes, and the General Law to Prevent, Investigate, and Punish Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.<sup>162</sup>

<sup>162</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 40-41.

137. The IACHR values the training efforts and considers that the State is making progress towards defining the cooperation functions in the law at the federal and state levels. Nonetheless, even though last year the Commission determined that this recommendation had met with partial substantial compliance, due to the lack of precision in the information reported, specifically in terms of the existence of a plan or policy, as the IACHR noted in its recommendation, it is not possible to determine the level of compliance with these recommendations.

138. On the recommendation to **adopt measures of protection for those who participate in the search for justice when they are at risk, and ensure access to files and impose sanctions in the event of reprisals**, the State reiterated the continuous implementation of measures to protect the beneficiaries of precautionary and provisional measures of the mechanism for protecting human rights defenders and journalists, in agreement with the beneficiaries and their representatives with the aim of determining an appropriate route for guaranteeing their lives and integrity. According to the State, from March to September 2019, 22 personas have accessed the Protection Mechanism.<sup>163</sup> In its observations on the draft of this report the State added that the CEAV is also involved in the protection process.<sup>164</sup>

139. The Commission attaches positive value to the protection provided to the persons mentioned. Nonetheless, the IACHR's recommendation goes not only to the defense of human rights defenders and journalists, but in effect is much more comprehensive, also including all those persons who are involved in the process of seeking and imparting justice. The IACHR will continue monitoring matters related to the adoption of these measures of protection, thus compliance with this recommendation is still pending.

140. As regards the recommendation **to adopt specific protection measures for justice operators according to their particular needs and in consultation with them**, in its observations on the draft of this report the State reported that in application of the General Agreement of the Plenary of the Federal Judicial Council on the Assignment, Implementation, and Removal of Security Measures for Public Servants in the Judicial Branch (approved in 2017), as of November 30, 2019, the Coordinating Body for Security drew up 210 risk assessments for public servants in the Federal Judicial Branch.<sup>165</sup>

141. The adoption of measures of protection on behalf of 68 judicial officers is valued positively by the IACHR, and shows the existence of a certain level of institutionalization of the security measures and on the process of assigning them, with the intent that it be possible to verify the effectiveness of the mechanism. For the IACHR the protection of judicial officers should be taken on as an effective policy of prevention and protection that should include prompt, exhaustive, and diligent investigations of the threats, harassment, assaults, among others acts of intimidation or interference in their work.<sup>166</sup> Taking note of the existence of current measures of protection, the IACHR considers that the recommendation has met with partial compliance.

142. As regards the recommendation to **implement the General Law on Victims and the functioning of the Executive Commission of Attention to Victims**, the State indicated that the CEAV continues accompanying the installation and strengthening of the CEEAVs through technical assistance, advisory services, and help in getting federal resources to the states. This cooperation is done through a subprogram called "strengthening offices of legal counsel" in the context of executing the Fund for assistance

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<sup>163</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 42.

<sup>164</sup> Observations and comments by the State, January 13, 2020, para. 49

<sup>165</sup> Observations and comments by the State, January 13, 2020, para. 50.

<sup>166</sup> IACHR, [Guarantees for the independence of justice operators \(2013\)](#), paras. 146 ff.

for public security, which also includes training, infrastructure, equipment and contracts. As reported, up to August 2019, in all 21 local public institutions to serve victims were established.<sup>167</sup>

143. According to the CNDH<sup>168</sup>, nine more CEEAVs have yet to be installed<sup>169</sup>, yet as of August 2019 it was only able to corroborate the installation and operation of the CEEAVs in Sinaloa and Mexico City.

144. The IACHR notes that in 2019 the CEAV conducted an open public consultation on attention to victims in Mexico with a view to undertaking an assessment that would make it possible to plan its operations for the 2019-2024 period. In its observations on the draft of this report the State indicated that the public consultation received 383 questionnaires.<sup>170</sup> The survey revealed that there are shortcomings in care for victims in terms of personnel available to help them, and that at least half the victims who received support or accompaniment obtained advisory services, representation, and legal counseling, and approximately 3 of every 10 received psychological first aid or emotional containment, short-term therapy, and social work. It is worrisome that of the persons surveyed, half of the persons consider unsatisfactory or very unsatisfactory the actions of the state authorities when it comes to clarifying the human rights violations of which these persons have been victims.<sup>171</sup>

145. In other words, the Commission observes that there is progress in installing the CEEAVs for implementing the National System for Attention to Victims, provided for in the General Law on Victims of 2013. Now that several years have elapsed and that many states<sup>172</sup> of the Federation have yet to establish the CEEAVs, the IACHR considers that the recommendation has met with partial compliance.

146. As regards the recommendation to ensure **accountability for gross human rights violations and to investigate, clarify and punish the acts committed during the time period known as the Dirty War**, the State indicated that following up on the “Agreement by which several measures are ordered to seek justice for crimes committed against persons associated with social and political movements of the past,” public apologies were offered to Martha Alicia Camacho Loaisa and José Manuel Alapizco Lizárraga (members of the Liga Comunista 23 de Septiembre, who were arbitrarily detained by state agents on August 19, 1977.<sup>173</sup> In this respect, the Centro PRODH indicated that the recommendation has not been implemented.<sup>174</sup>

147. In addition, the Commission notes that in February 2019 the CEAV presented a Plan for Attention and Reparation to the Victims of the Political Violence of the Past. That Plan establishes measures of reparation as the result of a participatory process that included the victims. In addition, that Plan creates a center of truth and memory and a national day to remember of the victims of that period, among other measures of satisfaction, restitution, and non-repetition.<sup>175</sup> In its observations on the draft of this report the State added that as regards these victims the CEAV has issued nine resolutions on food assistance

<sup>167</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 43.

<sup>168</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019, p. 11.

<sup>169</sup> Aguascalientes, Baja California, Campeche, Chiapas, Guanajuato, Hidalgo, Oaxaca, Puebla, and Sonora.

<sup>170</sup> Observations and comments by the State, January 13, 2020, paras. 52-54.

<sup>171</sup> CEAV, [Consulta Pública Abierta sobre Atención a Víctimas en México 2019](#), pp. 24 ff.

<sup>172</sup> According to information from SERAPAZ: Aguascalientes, Baja California, Campeche, Chiapas, Mexico City, Guanajuato, Hidalgo, Oaxaca, Puebla, Sinaloa, and Sonora.

<sup>173</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 44.

<sup>174</sup> Centro PRODH, Información de seguimiento al Informe “Situación de los derechos humanos en México” 2015. Information sent on October 2, 2019, p. 15

<sup>175</sup> Government of Mexico, [CEAV presenta Plan de Atención y Reparación a las Víctimas de la Violencia Política del Pasado, en Atoyac de Álvarez, Guerrero](#), February 11, 2019.

encompassing 370 families, for more than 9 million Mexican pesos; and five resolutions for integral reparation to 14 victims, for almost 14 million Mexican pesos.<sup>176</sup>

148. In 2018 the Commission was informed that an indirect *amparo* was filed against the Ministry of Public Education by Article 19, Indignación, the Centro ProDH, and Carlos Escoffié asking that information on the so-called “dirty war” be included in public education.<sup>177</sup> To date the decision in that *amparo* is pending.

149. The Commission finds that the authorities of the State have adopted decisions on reparation of the victims, and that it is necessary to observe the evolution of these processes for determining the gains in carrying out the recommendation being analyzed. Therefore, the IACHR concludes that this recommendation has met with partial compliance.

150. As regards the recommendation on **reform of the Military Justice Code**, the State reiterated that since the 2014 reform of the Code of Military Justice, the Federal Code of Criminal Procedure, and the Law that Establishes the Minimum Rules on Social Readaptation of Convicts, the military jurisdiction is restricted and it ensures that human rights violations are prosecuted in civilian courts. It also reported that as a result the Ministry of National Defense has declined jurisdiction in favor of civilian authorities when the matter implies human rights violations allegedly committed by military personnel to the detriment of civilians.<sup>178</sup>

151. The Commission recalls that since the 2017 Annual Report it noted that said amendment to the Code was pending, for the current legislation continues, without partially adapting to inter-American standards, as has been noted by the I/A Court HR in supervising compliance with some judgments against Mexico.<sup>179</sup> Mindful of the foregoing, the Commission reiterates the need for the State to carry out that recommendation, which is still pending implementation so that it is recognized that the military criminal jurisdiction does not apply to human rights violations, whether the person at the receiving end is a civilian or member of the military.

152. With respect to the recommendations to **monitor the entry into force of the new criminal justice system** and **evaluate its effective implementation**, the State noted that it trained 132 public defenders to strengthen their litigation skills in the context of the adversarial criminal justice framework to guarantee an adequate defense for persons facing criminal charges. In addition, it reported that three training activities were carried out: (i) “Exchange of experiences on the areas of opportunity and prospects of the New Criminal Justice System,” geared to circuit and district judges, from June 5 to 28, 2019; (ii) “Diploma in Training and Preparation of Assistants at Federal Criminal Justice Centers,” geared to public servants in the Federal Judicial Branch, June 10 to September 13, 2019; and (iii) “Diploma in Law of Criminal Enforcement,” geared to judicial personnel, from September 2 to November 8, 2019.<sup>180</sup> In addition, the State recognizes that implementing the model is a process that is under way and that it considers that it has partially complied with the recommendation, and will generate quantitative and qualitative information to evaluate the effectiveness of the reform.<sup>181</sup>

153. In its previous report the IACHR described the process of citizen discussion around the appointment of the person who would serve as Attorney General, as part of the reform process of the transition

<sup>176</sup> Observations and comments by the State, January 13, 2020, para. 55.

<sup>177</sup> Article 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>178</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 47.

<sup>179</sup> I/A Court HR, Supervision of Compliance with Judgment, Cases of Radilla Pacheco, Fernández Ortega et al., Rosendo Cantú and others v. Mexico, April 17, 2015, para. 20.

<sup>180</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 48.

<sup>181</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 48.

to the adversarial model in criminal justice.<sup>182</sup> Finally, on January 19, 2019, the Senate elected the first Attorney General of the Republic with the title Fiscal General de la República, whose term lasts nine years; nonetheless, since this happened México Evalúa has indicated that there is little information with respect to the status of the transition to the new criminal justice system.<sup>183</sup>

154. In addition, the report of the observatory of the transition, by México Evalúa, has indicated “that to date the transition lacks mechanisms of transparency, publicity, and accountability,” and that it is necessary for corrective measures to take into consideration a wide-ranging inter-institutional dialogue with society. The report in question finds that the levels of transformation of the criminal justices system in terms of autonomy, institutional development, legal development, and pace of change are quite low.<sup>184</sup>

155. The Centro PRODH indicated that it has accompanied several innocent victims who have been criminalized in the new criminal justice system, identifying the persistence of certain vices such as admitting illegal evidence and due process violations favorable to the prosecution.<sup>185</sup>

156. Mindful of the foregoing information, the IACHR finds that this recommendation has met with partial compliance.

## F. Impairment of rights of particular groups

### 1. LGBT persons

- Adopt necessary measures to investigate, punish and repair 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 committed because of the sexual orientation or gender identity of the victims
- Adopt necessary measures in terms of prevention of violence, including legislative measures and public policies aimed at eradicating social discrimination towards LGBT persons, which causes and reinforces violence based on prejudice.

157. On the recommendation to **investigate, punish, and make reparation for acts of violence against LGBT persons**, the State referred once again to the SINDIS as an instrument for compiling information on acts of discrimination.<sup>186</sup> Along those same lines, the RENAVI compiles information related to violations suffered by LGBT persons and, as part of its implementation it trained 100% of its public servants.<sup>187</sup> At the same time, the Commission notes with special emphasis the information on inclusion of LGBTI persons in the context of the 2019-2022 National Development Plan<sup>188</sup>, as well as the ratification, by the Senate of Mexico, of the Inter-American Convention Against All Forms of Discrimination and Intolerance.<sup>189</sup>

158. The State also referred in general to the system of complaints before the CONAPRED, indicating that this administrative organ “seeks on a priority basis conciliation between the parties for alleged

<sup>182</sup> IACHR, [2018 Annual Report](#), 2018, p. 701, paras. 103 ff.

<sup>183</sup> México Evalúa, [Autonomía en la procuración de justicia ¿suficiente garantía?](#) October 25, 2019.

<sup>184</sup> México Evalúa, [De PGR a FGR: Observatorio de la transición 2019](#). October 2019, pp. 24 ff.

<sup>185</sup> Centro PRODH, Information following up on the Report “Situation of Human Rights in Mexico” 2015. Information sent on October 2, 2019, p. 16.

<sup>186</sup> Ministry of Interior, [Sistema Nacional de Información sobre Discriminación](#), November 6, 2019.

<sup>187</sup> Response presented by the State in the framework of the request for information for preparing the 2019 Annual Report.

<sup>188</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 49-50.

<sup>189</sup> Senate of the Republic, [Aprueban instrumentos internacionales contra el racismo, la discriminación y la intolerancia](#), October 10, 2019.

acts of discrimination.” Based on its authority, the CONAPRED can restore the right violated, order compensation for the harm caused, publicly admonish the offender, seek public or private apologies, and request guarantees of non-repetition. This year, from March to September 2019 the CONAPRED handled 22 cases of complaints characterized as acts of discrimination attributed both to private persons (10 cases) and state agents (12 cases).<sup>190</sup> In its observations on the draft of this report the State reported on the institutional position of CONAPRED, alerting about the possibility of an amendment to the state law on health of the state of Nuevo León related to conscientious objection of medical and nursing personnel so as to refrain from performing certain medical procedures. The CONAPRED noted that conscientious objection cannot suspend the delivery of medical services to the citizens, especially if that objection could be motivated by some of the motives noted by the law as discriminatory.<sup>191</sup>

159. In addition, the State indicated that the CONAPRED began to conduct the first Intersex Survey. The State added in its observations that the FGR trains its personnel in the “Protocol for Action for Personnel of the Justice and Law Enforcement Agencies of the Country in cases that involve Sexual Orientation or Gender Identity.”<sup>192</sup>

160. The IACHR also received information that violence against LGBTI persons in Mexico continues to be common, such as the assassination of Muxe human rights defender Oscar Cazorla, on February 9, 2019 in Oaxaca.<sup>193</sup> According to information that is public, as of July 2019 the investigation carried out by the Office of the Attorney General of the State of Oaxaca had not made any headway in identifying the persons responsible for the crime.<sup>194</sup> In addition, the assassinations of Miguel Ángel Medina Lara, in Veracruz<sup>195</sup>; Renata Spencer, in Hidalgo<sup>196</sup>; Hugo Méndez Hernández, in Tehuacán<sup>197</sup>; Carly, in Oaxaca<sup>198</sup>; Armando Ladrón de Guevara Jiménez, in Carlos Carillo<sup>199</sup>; and Guadalupe López Grajales, in Emiliano Zapata<sup>200</sup> represent only some of the assassinations of LGBTI persons in Mexico, which, according to information provided to the IACHR, number 29 cases so far this year.<sup>201</sup> In this regard, the Commission urges the State to conduct an exhaustive and impartial investigation, and to prosecute and punish the persons responsible for these acts.

161. The IACHR reminds the State of the importance of receiving substantive information and data on the effective action of the institutions that see to the struggle against violence impacting the LGTBI population. Accordingly, the IACHR considers that the recommendation continues to meet with partial compliance.

162. As for the recommendation that urges the State **to adopt measures to prevent violence aimed at eradicating social discrimination against LGBT persons**, the IACHR salutes the decision of the Supreme Court that guaranteed the right to register children’s birth certificates by same-sex couples<sup>202</sup>, and

<sup>190</sup> Senate of the Republic, [Aprueban instrumentos internacionales contra el racismo, la discriminación y la intolerancia](#), October 10, 2019.

<sup>191</sup> Observations and comments by the State, January 13, 2020, para. 60.

<sup>192</sup> Observations and comments by the State, January 13, 2020, paras. 58-61.

<sup>193</sup> Infobae, [Óscar Cazorla fue asesinado en su casa: era activista muxe de la lucha por los derechos LGBT](#), February 10, 2019.

<sup>194</sup> SDP, [Denuncian impunidad en asesinato de Óscar Cazorla, activista muxe](#), July 1, 2019.

<sup>195</sup> Expansión Política, [Un activista LGBT+ es asesinado a golpes y pedradas en Veracruz](#), August 12, 2019.

<sup>196</sup> El Independiente de Hidalgo, [Piden Justicia para Renata](#), March 11, 2019.

<sup>197</sup> Horas, [Asesinan a profesor de primaria indígena en su casa: había sido amenazado por ser homosexual](#), February 6, 2019.

<sup>198</sup> [Ejecutan a mujer transgénero en Oaxaca: “no nos maten”, clama presidenta de la AAFL](#), July 15, 2019.

<sup>199</sup> En Contacto, [Crimen de odio: violado y apuñalado en el cuello](#), March 15, 2019.

<sup>200</sup> La Jornada, [Hallan muerta a mujer que reportaron desaparecida](#), July 9, 2019.

<sup>201</sup> Sin Violencia, [El Prejuicio no conoce fronteras](#), August 2019.

<sup>202</sup> Supreme Court, [Primera Sala declara inconstitucional que se limite el derecho de filiación de los menores que nacen en el seno de uniones familiares homoparentales](#), May 8, 2019.

found unconstitutional the heteronormative limitation of the concept of family in Nuevo León.<sup>203</sup> The Commission also learned of changes and legal adaptations made to guarantee marriage equality in Hidalgo<sup>204</sup>, Baja California Sur<sup>205</sup>, Oaxaca<sup>206</sup>, and San Luis Potosí.<sup>207</sup> In addition, the Commission recognizes the instruction of the Ministry of Foreign Affairs of Mexico to its consulates for them to proceed to make the adaptations required so that all persons, without any distinction based on sex, can contract marriage.<sup>208</sup>

163. The IACHR takes note that marriage to any person independent of that person's sex has not been approved in Durango, Guanajuato, the state of México, Sinaloa<sup>209</sup>, Sonora, Tabasco, Tlaxcala, Veracruz, Yucatán<sup>210</sup>, Zacatecas, or Tamaulipas.

164. The Commission notes in a positive light the reforms of the Constitution of Mexico that made sex education and reproductive education compulsory, with a gender perspective based on respect for the human rights to equality and non-discrimination.<sup>211</sup> In that sense the IACHR reiterates that education in human rights plays a key role when it comes to addressing and eliminating structural prejudices, historical forms of discrimination, stereotypes, and false concepts concerning persons with diverse sexual orientations or gender identities.<sup>212</sup>

165. Regarding the right to health of persons with diverse gender identities and expressions, the IACHR received with satisfaction the information on the startup of activities, in Jalisco, of the first health care unit devoted to trans persons in Mexico.<sup>213</sup> Among the services provided by the new unit are specialized care in areas such as sexology, endocrinology, urology, gynecology, and laboratory, as well as training of health care professionals to serve trans persons.<sup>214</sup>

166. Despite the gains, the Commission took note with concern of the adoption of health laws in Morelos<sup>215</sup> and Nuevo León<sup>216</sup> that allow service providers in the health sector to refuse to provide medical care to LGBTI persons, based on it not being in accord with their thoughts or beliefs. As regards conscientious objection, the IACHR recalls that all states have the obligation to undertake a detailed review of the laws, regulations, practices, and public policies whose drafting or implementation may have discriminatory repercussions on access for LGBTI persons to health services.

<sup>203</sup> Ministry of Interior, [Action of Unconstitutionality 29/2018](#), May 31, 2019.

<sup>204</sup> Milenio.com, [Aprueban matrimonio igualitario en Hidalgo](#), May 14, 2019.

<sup>205</sup> La Jornada, [Aprueban matrimonio igualitario en Baja California Sur](#), June 27, 2019.

<sup>206</sup> Expansión Política, [Oaxaca dice "Sí" al matrimonio igualitario](#), August 28, 2019.

<sup>207</sup> Infobae, [Congreso de San Luis Potosí aprobó el matrimonio igualitario con 14 votos a favor](#), May 16, 2019.

<sup>208</sup> Animal Político, [Parejas del mismo sexo podrán casarse en los todos los consulados de México en el mundo](#), May 16, 2019; Observations and comments by the State, January 13, 2020, para. 62.

<sup>209</sup> Infobae, [El Congreso de Sinaloa rechazó el matrimonio igualitario; no se podrá reagendar el tema en la actual Legislatura](#), June 18, 2019.

<sup>210</sup> Ruido, [Una burla en el Congreso de Yucatán](#), April 10, 2019.

<sup>211</sup> Observatorio LGBT, [Educación sexual es reconocida en la Constitución: planes de estudio deberán incluirla](#), May 20, 2019.

<sup>212</sup> IACHR, [IACHR Regrets Ban on Gender Education in Paraguay](#), December 15, 2017.

<sup>213</sup> Government of Jalisco, [Jalisco tiene la primera Unidad de Atención Médica Sexual del país](#), July 22, 2019.

<sup>214</sup> Reporte Índigo, [Abren en Jalisco unidad médica especializada para personas transgénero](#), July 23, 2019.

<sup>215</sup> Congress of the State of Morelos, [Avalan que médicos y enfermeras puedan ejercer su derecho de objeción de conciencia](#), July 15, 2019.

<sup>216</sup> Sin Embargo, [NL aprueba que el personal de salud no atienda a personas LGBT+ por "objeción de conciencia"](#), October 21, 2019.

167. The Commission received worrisome information that medical centers continue to exist that offer therapies with the intent to “modify” the sexual orientation of persons in Mexico.<sup>217</sup> On this issue, the Commission reminds the State that such techniques are harmful, ineffective, unethical, and lack any scientific basis, in addition to possibly constituting a form of torture.<sup>218</sup>

168. The Commission also learned of the legal changes in Colima<sup>219</sup> and Hidalgo<sup>220</sup> in 2019 that made it possible to recognize gender identity as per one’s self-perception through administrative procedures. On this issue, the IACHR values the legislative processes that have been undertaken, recalling that gender identity is an essential part of the right to identity, and, therefore, that the State has the obligation to adopt measures, without delay, aimed at expeditious, transparent, and accessible legal recognition of gender identity.<sup>221</sup>

169. The Commission recognizes significant gains in Mexico when it comes to carrying out the recommendations related to violence and non-discrimination against LGBTI persons.

170. Based on the foregoing, the IACHR concludes that the recommendation has met with partial compliance. In this regard, the IACHR reiterates its appeal to the State to continue its work to prevent and investigate violence committed against LGBTI persons by adopting affirmative measures that fight the structural causes of violence based on prejudices against these persons. Thus, the IACHR finds it necessary that these measures take special consideration of groups that may be susceptible to multiple discrimination, both because of their sexual orientation and ethnic-racial or national origin. It is therefore recommended to include an intersectional approach in the implementation of public policies that benefit LGBTI people and Afro-descendants.

171. In addition, the Commission urges the Mexican State to harmonize its domestic legislation in the states in relation to the rights related to freely developing one’s civil life, such as marriage or personal data in identification documents, as well as to accessing economic, social, and cultural rights, such as the rights to health and education.

## 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 by the prosecutorial authorities for crimes related to violence against women, as well as 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.

<sup>217</sup> Agencia EFE, [Centros de conversión sexual en México, ineficaces y altamente peligrosos](#), June 28, 2019.

<sup>218</sup> IACHR, [Violence against LGBTI persons](#), para. 200.

<sup>219</sup> El Heraldo, [Congreso de Colima aprueba cambio de identidad de género en documentos oficiales](#), February 13, 2019.

<sup>220</sup> Excélsior, [En Hidalgo se podrá elegir identidad de género a los 18 años](#), April 25, 2019.

<sup>221</sup> IACHR, [IACHR Welcomes Progress towards the Recognition of Gender Identity in the Region](#), December 21, 2018.



- 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.

172. **As regards implementing and strengthening measures to comply with the obligations to act with due diligence to prevent, punish, and eradicate violence and discrimination against women,** the State reported that the National Commission for Preventing and Eradicating Violence Against Women (CONAVIM) launched the call for bids for the “Process for certifying the Women’s Justice Centers in the 2019 System of Institutional Integrity” with a view to fostering the institutional capacities of the Women’s Justice Centers (CJM) that participate in implementing the methodology of the Institutional Integrity System, accrediting and acknowledging their gains in the continuous improvement of their organization and on the quality of the services that women victims of violence are provided, along with their children, to help ensure their access to justice and the exercise of their human rights.<sup>222</sup>

173. In addition, the State described numerous activities involving training and education on human rights, women’s rights, and gender equality.<sup>223</sup> Regarding sexual violence, the Commission was informed that the Ministry of Health is implementing the strategy aimed at “reinforcing essential health care for persons who experience sexual violence,” for which specific resources are earmarked; it has reviewed and updated the context of regulations and guidance; and it has programmed integral supervision in the health services of the 10 states identified as priority.<sup>224</sup> In addition, the IACHR was informed of the creation of the Technical Secretariat on Gender Equality and Attention to Vulnerable Groups by the Federal Institute of the Office of the Public Defender, with the aim of guaranteeing the rights of underprivileged persons who historically have experienced marginalization and discrimination. Its activities include strengthening the offices of legal counsel and public defenders’ offices on issues of gender perspective with the aim of eradicating violence and discrimination against women.<sup>225</sup>

174. The Commission also notes that as of June 18, 2019, all the states have published their respective laws on access to a life free from violence against women, and that of all of them only Campeche has not regulated it. In addition, the Commission was informed that the states have legislated on new modalities of violence adapted to their context, including obstetric violence, on which there is legislation in 25 states; and violence in the couple, on which there is legislative in at least 11 states.<sup>226</sup>

175. In addition, the IACHR notes that there are 30 procedures for alerts of gender violence against women, 18 of which have resulted in declarations of such alerts in 17 states. In this regard, Veracruz is the only one that has declared two alerts, the first for femicidal violence and the second for comparative insult (Agravio

<sup>222</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 55.

<sup>223</sup> Séptimo Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” October 2019, p. 57 and Observations and comments by the State, January 13, 2020, paras. 63-65. The trainings include: trainings for physicians and nursing personnel; implementing the online course “Human Rights and Gender”; trainings for personnel of the “Isidro Espinosa de los Reyes” National Institute of Perinatology (INPer) and the National Institute of Cardiology (INCar); in the area of the Office of the Attorney General a training was held on “The Importance of Expert Evidence in Social Anthropology for Respecting the Human Rights of Indigenous and Afro-Mexican Peoples with a Gender Perspective”; courses called: “Awareness-raising and training to prevent and respond to sexual harassment in the workplace,” geared to substantive personnel of the Federal Prosecutorial Police and the National Center for Planning, Analysis, and Information for Fighting Crime (CENAPI); as well as planning a specialized training in a Seminar on Expert Services with a Gender Perspective; and training activities by the Institute of the Federal Judiciary.

<sup>224</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” October 2019, p. 56.

<sup>225</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” October 2019, p. 59.

<sup>226</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” October 2019, para. 21.

Comparado), the latter due to having legislation that violates women's human rights.<sup>227</sup> Moreover, during 2019 the State has furthered actions to strengthen the work of the Women's Justice Centers, in a coordinated agenda against gender violence, in which 40 such centers have participated, with the aim of building collaborative mechanisms among the different actors associated with the Women's Justice Centers, and in addition, the United Nations Office on Drugs and Crime (UNODC) and with the United Nations Population Fund (UNFPA).<sup>228</sup> In addition, on occasion of the National Forum of Liaisons of the National Bank of Data and Information on Cases of Violence against Women, and the National Meeting of the BANAVID with liaisons from the superior courts of justice, it is reported that from January to May 2019 there were 37,237 cases of violence against women.<sup>229</sup>

176. As regards murders of women based on their gender, the Commission welcomes the adoption of statutes providing for the crime of femicide throughout Mexico<sup>230</sup> establishing that the willful murder of a woman occurs when the victim is threatened or rendered incommunicado before dying, when degrading lesions are inflicted on her, or when her corpse is put on display. The text also indicates sanctions for those public servants who by act or omission delay the attention given to this crime, as well as mechanisms for making reparation for the harm to the family members of the women murdered.<sup>231</sup> In this respect, the IACHR observes that until now of the country's 32 states, 19 have a statutory definition that complies in full or in part with the characteristics for being able to show the offense and 13 do not yet have an adequate criminal statute.<sup>232</sup>

177. Without prejudice to the foregoing, the Commission reiterates its concern over the high number of assassinations of women in Mexico due to their gender, as well as over the widespread impunity around these cases.<sup>233</sup> According to data from the Executive Secretariat of the National System of Public Security, from 2015 to June 2019 in all 3,080 purported feminicides have been committed, and there have been 10,610 purported women victims of intentional homicide. In the first six months of 2019 a total of 1,812 women have been assassinated, i.e. 10 women per day on average.<sup>234</sup> As for sexual violence, in Mexico sex crimes against women increased 20% during the first half of 2019 compared to the same period last year, according to calculations by the federal government. The prosecutorial services have opened at least 22,749 investigative files for some sex crime against women this year, whereas in 2018 only 18,970 such cases were investigated. A total of 10,522 cases of sexual abuse have been recorded, which represents a 30.1% increase with respect to the previous year, at the same time as the reports of sexual harassment increased 54.3%, from 1,154 investigative files for January to June 2018 to 1,780 in 2019.<sup>235</sup> In its observations on the draft of this report

<sup>227</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", October 2019, para. 21.

<sup>228</sup> CONAVIM. Foro "Centros de Justicia para las Mujeres, agenda 2019: coordinación contra la violencia de género." September 1, 2019.

<sup>229</sup> El Universal. Suman más de 37 mil casos de violencia contra las mujeres. September 1, 2019.

<sup>230</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México," October 2019, para. 32.

<sup>231</sup> Expansión, Cámara de Diputados aprueba la tipificación del delito de femicidio, December 13, 2017.

<sup>232</sup> The states that have a criminal statute that fully or partially has the characteristics for being able to show the crime (depriving a woman of life for reasons of gender) are: Campeche, Chiapas, Mexico City, Coahuila, Colima, Guerrero, Hidalgo, Jalisco, state of México, Morelos, Nuevo León, Oaxaca, Querétaro, San Luis Potosí, Sinaloa, Sonora, Tamaulipas, Veracruz, and Zacatecas. The 13 states that do not have an adequate criminal statute are Aguascalientes, Baja California, Baja California Sur, Chihuahua, Durango, Guanajuato, Michoacán, Nayarit, Puebla, Quintana Roo, Tabasco, Tlaxcala, and Yucatán. All of them – with the exception of Chihuahua, which included specific conduct until 2017, without yet recognizing the term 'femicide' in its Criminal Code – have made one or two reforms without this meaning an improvement in the codification of femicide. (El País, La ONU pide a México tipificar el femicidio en todo el país, June 13, 2018).

<sup>233</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.

<sup>234</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México," October 2019, para. 49.

<sup>235</sup> Milenio, En 2019, aumentaron 20% denuncias por delitos sexuales, August 15, 2019.

the State added that the CEAV is drawing up the Protocol for Attention and Integral Reparation of Harm to Victims of Femicide.<sup>236</sup>

178. In addition, the Commission has learned of federal budget adjustments that would have a negative impact on the National Commission to Prevent and Eradicate Violence Against Women (CONAVIM), whose budget would be cut 30%, and the Program to Support Women's Agencies in the States would disappear; it is the only program geared to the states for fighting gender inequality. At the same time, civil society organizations report new limitations on accessing public funds and, in particular, for operating shelters for women victims of violence.<sup>237</sup> With the withdrawal of funds from the State, the agencies or mechanisms are at the discretion of what the states contribute for their financing, which may give rise to a precarious and fragile situation not only for such initiatives but also for the women who such support is designed to benefit. In its observations on the draft of this report the State indicated that the CONAVIM adopted the Integral Program in this area for 2019-2024 and stepped up its work related to access to justice in cases related to violence against women.<sup>238</sup>

179. As regards incorporating the gender perspective in the administration of justice, the Commission is satisfied with the adoption of the Protocol for Judging with a Gender Perspective, at the same time that it views with concern the various obstacles that women continue to face when it comes to accessing justice in conditions of equality and without discrimination, resulting in serious indicators of impunity. In this respect, the Commission notes that the periodic reports of the Office of the Attorney General of the state of México (FGJEM) reflect actions to reduce the high rates of impunity in crimes against women. On that basis, it was reported that from January 2018 to March 2019, 17 convictions were obtained, including one of the longest prison sentences in Latin America, 99 years and six months for the crime of human trafficking for sexual exploitation by means of concubinage and forced begging.<sup>239</sup>

180. In addition, with respect to the implementation of the General Law on Access for Women to a Life Free from Violence, the Commission was informed that the CONAVIM began a process of certifying indicators of the System of Institutional Integrity to ensure the implementation of actions aimed at prevention, attention, punishment, and eradication of violence against women in the country, as well as promoting gender equality. To date, 20 Women's Justice Centers have been certified, seven in fiscal year 2017, 11 in fiscal year 2018, and two in fiscal year 2019.<sup>240</sup>

181. The Commission also views with concern that in Mexico 93% of all crimes related to violence against women go unresolved, including femicides and sexual violence, according to the National System of Public Security (SNSP).<sup>241</sup> According to public information, in only 11% of rape cases is an investigative file opened, and of these only 2.4% result in a judgment.<sup>242</sup> In this respect, the IACHR has said that impunity in the face of violence against women stems from stereotype-based interpretive criteria in resolving cases; the scant knowledge of women's rights among members of the judiciary and law-enforcement personnel including the police; the lack of accountability of judges whose judicial performance does not take into account gender issues; the scant public access to judicial decisions; the financial, linguistic, and geographic barriers that thwart access to justice for low-income women, indigenous and rural women, and women with disabilities; women's scant

<sup>236</sup> Observations and comments by the State, January 13, 2020, para. 69.

<sup>237</sup> El Economista, [El presupuesto del 2019, retroceso en igualdad de género](#), December 19, 2018; El País, [López Obrador limita las ayudas a menores y mujeres víctimas de maltrato](#), March 4, 2019.

<sup>238</sup> Observations and comments by the State, January 13, 2020, para. 66

<sup>239</sup> FGJME, [3er Informe de gestión de la Fiscalía General de Justicia Abril 2019-Marzo 2019](#), June 2019.

<sup>240</sup> CONAVIM, [Re-certificación para los Centros de Justicia para las Mujeres 2019](#), September 27, 2019.

<sup>241</sup> United Nations, Committee Against Torture, Concluding observations on the seventh periodic report of Mexico, CAT/C/MEX/CO/7, July 24, 2019, para. 58.

<sup>242</sup> El País, [La frustración y el enojo: la ruta para denunciar el abuso sexual en México](#), August 19, 2019.

knowledge, in particular women victims of gender violence, of their rights and the avenues of legal recourse available to them.<sup>243</sup>

182. In view of the foregoing, the IACHR recognizes the State's efforts and calls on it to intensify them with the aim of following up on its recommendation to implement and strengthen measures to carry out the duty to act with due diligence to prevent, punish, and eradicate violence and discrimination against women, incorporating a gender perspective, including specific efforts to carry out the obligations to prevent, investigate, punish, and make reparation for violations of women's human rights. Based on the foregoing, the IACHR observes that the recommendation has met with partial compliance.

183. 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 liberty**, the Commission views positively the information according to which a road map was approved by the Mechanism for Follow-up on Cases of Sexual Torture of Women, for strengthening that instrument as well as promoting a presidential decree to strengthen its powers and attributions, to ensure it a technical structure and budget of its own, to address possible reports throughout the State and generate public policies to prevent the sexual torture of women.<sup>244</sup> In its observations on the draft of this report the State noted that from March to December 2019, 13 training activities were held on violence against women in which more than 1,500 officials from the FGR participated; informational documents on the subject were also distributed.<sup>245</sup> In addition, it noted that the CEAV, in coordination with the Ministry of Interior, participated in the Specialized Workshop for Addressing Sexual Exploitation of Children and Adolescents, Human Trafficking, and Child Labor in the travel and tourism sector.<sup>246</sup>

184. In addition, the Commission was informed that the National Conference of the Penitentiary System approved, *inter alia*, the protocols for action to prevent sexual assaults, suicides and torture, cruel, inhuman, and degrading treatment of persons deprived of liberty, which include international human rights standards. In addition, the National Center for Crime Prevention and Citizen Participation of the Executive Secretariat of the National Public Security System included, among the priority objectives of its Six-year National Prevention Plan, implementing programs for training and professionalizing the National Guard and the police institutions on women's rights; and promoting the prisons incorporating a gender perspective as a cross-cutting theme in the programs for social reinsertion that benefit women deprived of liberty and their children.<sup>247</sup> In addition, the Ministry of the Navy held several trainings on human rights geared to its naval personnel including trainings on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which include aspects related to sexual torture as well as treatment of vulnerable groups, placing emphasis on women and minors.<sup>248</sup>

185. In addition, the IACHR has taken note that the Head of Government of Mexico City decreed the Alert for Violence against Women on November 23, 2019, and that it is instituting five measures: (1) the creation of the Public Registry of Sex Offenders, (2) appeals to the Mexico City legislature to approve laws to eradicate digital harassment and the creation of the DNA data base of sexual offenders, (3) Center for Attention

<sup>243</sup> 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, July 25, 2018; Equis et al., Acciones Judiciales en contra de los Derechos de las Mujeres en México, request for thematic hearing in the context of the 168<sup>th</sup> period of session of the IACHR in Santo Domingo (Dominican Republic), communication of March 9, 2018.

<sup>244</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," October 2019, p. 61.

<sup>245</sup> Observations and comments by the State, January 13, 2020, paras. 71 and 72.

<sup>246</sup> Observations and comments by the State, January 13, 2020, para. 70.

<sup>247</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," October 2019, p. 62.

<sup>248</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," October 2019, p. 63.

for Women, (4) improving services at prosecutorial offices; and (5) increasing the number of routes in the program “Safe paths, walk free and safe,” which seeks to create violence-free spaces for women.<sup>249</sup>

186. Sexual violence and especially sexual violence as a form of torture directed against women deprived of liberty continues to be a matter of concern for the IACHR. According to the information communicated to the Commission, 8 of every 10 women detained in Mexico from 2009 to 2016 were victims of torture before being brought before a judge<sup>250</sup>, which shows that sexual torture of women in the custody of various Mexican security forces is not exceptional, but rather occurs with worrisome regularity and is related to high levels of impunity.<sup>251</sup> Moreover, the IACHR has continued receiving information on acts of sexual violence by the security forces with the aim of obtaining forced confessions, especially in the context of the militarized security policy and what has been called the “war on drug-trafficking.”<sup>252</sup> In this respect, the Commission received information related to the complaint lodged with the United Nations due to sexual violence directed against women deprived of liberty in Mexico. According to these reports, sexual violence includes rape, threat of rape, groping and electrical discharges on the breasts, glutei, or genitals, as well as women being forced to engage in sexual acts.<sup>253</sup>

187. In this regard, the Commission is concerned about the shortcomings that persist in the investigation of such acts, and notes the deficits in detecting and documenting torture and other abusive treatment. This is due to the deficiency of the initial medical exams and underestimating the seriousness of the injuries; the delay in applying medical-forensic expert studies, which may take months or years after the torture was inflicted; and the lack of a gender perspective in the expert examinations. In addition, given that discriminatory gender-based stereotypes persist, the victims’ testimony was considered fully credible, and signifying re-victimization of the women and additional obstacles to their access to justice.<sup>254</sup> Accordingly, despite the increase in reports of this type of violence<sup>255</sup> and the large number of complaints lodged by women for acts of sexual violence as a form of torture, the authorities’ response has not complied with the international commitments of the State regarding investigation, prosecution, punishment, and reparation.

188. Moreover, the IACHR has noted the importance of the November 20, 2018 judgment of the Inter-American Court regarding the international responsibility of the Mexican State for the victims of sexual torture in Atenco.<sup>256</sup> In this regard, the Commission continues to be vigilant of the measures taken by the State to comply fully with that judgment.<sup>257</sup>

189. In its observations on the draft of this report the State reported that CONAVIM promotes measures in the design of the Comprehensive Program to Prevent, Address, Punish and Eradicate Violence

<sup>249</sup> Gobierno de la Ciudad de México, [Se decreta la Alerta por Violencia contra Mujeres](#), 23 de noviembre de 2019.

<sup>250</sup> Animal Político, [En México, 8 de cada 10 mujeres detenidas sufren tortura o malos tratos de las autoridades](#), November 21, 2018.

<sup>251</sup> Centro Prodi, [Mujeres con la frente en alto. Informe sobre la tortura sexual en México y la respuesta del Estado](#), November 2018.

<sup>252</sup> IACHR, [Situation of the human rights of women in the context of the criminalization of drugs in the region](#), Thematic hearing, 168<sup>th</sup> period of sessions, Santo Domingo (Dominican Republic), May 10, 2018.

<sup>253</sup> Infobae, [Denunciarán ante la ONU la tortura sexual que sufren las mujeres reclusas en México](#), April 22, 2019; El Universal, [Acusarán a México ante Naciones Unidas por Tortura Sexual contra Mujeres](#), April 22, 2019.

<sup>254</sup> Amnesty International, [Informe al Comité sobre la eliminación de la discriminación contra la mujer](#), 70<sup>th</sup> session, July 2-21, 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>255</sup> 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, July 25, 2018.

<sup>256</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>257</sup> PRODH, [A 13 años de Atenco, mujeres sobrevivientes demandan cumplimiento de sentencia interamericana y exigen justicia para las mujeres que han alzado la voz contra la tortura sexual](#), May 3, 2019.

Against Women (PIPASEVM) 2019-2024 which is currently under evaluation by the Ministry of Finance and Public Credit, anticipating its publication by January 2020.<sup>258</sup>

190. As regards the foregoing, the Commission views with concern the information received, which described the extent of sexual violence committed against women during their detention, transfer, entry to prison, and deprivation of liberty in Mexico. Based on the foregoing, the IACHR considers that the recommendation has not yet met with compliance.

191. In addition, the Commission received information from the State following up on its recommendation **to implement uniform protocols by the prosecutorial authorities for crimes related to violence against women, as well as proper supervision of their implementation.**

192. In this respect, and as noted above, the Commission attaches a positive value to the adoption by at least 23 states of a protocol on femicide<sup>259</sup>, and that the publication of the Protocol to Judge with a Gender Perspective has enabled the Federal Judicial Branch to render more judgments that incorporate a gender perspective. In addition, the Commission notes that all the states have published laws on access to a life free from violence against women and have considered new modalities of violence as a response to the context of violence that women suffer: obstetric violence, codified in 25 states; and violence in the couple, provided for in 11 states.<sup>260</sup>

193. The Commission was also informed of the beginning of the process of updating the “Protocol for Judging with a Gender Perspective,” beginning with a consultative process that includes the participation of civil society, academia, and judicial officers. The FGR, which is in charge of coordinating the “Protocol for the prevention, attention, and punishment of sexual harassment” of the institutions and offices of the Federal Public Administration, began to draw up a proposed internal model of attention to replace the above-noted Protocol in December 2019. In addition, the protocols for prosecutorial, police, and expert action with a gender perspective for the crime of femicide and for sexual violence, as well as the Standardized Protocol for Action with a gender perspective for investigating the crimes of human trafficking for sexual exploitation, drawn up by the FGR, are being validated within the FGR.<sup>261</sup>

194. In its observations on the draft of this report the State noted that the FGR was preparing a proposal for institutional guidelines to prevent and investigate sexual harassment and stalking to replace the Protocol for preventing, responding to, and punishing sexual harassment and stalking.<sup>262</sup>

195. The Commission observes this information in a positive light and calls on the State to continue its efforts to ensure that the adoption of those protocols are national in scope, especially the protocol on femicide; to guarantee the effective implementation of all of them; to reinforce the mechanisms for monitoring and supervising their implementation; and to inform the IACHR of those actions. Based on the foregoing, the IACHR observes that the recommendation continues to meet with partial compliance.

<sup>258</sup> Observations and comments by the State, January 13, 2020, para. 73-74.

<sup>259</sup> The states that have protocols on the crime of femicide are: Aguascalientes, Baja California, Chiapas, Colima, Mexico City, Guanajuato, Guerrero, Hidalgo, Jalisco, state of México, Morelos, Nuevo León, Oaxaca, Puebla, Quintana Roo, San Luis Potosí, Sinaloa, Sonora, Tabasco, Tamaulipas, Veracruz, Yucatán, and Zacatecas. The five states that have a protocol on homicide for reasons of gender are: Campeche, Chihuahua, Michoacán, Querétaro, and Tlaxcala. The two states that are in the process of preparing and publishing protocols on femicide are Coahuila and Durango. Only two states do not yet have a protocol on femicide, Baja California Sur and Nayarit. Quinto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México.”

<sup>260</sup> CNDH. Actualización correspondiente al año 2019 de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México,” October 2019, para. 54.

<sup>261</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” October 2019, p. 63.

<sup>262</sup> Observations and comments by the State, January 13, 2020, para. 76.

196. With respect to 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 was informed of the drawing up of the National Program for Equality between Women and Men 2019-2024 (PROIGUALDAD), which includes as a priority line giving impetus to the transformation of sociocultural behaviors and norms for fostering a culture free from violence and discrimination against women and girls, with a gender and intersectional perspective.<sup>263</sup> In its observations on the draft of this report the State added that said plan is still awaiting an opinion from the Ministry of Finance and Public Credit.<sup>264</sup> In addition, INMUJERES promotes various campaigns such as “November 25. Fighting gender violence,” “Fight violence. Live without violence,” and “For your rights. Dating without violence,” as well as “In search of equality, for your rights,” in different versions. The campaigns seek to raise awareness in society to do away with gender stereotypes and roles, promoting a framework of relations of equality as between women and men, and girls and boys.<sup>265</sup> In its observations on the draft of this report the State reported that it is seeking to implement a “feminist foreign policy” to give visibility to women’s contributions to foreign policy and global actions.<sup>266</sup>

197. The IACHR closely observed the declaration of the Mexico City Human Rights Commission (CDHDF), in which it expressed the urgency of guaranteeing the political participation and consultation of Afro-Mexican women in the process of generating secondary legislation derived from the Political Constitution of Mexico City; In order to eradicate racial discrimination, racism and related forms of intolerance that hinder the fundamental rights of Afro-Mexican women, promoting the inclusion of the gender perspective in government policies, programmes and actions aimed at addressing the multiple forms of discrimination of which they are part of<sup>267</sup>.

198. The IACHR has positively embraced the drawing up of a constitutional amendment on parity in public offices as between women and women, which represents a major step forward. Nonetheless, structural changes are still needed for women to have real and effective parity participation, i.e. it not only implies that women are 50% of those who make the decisions, but that they do so without any discrimination or violence.<sup>268</sup> In its observations on the draft of this report the State reported that Articles 2, 4, 35, 41, 52, 53, 56, 96, and 115 of the Constitution have been reformed in respect of gender parity, and indicated that 1,500 officials of the Ministry of Interior received training from the CONAVIM on gender perspective and eradicating violence against women.<sup>269</sup>

199. Moreover, the Commission notes in a positive light the approval of the 2014-2018 National Program for Equality and Non-Discrimination yet views with concern the persistence of discriminatory provisions on grounds of sex in the legislation and the lack of harmonization of the civil and criminal codes of the states, which stands in the way of the effective application of the Convention and the national legislation on gender equality. Moreover, the lack of effective mechanisms and the insufficiency of the state budgets allocated to enforce the laws on gender equality and women’s right to a life free from violence, and the lack of follow-up, have not made it possible to put an end to discrimination, especially in its intersectional forms, and in particular as it affects indigenous women, Afro-Mexican women, migrant women, women with disabilities, lesbian, bisexual, and transgender women, and intersex persons; and the lack of a unified criminal code and of a judicial

<sup>263</sup> Séptimo Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México” October 2019, p. 65.

<sup>264</sup> Observations and comments by the State, January 13, 2020, para. 79

<sup>265</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” October 2019, p. 65.

<sup>266</sup> Observations and comments by the State, January 13, 2020, paras. 77-78.

<sup>267</sup> Comisión de Derechos Humanos de la Ciudad de México (CDHDF). [Se debe garantizar participación de mujeres afromexicanas en legislación secundaria](#). 25 julio 2019.

<sup>268</sup> INM. [Paridad en todo: 50% mujeres y 50% hombres en la toma de decisiones](#). June 19, 2019.

<sup>269</sup> Observations and comments by the State, January 13, 2020, paras. 80 – 82.

mechanism for resolving the cases of discrimination against women has resulted in low rates of prosecution of cases of discrimination on grounds of sex.<sup>270</sup>

200. The Commission is concerned about the normalization and tolerance of violence against women, as well as the prevalence of stereotyped and sexualized images to which women are subjected in the media, in particular stereotyped representations and negative images of indigenous women, Afro-Mexican women, migrant women, and refugee and asylum-seeking women in the media.<sup>271</sup> Based on the foregoing, the IACHR observes that the recommendation has not yet met with compliance.

201. With respect to the recommendation to **design and implement culturally adequate policies to prevent, investigate, punish, and make reparation for acts of discrimination against indigenous women**, the State informed the Commission that the FGR is carrying out a publicity campaign to support the rights of the indigenous peoples, to which end it has undertaken 35 dissemination actions on the issues of Rights of the Victim and the Accused, as well as preventing crimes against health and gender violence. These actions are broadcast on the radio stations of the National Institute of Indigenous Peoples in the states of Oaxaca, Guerrero, Chiapas, and Baja California, with messages in the Mixe, Mixteco, Náhuatl, Tlapaneco, Tzeltal, Zapoteco, Chinanteco, and Tzotzil languages. In addition to this campaign, the State has reported having carried out eight training activities on "The Importance of Expert Evidence in Social Anthropology for Respecting the Human Rights of Indigenous and Afro-Mexican Peoples with a Gender Perspective."<sup>272</sup> The State reiterated this information in its observations on this report.<sup>273</sup>

202. According to public information, the prevalence of multiple forms of violence and discrimination persists with a negative impact on indigenous women, compromising their access to education, work, culturally appropriate health care, as well as participation in public life and decision-making.<sup>274</sup> Moreover, the Commission notes the prevalence of domestic violence and sexual violence against indigenous women, as well as discriminatory practices and violence against indigenous women by sexual and reproductive health care personnel in the public health institutions at the moment of accessing sexual and reproductive health care, which in some cases has led to sterilizations without free and informed consent, according to information from 2018.<sup>275</sup>

203. As regards access to justice, the Commission has been informed that in most cases when indigenous women victims of violence lodge complaints they do so before their traditional authorities, given their geographic proximity, and relationship with their authorities, access in their own language and, in many cases, the absence or lack of perceived effectiveness of the justice system of the State.<sup>276</sup> Nonetheless, even though the indigenous legal systems are afforded constitutional recognition, in practice the State has rendered invisible their importance and contribution to resolving disputes, without granting budgets for strengthening

<sup>270</sup> 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, July 25, 2018, para. 11.

<sup>271</sup> 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, July 25, 2018. United Nations General Assembly, Compilation on Mexico, Human Rights Council, Working Group on the Universal Periodic Review, 31<sup>st</sup> period of sessions, A/HRC/WG.6/31/MEX/2, September 3, 2018. Amnesty International, Informe al Comité sobre la eliminación de la discriminación contra la mujer, 70<sup>th</sup> session, July 22, 2018.

<sup>272</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," October 2019, p. 68.

<sup>273</sup> Observations and comments by the State, January 13, 2020, para. 84

<sup>274</sup> United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the 18<sup>th</sup> to 21<sup>st</sup> combined periodic reports of Mexico, CERD/C/MEX/CO/18-2, August 29, 2019, para. 24.

<sup>275</sup> United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the 18<sup>th</sup> to 21<sup>st</sup> combined periodic reports of Mexico, CERD/C/MEX/CO/18-2, August 29, 2019, para. 24.

<sup>276</sup> Equis et al., Acceso a la Justicia para Mujeres Indígenas. Informe Sombra para el Comité de la ONU para la Eliminación de la Discriminación Racial, August 2019, p. 2.



them, instead limiting their operations through practices or secondary legislation that keeps this justice system from resolving cases of violence against women. These practices have weakened indigenous justice and with it the possibility of responding indigenous women's expectations for justice.<sup>277</sup> The IACHR observes that this lack of adequate coordination between the regular courts and the indigenous jurisdiction may constitute an obstacles to effective access to justice for indigenous women who are victims of gender violence.<sup>278</sup>

204. The Commission also notes other obstacles to access to justice for indigenous women in equal conditions, such as failings in national coverage and the physical distances to offices where complaints are to be lodged. Moreover, there are not sufficient guarantees for them to have interpreters and defense counsel in all trials and proceedings who understand their language and culture. According to the information available, there are approximately 1,649 interpreters accredited by the National Institute of Indigenous Languages nationwide, while only 25 persons make up the corps of bilingual public defenders in Mexico, as indicated in detail in the recommendations on indigenous persons and peoples. The lack of translators and interpreters, in the case of women victims of violence, becomes a concrete obstacle when it comes to reporting crimes and following up on their proceedings.<sup>279</sup>

205. The Commission observes the lack of official data broken down by gender and ethnic or racial origin, so as to make it possible to adequately assess the phenomenon of violence against indigenous women. For example, in the National Survey on the Dynamic of Relations in the Home, which monitors violence against women in the country, if the woman interviewed does not speak Spanish, the interview is concluded without capturing her testimony. According to the information available, this practice is common in most of the surveys on violence and access to justice, resulting in the disproportionate exclusion of indigenous women.<sup>280</sup> The Commission also observes that in 2012 the variable was included as to whether the victims of homicide spoke an indigenous language. In the case of women, however, of the total homicides perpetrated from 2012 to 2017, in 41.9% of the cases language was ignored, which implies that even considering language as the sole indicator of a person's ethnic origin, it is not possible to know for sure how many indigenous women have been murdered in Mexico.<sup>281</sup>

206. According to the information available, the Commission observes the lack of a structured and coordinated strategy in the design and implementation of culturally appropriate policies for preventing, investigating, punishing, and making reparation for acts of discrimination against indigenous women, associating it with the institutional expression of historical discrimination that indigenous women have faced and will continue facing in Mexico. In this context, the IACHR reiterates its recommendation to the State and urges it to channel all necessary efforts to adequately address the needs of indigenous women; to adopt the measures necessary for ensuring access to justice for all of them; to adopt policies that integrate a differentiated approach and gender perspective in carrying out its duty of due diligence; to generate properly disaggregated statistical data; and to report to the Commission on all of these points. Based on the foregoing, the IACHR observes that the recommendation has yet to be implemented.

### 3. Children and adolescents

- Develop operational protocols for the police regarding interventions involving children and adolescents, aimed at ensuring the protection of their rights.

<sup>277</sup> Animal Político, Lo que tienes que saber sobre discriminación racial contra las mujeres indígenas en México, September 5, 2019.

<sup>278</sup> United Nations, Committee on the Elimination of Racial Discrimination, Concluding observations on the 18<sup>th</sup> to 21<sup>st</sup> combined periodic reports of Mexico, CERD/C/MEX/CO/18-2, August 29, 2019, para. 26.

<sup>279</sup> Equis et al., Acceso a la Justicia para Mujeres Indígenas. Informe Sombra para el Comité de la ONU para la Eliminación de la Discriminación Racial, August 2019, p. 4.

<sup>280</sup> Equis et al., Acceso a la Justicia para Mujeres Indígenas. Informe Sombra para el Comité de la ONU para la Eliminación de la Discriminación Racial, August 2019, p. 15.

<sup>281</sup> Equis et al., Acceso a la Justicia para Mujeres Indígenas. Informe Sombra para el Comité de la ONU para la Eliminación de la Discriminación Racial, August 2019, p. 17.

- Implement and strengthen measures to fulfill the duty to act with due diligence to prevent, punish and eradicate violence against children and adolescents, including concrete 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.

207. As regards **developing operational protocols for the police regarding interventions involving children and adolescents, aimed at ensuring the protection of their rights**, the State reported that on July 16, 2019 the 2019-2024 Mexico Action Plan was presented following up on Mexico's accession to the Global Partnership to End Violence Against Children in 2017<sup>282</sup>, to put an end to all forms of violence against that population. As reported, the Plan has four strategies, one of which is focused on the subject matter of this recommendation and has been called "Public security and social participation of children and adolescents," whose monitoring has been entrusted to the Ministry of Public Security and Citizen Protection. In addition, this strategy contains the line of action called "Strengthening capacities of the National Guard and the state and municipal security bodies in respect of the protection of children and adolescents," whose measures of implementation are as follows: (i) Establish a protocol for coordination between the recently-established National Guard and the state and municipal police for serving and protecting children and adolescents whose objective is to provide them the support and tools needed to transit successfully through situations of risk, violence, and crime in which they may find themselves immersed or of which they may be victims, (ii) develop a program for training the National Guard, for protecting and serving children and adolescents; and (iii) develop training programs for the state and municipal police on protecting children and adolescents.<sup>283</sup> The State reiterated this information in its observations on the draft of this report.<sup>284</sup>

208. The CNDH indicated in general terms that poverty among children and adolescents should not be considered a datum on their economic situation, but instead as an indicator of human dignity<sup>285</sup>, and that the Ministry of National Defense has arrested more than 5,000 children and adolescents associated with the work of organized crime. In the arrests the main arresting agent has been the National Army, followed by the Federal Police, the Ministry of Navy, and the FGR.<sup>286</sup> The media have covered this situation, focusing on situations that indicate that there has been steady escalation in the numbers of children and adolescents in organized crime, to the point that the leading cause of death in Mexico in men under 29 years of age is involvement in such crime.<sup>287</sup>

209. The Commission observes that in April 2019 the Ministry of Public Security trained its agents in the "Protocol for Action for Arresting Adolescents." The objective of the course was to expand the agents' knowledge of the legal framework that applies to arrests in that population, and the differences in treatment that must be given consideration.<sup>288</sup> In addition, according to public information after the issuance of the new

<sup>282</sup> In particular, the State indicated that said Alliance, which formed in December 2018, has made it possible to identify various gains, challenges, and gaps, both legislative and in terms of public policies, to put an end to the forms of violence to which children and adolescents are exposed. Communication from the Mexican State, Quinto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México" de la Comisión Interamericana de Derechos Humanos, resultado de la visita que realizó a México del 28 de septiembre al 2 de octubre de 2015, November 2018, pp. 45-46.

<sup>283</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 69.

<sup>284</sup> Observations and comments by the State, January 13, 2020, para. 90

<sup>285</sup> CNDH, "Nota de prensa: [La CNDH expresa su preocupación por pobreza de niñez y adolescencia y exhorta a las autoridades a elaborar políticas públicas con enfoque de derechos humanos](#)," 2019.

<sup>286</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019, pp. 17-18.

<sup>287</sup> El País, "[Éramos niños jugando a ser sicarios: los hijos de la violencia en México](#)," October 14, 2019; Infobae, "Nota de prensa: [Horror en México por la muerte de tres niños sicarios en un tiroteo](#)," September 13, 2019.

<sup>288</sup> Ministry of Public Security, [Se actualiza Policía Estatal Preventiva en Protocolo de Actuación en la Detención de Menores](#), April 24, 2019.

Regulation on Police and Good Governance of Mérida, Yucatán, the obligation was established to adopt a municipal protocol for police intervention in cases of infractions committed by children and adolescents.<sup>289</sup>

210. The IACHR also takes note that the network for the rights of children (REDIM) has repeatedly drawn the authorities' attention to put a halt to armed attacks directed against children and adolescents. In its public pronouncements the REDIM has referred to the deaths and lesions caused to this population in the context of armed confrontations, and that in the first half of 2019 there were 285 intentional homicides against the population ages 0 to 17 years; the most recurrent states were Guanajuato, Nuevo León, and Veracruz.<sup>290</sup> Towards the end of the year this trend appeared not to have diminished, for in November 2019 the public learned of the attacks on 14 children who were members of the LeBaron family. As a result of the attack six children died and eight others suffered non-lethal injury. The REDIM has reiterated that the head of state is also the president of the SIPINNA System and accordingly regretted his absence at the plenary sessions this year.<sup>291</sup>

211. In its observations on the draft of this report the State added that on 2019, in cooperation with UNICEF, the Federal Office for Protection of Children and Adolescents (Procuraduría Federal de Protección de NNA) issued the first practical handbook for the exercise of representation of children and adolescents in administrative and judicial proceedings. It also reported that the SESNSP coordinated the preparation of the National Program for the Social Prevention of Violence and Crime 2019-2024, which includes protections for children and adolescents.<sup>292</sup>

212. Based on the foregoing, and taking into consideration the adoption of the above-mentioned protocol and provisions of this sort at the state level, the IACHR considers that this recommendation has met with partial substantial compliance. The IACHR reiterates the importance of supervising implementation of the Protocol in order to fully implement this recommendation.

213. With respect to 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**, on May 30, 2016, the State reported that the guidelines were adopted for restoring rights and measures of protection for children and adolescents and the Internal Procedure for the Restitution of Rights and Measures of Protection. In addition, the State reiterated that the Office of the Federal Prosecutor for Protection of children and adolescents has the attribution of restoring rights violated, which is one form of reparation for human rights violations in this population. In addition, it indicated that the National System for the Protection of Children and Adolescents unanimously adopted a "Route for Integral Protection of Rights of Children and Adolescents in Migration." As reported, the Office of the Federal Prosecutor for the Protection of Children and Adolescents provided steady assistance in the design of this policy; the instrument has five stages: (i) monitoring of migratory movements and preparation; (ii) detection of children and adolescents, from their entry to the national territory and establishment of urgent measures; (iii) determination of best interest by the Office of the Federal Prosecutor for the Protection of Children and Adolescents; (iv) restitution of right entrusted to enforcement institutions; and (v) preparation and transition to independent adult life.<sup>293</sup>

214. The CNDH indicated, generally, that the issue of violence against children and adolescents is a large-scale problem that has been considered by the World Health Organization and the United Nations Children's Fund as a public health problem. The CNDH reiterated that in 2015 the Committee on the Rights of

<sup>289</sup> Novedades Yucatán, [Mérida primera ciudad del país con protocolo para arrestar a menores](#), September 27, 2019.

<sup>290</sup> REDIM, [REDIM llama al Estado mexicano a construir una Política de Estado para prevenir y frenar la violencia armada que viven niñas, niños y adolescentes](#), no date; REDIM, [¿Qué hay más importante para el Presidente AMLO que atender con urgencia la violencia armada en contra de la niñez?](#), April 28, 2019.

<sup>291</sup> REDIM, [#REDIM urge al jefe del estado y presidente del SIPINNA, diseñar estrategia nacional para frenar los ataques armados en contra de niñas niños y adolescentes](#).

<sup>292</sup> Observations and comments by the State, January 13, 2020, paras. 91, 93.

<sup>293</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 71.

the Child urged the State to adopt laws and policies to prevent and punish violence against children and adolescents. Nonetheless, as of 2018 only in Mexico City, Chiapas, and Zacatecas had laws been adopted that prohibit corporal punishment. In addition, it noted that as of 2019 it was estimated that 460,000 children and adolescents had been incorporated into the organized crime groups as mules or spies, or for forced prostitution.<sup>294</sup> The CNDH also noted that there has been discussion of the need to expressly prohibit and punish corporal punishment of children and adolescents and establish safe and accessible channels for reporting such abuses. The CNDH reported that it issued recommendation No. 86/2018 in relation to situations of violence to the detriment of 20 children and adolescents in 10 basic education schools in Hidalgo, Tabasco, and Mexico City.

215. In addition, in its observations on the draft of this report the State reported that it has an “Model of alternative forms of care for children and adolescents who are migrants, asylum-seekers, and refugees in Mexico: Guide for its implementation,” which identifies the different options for self-care other than the migration stations for the population of children and adolescents transiting through Mexican territory. As reported, that policy is aligned with the mandate of the General Law on the Rights of Children and Adolescents and with the United Nations Guidelines for the Alternative Care of Children. According to the State, this model seeks to orient and provide tools that can be replicated in the states.<sup>295</sup>

216. In this section the State addressed the rest of the strategies in the 2019-2024 Action Plan mentioned above and indicated that with these an effort was being made to fight violence against children and adolescents in all environments and territories; to guarantee their security through actions for the prevention of crime and of violations of their human rights; to restore their rights when they have been violated, and to address gender violence against them. In addition to the foregoing, it reported that from July to September 2019 it disseminated the “Guidelines for integral reparation of harm to victims of crime and human rights violations in the area of human trafficking” to the networks specialized in working with victims, such as the CEEAVs, and that it incorporates a differentiated component for children and adolescents. Along these same lines, it indicated that the Office of the Special Prosecutor for Crimes of Violence against Women and Human Trafficking (FEVIMTRA) has trained personnel and facilities that have been properly adapted for serving children and adolescents appropriately and with specialized services. It also provides attention to victims of extreme gender violence and human trafficking with a differential approach, a gender perspective, and the best interest of the child and adolescents, having served 119 children and adolescents from March 1 to September 30, 2019. In addition, the Specialized Shelters of FEVIMTRA provide adequate services (social work, psychology, medicine, nursing, among others) for the population of children and adolescents, and from March 1 to September 30 have housed 18 children and adolescents whose average stay was three months.<sup>296</sup>

217. UNICEF and the Centro de Estudios para el Logro de la Igualdad de Género en México (“CELIG”) each presented its own statistical report on violence against children and adolescents, both of which suggest that the violence brought to bear against this population is a structural problem, both within and beyond the family home. While neither document presents information for 2019, they both analyze trends in recent years. For example, it is very striking that from 2010 to 2016 there were more than 9,000 homicides of children and adolescents, 76% of the victims being boys and men, and 24% girls and women, with 78% concentrated in the 12 to 17 year age group.<sup>297</sup> In addition, according to the report, of every 10 crimes of violence committed against children and adolescents, only 1 was reported; judicial proceedings were instituted in only 60% of the cases; and of every 100 crimes that affect children and adolescents only three culminate in a conviction. In the same vein, in 2017 in all 812 children and adolescents were disappeared. Based on the foregoing, it was concluded that convictions for crimes committed against children and adolescents are few

<sup>294</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el “Informe sobre situación de los Derechos Humanos en México”, publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015. October 2019, pp. 17-18.

<sup>295</sup> Observations and comments by the State, January 13, 2020, para. 92

<sup>296</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 72-74.

<sup>297</sup> UNICEF, [Panorama estadístico de la violencia contra niñas, niños y adolescentes en México](#), July 2019.

and far between, or benevolent with respect to the assailants, and thus do not guarantee access to justice for this population.<sup>298</sup> The State reiterated this information in its observations on the draft of this report.<sup>299</sup>

218. The existence of this type of an effort to systematize information is notable given the lack of a national statistical registry on this issue, which is so problematic in Mexico<sup>300</sup> and with respect to which there is information that indicates that violence against this population is on the rise<sup>301</sup>, both within and beyond the home.<sup>302</sup>

219. As regards the situation of children and adolescents who are victims of sexual violence and the obligation of the State to act with due diligence to eradicate it, the IACHR expresses its concern given the lack of results in the case of the “Ciudad de los Niños” homes, which responds to situations of sexual abuse, violence, and human trafficking. In 2017<sup>303</sup> the State reported that the Office of the Attorney General of Guanajuato (PGJEG) had begun an investigation into the facts<sup>304</sup> and the effort to clarify them.<sup>305</sup> Nonetheless, in 2019, civil society organizations reaffirmed that the authorities of Guanajuato maintain “a pact of silence” in favor of the priest involved in the crimes committed in those homes and publicly asked that they not be reopened.<sup>306</sup> Moreover, new testimony on sexual abuses committed against children and adolescents by church organizations that has been revealed this year is cause for concern.<sup>307</sup> The State reiterated this information from 2017 in its observations on the draft of this report.<sup>308</sup>

220. In addition to the foregoing, the IACHR calls attention to the report of the CNDH “On the situation of the rights of children and adolescents in public and private social assistance centers and public and private shelters of the Mexican republic.” The CNDH has noted that this institutionalized population is especially vulnerable and that there are many cases of abuses committed against children and adolescents attributable to the lack of regulation, supervision, state control, and recognition of juridical personality of children and adolescents. The CNDH indicated that in 2018 and 2019 it received 41 complaints regarding violations of the human rights of children and adolescents from the states of Tabasco (01), Sonora (02), Sinaloa (02), Quintana Roo (02), Queretaro (02), Oaxaca (02), Veracruz (03), San Luis Potosí (03), Baja California (03), Chihuahua (04), Mexico City (05), Tamaulipas (06), Chiapas (12), and others (02). In addition, by motive for children and adolescent entering care institutions the Report indicates that in 15 states of Mexico, from 2014 to 2016, 105 children and adolescents were institutionalized for sexual abuse and 60 for rape.<sup>309</sup>

221. In addition, the Report also pulls together information on crimes committed against children and adolescents in foster care institutions. In the period studied 201 children and adolescents were affected in the care centers in the states of Jalisco, Sinaloa, Baja California Sur, Coahuila, Guerrero, Zacatecas, Tamaulipas, and Colima. The crimes reported are aggravated sexual abuse, aggravated equivalent of rape, , rape, corruption

<sup>298</sup> CELIG, [Niñas, niños y adolescentes víctimas de la violencia en México](#), February 15, 2019.

<sup>299</sup> Observations and comments by the State, January 13, 2020, para. 94

<sup>300</sup> Televisa, [México, sin registro estadístico de violencia contra niños y adolescentes](#), July 11, 2019.

<sup>301</sup> CNN, [Informe revela aumento en la violencia contra niños y adolescentes en México](#), May 9, 2019.

<sup>302</sup> Infobae, [La realidad de la infancia en México: 6 de cada 10 niños sufren violencia dentro y fuera de sus hogares](#), April 24, 2019.

<sup>303</sup> IACHR, [2017 Annual Report](#), 2017.

<sup>304</sup> In the case of the “Ciudad de los Niños” shelters it is alleged that crimes of sexual violence, mistreatment, forced disappearance, and human trafficking were committed.

<sup>305</sup> IACHR, [2017 Annual Report](#), 2017, para. 163.

<sup>306</sup> Eje Central, [Piden no reabrir albergue “Ciudad de los Niños.”](#) July 21, 2019; Contralínea, [Organizaciones exigen a autoridades no reabrir albergues “Ciudad de los Niños”](#), July 22, 2019.

<sup>307</sup> El País, [El trauma es que abusen de ti y digan que no es malo, que Dios está viendo](#), May 10, 2019.

<sup>308</sup> Observations and comments by the State, January 13, 2020, para. 95.

<sup>309</sup> CNDH, [Informe Especial sobre la situación de los derechos de niñas, niños y adolescentes en centros de asistencia social y albergues públicos y privados de la República Mexicana](#), October 2019.

of minors, injuries, indecency, attacks on integrity, among others.<sup>310</sup> The IACHR does not have information on the status of the investigations of this type of abuse against children and adolescents in the context of processes of total institutionalization or of educational institutions.

222. In addition, the IACHR highlights the survey conducted by the SIPINNA “OPINNA ¡qué buen plan!” in which more than 146,000 children and adolescents ages 8 to 17 participated, pursuant to the General Law on Children and Adolescents, which orders promoting the citizen participation of children and adolescents in matters that pertain to them. The proposals of children and adolescents for eradicating violence include the following: guarantee security for children and adolescents, mainly in the streets, schools, and their neighborhoods; improve lighting in the streets, parks, schools, and other common spaces for children and adolescents; promote places where adolescents and youths can come together; not punish children and adolescents with physical and verbal violence; end corruption; teach honesty starting with children; promote safe public transportation; prevent the stealing of children, especially girls; treat children well even though there are tensions, work with and provide resources to the families, so they won’t be angry and tense. The IACHR welcomes the effort to go straight to children and adolescents for their opinions, and draws attention to the seriousness with which they must be taken, in light of the legal mandate and the design of public policies that consider them as persons with rights, prioritizing their needs.<sup>311</sup>

223. Finally, the Commission expresses concern about the systematic obstacles faced by Afro-descendant children in Mexico as a result of structural discrimination and institutional racism that undermines their access and assurance of their economic, social, cultural and environmental rights. According to INEGI, in the municipalities with the largest Afro-Mexican presence, 7.7 per cent of adolescents of Afro-descendants between 12 and 14 years old do not attend school, and 33.3 per cent of young people between 15 and 18 years old do not attend school either. Civil society organizations have called on the Mexican State to comply with the commitments established in the United Nations International Decade for People of African Descent (2015-2024)<sup>312</sup>, mainly with regard to free primary education and access to all levels of quality public education for Afro-descendants children; as well as the incorporation of a gender perspective in public policies taking into account the specific needs of Afro-descendant women and girls<sup>313</sup>.

224. In view of the foregoing, the IACHR takes note that recommendation continues to meet with partial substantial compliance, and notes the measures adopted accordingly. In this regard, the Commission reiterates especially the need to implement and strengthen measures to carry out the obligations to prevent, punish, investigate, and eradicate violence perpetrated against children and adolescents, as well as to make reparation for the violations of human rights and considering the corresponding aggravating factors given the age of the victim, and pay special attention to presenting specific information on this subject.

#### 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

<sup>310</sup> CNDH, [Informe Especial sobre la situación de los derechos de niñas, niños y adolescentes en centros de asistencia social y albergues públicos y privados de la República Mexicana](#), October 2019.

<sup>311</sup> SIPINNA, [OPINNA ¡qué buen plan!. Reporte de Resultados](#), October 29, 2019.

<sup>312</sup> La Jornada del campo. [Niñez afromexicana. Retos en el marco del Decenio Internacional para los Afrodescendientes](#), 20 abril 2019.

<sup>313</sup> Naciones Unidas. [Decenio Internacional para los Afrodescendientes](#), 2015-2024.

225. As regards the recommendation to **adopt culturally appropriate measures in the event of human rights violations**, the State reported that based on an assessment done with a gender perspective, and with a differential and specialized approach regarding the contexts of victimization that compromise, impair, and impede the exercise of the rights of indigenous persons and peoples, in February 2019 the CEAV presented a Protocol for Attention to the Indigenous Population with a gender perspective and intercultural approach for working with victims who belong to this population.<sup>314</sup> As reported, the Protocol develops procedural and operational aspects, as well as conceptual and technical ones, on the treatment that indigenous victims of human rights violations should be accorded.

226. In addition, the State reported that the FGR, in the context of a campaign to publicize human rights, made 35 spots that were broadcast by radio in the Mixe, Mixteco, Náhuatl, Tlapaneco, Tzeltal, Zapoteco, Chinanteco, and Tzotzil languages. In addition, the FGR conducted the training on "The Importance of Expert Evidence in Social Anthropology for Respect of the Human Rights of the Indigenous and Afro-Mexican Peoples with a Gender Perspective," which included the participation of some 300 public servants.<sup>315</sup> The State reiterated this information in its observations on the draft of this report.<sup>316</sup>

227. The IACHR welcomes the different initiatives taken to raise awareness of human rights violations against indigenous persons. In this respect, the IACHR finds that the measures reported are focused on promotion, which is no doubt important. Nonetheless, substantive measures of obligatory implementation are required for incorporating the content of the recommendation when it comes to preventing, investigating, punishing, and making reparation for the human rights violations committed against this population. The core content of this recommendation finds expression in specific, systematic, and interconnected measures that can be measured. The IACHR reiterates that in the specific case of the indigenous peoples, the culturally appropriate measures imply prevention and protection vis-à-vis threats to their territorial rights. Finally, the Commission urges the Mexican State to promote the establishment of an independent unit or institution for the population of African descent in Mexico, in accordance with the standards of the Inter-American System and the Universal Human Rights System.

228. This notwithstanding, the IACHR has learned of the reduction of social supports for the indigenous student population with the gradual disappearance of school dormitories, which had been established to promote coverage and students staying in basic education in isolated, impoverished, and mostly indigenous communities.<sup>317</sup>

229. In addition, the IACHR observes with concern that the inhabitants of the indigenous community of Domingo Ixcatlán have denounced the failure to implement the precautionary measures granted on May 19, 2008.<sup>318</sup> These measures were motivated by the assassination of Gustavo Castañeda Martínez, Melesio Martínez Robles, and Inocencio Medina Bernabé at the hands of armed groups, purportedly acting in collusion with local authorities. The request identified 60 fact witnesses, family members and friends of the victims, who had received death threats from the purported perpetrators. In that case the IACHR asked the Mexican State to adopt the measures necessary to guarantee their lives and physical integrity and to report on the actions taken to clarify the facts judicially. Those measures were expanded on June 8, 2008 with respect to another 117 inhabitants also said to have received death threats.<sup>319</sup>

<sup>314</sup> Séptimo Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México", pp. 72-74 and Observations and comments by the State, January 13, 2020, para. 87.

<sup>315</sup> Séptimo Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México", pp. 68-69.

<sup>316</sup> Observations and comments by the State, January 13, 2020, para. 96.

<sup>317</sup> La Jornada, [Desaparecen albergues para niños indígenas](#), April 14, 2019.

<sup>318</sup> Contralínea, [Estado mexicano incumple medidas cautelares a favor de indígenas de Oaxaca, dictadas por CIDH](#), April 30, 2019; Voltairenet.org, [En Santo Domingo Ixcatlán, Estado mexicano incumple medidas cautelares de CIDH](#), May 14, 2019.

<sup>319</sup> IACHR, [Precautionary Measures granted by the IACHR in 2008](#), May 19, 2008.

230. The IACHR maintains its concern expressed in 2018 regarding the situation of violence affecting members of indigenous peoples in Mexico. The IACHR observes that during 2019 various members of the Consejo Nacional Indígena (National Indigenous Council) have denounced that the drug-trafficking cartels have taken over indigenous territories and natural resources in various parts of Mexico, in addition to having allied with business and governmental megaprojects earmarked for the indigenous populations and their defenders.<sup>320</sup> In addition, the Commission observes that some communities are arming to defend themselves, organizing communal guards, police forces, and community vigilante forces known as *rondas comunitarias*.<sup>321</sup> In that context the IACHR has learned of the forced displacements of indigenous peoples. Such is the case of indigenous populations in the state of Guerrero who early this year had set up camp in the doorways of the National Palace<sup>322</sup> and from the Raramuri community of El Manzano, in the north of Mexico, which was displaced as a result of the violence stemming from planting and transferring drug crops. In this regard, the IACHR notes with concern that this community is the beneficiary of precautionary measures issued by the Commission on April 27, 2015.<sup>323</sup>

231. The IACHR has also learned of various acts of violence in the south of Mexico, where Tzotzil indigenous populations from the neighboring municipalities of Chalchihuitán and Chenalhó were said to have confronted one another over property rights in 363 hectares of fertile lands. That grievance, which stretches back more than 40 years, was said to provoke the forced displacement of thousands of persons and more than 30 homicides in the first half of 2019. In this regard, the IACHR is pleased to note the announcement of the Mexican government on a pact between those communities and the authorities of the Chiapas Highlands on June 5, 2019.<sup>324</sup>

232. In view of the foregoing, the IACHR maintains that this recommendation continues to meet with partial compliance.

233. With respect to the recommendation **to guarantee the availability of interpreters**, the State reported that the Federal Institute of Public Defense has substantially increased the number of indigenous languages in which it can provide legal services. According to the information received, it went from 39 languages in 2018 to 97 in 2019; the service is provided by 85 persons, 42 of whom are public defenders, and 39 administrative officers, one department chief, one liaison, one maintenance officer, and one analyst. The State indicated that it considered that this recommendation had met with full compliance.<sup>325</sup>

234. The State also recalled that Article 10 of the General Law on Linguistic Rights of Indigenous Peoples provides: “The federal authorities responsible for justice and law enforcement, including the agrarian and labor laws, shall provide as necessary so that in such proceedings as are held indigenous persons are given assistance free of charge, at all times, for interpreters and defense counsel who are knowledgeable of their indigenous language and culture.” Under this legal premise, the National Institute of Indigenous Languages (INALI: Instituto Nacional de Lenguas Indígenas) has the National Registry of Interpreters and Translators in Indigenous Languages – PANITLI, which as of September 2019 had the registry of 1,860 interpreters and translators in 113 indigenous languages. The State indicated that PANITLI is an instrument that is on line for contacting interpreters in both agencies of the State and in the private sector.<sup>326</sup>

<sup>320</sup> Contralínea, [Cárteles, en guerra contra pueblos indígenas](#), October 9, 2019.

<sup>321</sup> Contralínea, [Cárteles, en guerra contra pueblos indígenas](#), October 9, 2019.

<sup>322</sup> Sputnik Mundo, [Los pueblos indígenas reclaman en ciudad de México un lugar digno en la sociedad](#), February 22, 2019.

<sup>323</sup> IACHR, [Precautionary measure No. 106-15 “Matter of Cruz Sánchez Lagarda and others with respect to Mexico.”](#) April 27, 2015.

<sup>324</sup> EFE Noticias, [Gobierno mexicano pacta con pueblos Indígenas para pacificar altos de Chiapas](#), June 5, 2019; Conexión Migrante, [Gobierno pacta con pueblos indígenas para pacificar Altos de Chiapas](#), June 5, 2019.

<sup>325</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 75.

<sup>326</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 75.



235. The IACHR observes that Mexico is a multilingual country. With 68 indigenous languages spoken, it is one of the countries with the greatest linguistic diversity in the world.<sup>327</sup> According to the 2015 Intercensal Survey of the National Institute of Statistics and Geography (INEGI), more than 25 million persons in Mexico recognize themselves as indigenous, yet only 7.4 million (6.5 percent of the total population) speak an indigenous language.<sup>328</sup> In addition, the IACHR notes that according to official data, 60 percent of the Mexican languages are at risk due to not being valued or taught.<sup>329</sup> In view of the foregoing, the Commission values the fact that the Senate of the Republic has unanimously agreed to declare 2019 as the Year of Indigenous Languages.<sup>330</sup> The State reiterated this information in its observations on the draft of this report.<sup>331</sup>

236. The IACHR has taken note of the various complaints received from civil society, which indicate that more than 8,000 indigenous persons are deprived of liberty due to the lack of interpreters. According to information that is a matter of public knowledge, their primer on rights does not indicate to them that they have the right to an interpreter, a violation of their right to due process.<sup>332</sup> In its observations on the draft of this report the State indicated that for the fiscal year the INPI granted support 1,461 times for indigenous persons who participate as interpreters/translators in indigenous languages in judicial or administrative proceedings, to ensure respect for language rights and due process for indigenous persons who are caught up in the criminal justice system.<sup>333</sup>

237. In this respect, the IACHR recalls that the right of an indigenous person to communicate in his or her own language is grounded in human rights in both the individual and collective dimensions. According to Article 8(2) of the American Convention, the states must take all measures to ensure that indigenous persons can understand and make themselves understood in legal proceedings, providing interpreters, translators, and other resources needed to that end.<sup>334</sup>

238. In view of the foregoing analysis the IACHR recognizes the increase in the number of translators and interpreters from 2018 to 2019, which makes it possible to indicate that the recommendation has met with partial substantial compliance. The IACHR considers it necessary, for its next report, for the State to detail how other offices of the State, besides the Office of Public Defense, obtain translation services.

239. On the recommendation to **adopt the measures needed for carrying out free, prior, and informed consultations**, the State indicated that the National Institute of Indigenous Peoples (INPI) has the legal mandate to guarantee free, prior, and informed consultation. According to what was reported, the INPI has promoted the participation of indigenous peoples and communities in the process of making decisions that could affect them with an emphasis on matters related to the territory and the tapping of its resources. The State also noted that the INPI drew up the document "*Bases, Principios y Metodología para su Implementación por la Administración Pública Federal*" ("Terms, Principles, and Methodology for its implementation by the Federal Public Administration") for implementing the right to consultation through the specific protocols for consultation that have been implemented in the territory of the State.<sup>335</sup> In its observations on the draft of this report the State noted that the Ministry of Interior implemented the Weekly (Semana) for Advanced Training on the Right to Consultation and Prior, Free, and Informed Consent of Indigenous and Afro-Mexican

<sup>327</sup> Government of Mexico, [México es uno de los países con mayor diversidad lingüística en el mundo](#), February 18, 2019.

<sup>328</sup> INEGI, [Encuesta intersensal 2015](#), visited November 5, 2019.

<sup>329</sup> Government of Mexico, [México es uno de los países con mayor diversidad lingüística en el mundo](#), February 18, 2019.

<sup>330</sup> Government of Mexico, [México es uno de los países con mayor diversidad lingüística en el mundo](#), February 18, 2019.

<sup>331</sup> Observations and comments by the State, January 13, 2020, para. 98.

<sup>332</sup> FILAC, [Más de 8 mil indígenas en la cárcel por falta de traductores en México](#), March 22, 2019.

<sup>333</sup> Observations and comments by the State, January 13, 2020, para. 97.

<sup>334</sup> IACHR, Press Release, ["IACHR conducted visit to the United States' Southern Border."](#) September 16, 2019.

<sup>335</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 77.

Communities with the aim of proposing a constitutional amendment on this subject.<sup>336</sup> The IACHR notes that the State did not provide detailed information about the activities of the INPI in 2019.

240. The IACHR has learned that the Nahua community of Tecoltemi, in the state of Puebla, has demanded before the federal courts that the mining concessions granted without consultation on their territory to the company Almaden Minerals be cancelled. In addition, that community has requested the review of several articles of the Mining Law since it gives preference to mining over any other activity and authorizes the governmental authorities to hand over to companies the lands and territories of the indigenous peoples and the *ejidos*.<sup>337</sup>

241. In addition, the IACHR has learned that several indigenous peoples in southern Mexico, as well as human rights organizations, rejected the consultation to create the Program for Development of the Isthmus of Tehuantepec, a project that affects the narrowest part of Mexican territory between the Pacific and Atlantic oceans, in the southern states of Oaxaca and Veracruz, and which includes plans, among other things, for the construction of an “Interoceanic Corridor.”<sup>338</sup>

242. In this respect, the IACHR observes that on March 27 the Government of Mexico announced it would be holding the consultation for the Plan for Development of the Isthmus of Tehuantepec<sup>339</sup>, information that was reiterated on its observations on the draft of this report.<sup>340</sup> According to the public sources the indigenous population denounced that it was a just going through the motions.<sup>341</sup> According to what was said by the civil society organizations, that participatory process has excessive formalities and would impede the affected communities from learning, analyzing, and making any decision about the project.<sup>342</sup> In addition, the IACHR notes that the CNDH determined that the indigenous peoples run the risk of disappearing due to the construction of megaprojects in their territories<sup>343</sup>, and that it asked various federal authorities and the authorities of the states of Oaxaca and Veracruz to grant precautionary measures in favor of the Binnizá (Zapoteco), Ayuuk (Mixe), Zoque, Ikoots (Huave), Chontal, Chinanteco, Mazateco, Mixteco, Popoluca, Náhuatl, and Totonaco indigenous peoples and Afro-Mexicans situated in the area of influence of that project.<sup>344</sup> the Council of Autonomous Organizations of Oaxaca (COOA: Consejo de Organizaciones Oaxaqueñas Autónomas) denounced the existence of “simulated consultations” for the megaprojects, as well as assassinations of human rights defenders and activists, and the criminalization of social protest. In that context they are said to have demanded the cancellation of the mining concessions and hydroelectric projects in Mexico, rejecting the Special Economic Zone and the Trans-isthmian Megaproject, due to the serious effects it would have for Oaxaca.<sup>345</sup>

243. In addition, the IACHR observes that El Tren Maya, a transportation project that seeks to interconnect the main archeological centers of Mayan culture in five states of southeast Mexico<sup>346</sup>, has also

<sup>336</sup> Observations and comments by the State, January 13, 2020, paras. 102-103.

<sup>337</sup> Animal Político, [Comunidad indígena de Puebla logra llevar a revisión la inconstitucionalidad de la Ley Minera](#), October 21, 2019; Proceso, [Comunidad nahua gana amparo contra instalación de minera canadiense en Ixtacamaxtitlan](#), April 23, 2019.

<sup>338</sup> La Prensa Latina, [Consulta indígena del proyecto transistmico en México se inicia con rechazo](#), March 30, 2019.

<sup>339</sup> La Vanguardia, [Anuncian consulta indígena sobre plan de desarrollo del Istmo de Tehuantepec](#), March 28, 2019.

<sup>340</sup> Observations and comments by the State, January 13, 2020, para. 104.

<sup>341</sup> La Jornada, [Organizaciones indígenas rechazan Consulta Istmo](#), March 30, 2019; SDP, [Denuncian que megaproyectos en el Istmo profundizan despojo a pueblos indígenas](#), April 29, 2019; El País, [Indigenismo simulado](#), May 9, 2019.

<sup>342</sup> Proceso, [Urge en Oaxaca frenar los despojos que dan paso a megaproyectos](#), March 28, 2019.

<sup>343</sup> El Universal, [Megaproyectos ponen en riesgo existencia de pueblos indígenas: CNDH](#), April 16, 2019.

<sup>344</sup> La Jornada, [Pide CNDH proteger a pueblos indígenas por proyecto del Istmo](#), March 30, 2019.

<sup>345</sup> Kaosenlared.net, [México. Organizaciones indígenas inician jornada de protesta por los “graves atropellos del Estado” contra los pueblos en Oaxaca](#), April 5, 2019; desinformémonos, [Organizaciones indígenas inician jornada de protesta por los “graves atropellos del Estado” contra los pueblos en Oaxaca](#), April 4, 2019.

<sup>346</sup> BBC News, [Tren Maya: así es el ambicioso proyecto que propone AMLO y tiene un costo de miles de millones de dólares para México](#), November 15, 2008.

been the source of criticisms due to the alleged failure to carry out the right to consultation. The IACHR notes that the Executive, despite having recognized the indigenous communities' opposition to the project, had indicated that it is valid to start the call for bids. According to information that is a matter of public knowledge, the authority had said that the infrastructure projects would be carried out because democracy so requires.<sup>347</sup> In its observations on the draft of this report the State noted that in the context of the Maya Train Project the following peoples were consulted: Nahuas in the municipality of Atlixco, Puebla, on the "Proyecto Integral Morelos (Atlixco, Puebla section)"; the Mayas, Tzeltal, Tzotzil, and Ch'ole peoples and communities of the states of Chiapas, Tabasco, Campeche, Yucatán, and Quintana Roo, on the "Maya Train Development Project."<sup>348</sup>

244. The IACHR further observes that in 2019 the organization Pueblo y Comunidad Indígena de "El Contadero," in Mexico City, had filed an *amparo* for failure to consult the Decree Abrogating the Law on the National Commission for the Development of the Indigenous Peoples, and creating the Law on the National Institute of Indigenous Peoples, published in the Diario Oficial de la Federación on December 4, 2018 by instruction of the federal government.<sup>349</sup> That institute had published, in the Diario Oficial de la Federación (DOF), the decision by which the Guidelines of the Program on Indigenous Rights for the 2019 fiscal year are issued, whose objective is the implementation and effective exercise of the rights of the indigenous and Afro-Mexican peoples, as well as of the persons who are part of those peoples, by carrying out projects and actions for training, strategic defense, advisory services, community research, promotion, accompaniment, and dissemination.<sup>350</sup>

245. In its observations on the draft of this report the State reported that it has carried out the following consultations: with the governments of the Yaqui Tribe in Sonora on the aqueduct known as "Acueducto Independencia," the "Sonora gas pipeline in Yaqui territory (Guaymas-El Oro segment)," and "Water allocation titles of the Yaqui river basin"; the Guarijío people settled in the state of Sonora regarding the dam known as the "Presa Bicentenario"; the Mayo people on the "El Mayo photovoltaic project"; the Náhuatl community of Xaltocan, state of México, on "Expansion and Upgrading of the Mixed Use Civilian/Military Airport, classified as international, at Military Air Base No. 1" (Santa Lucía, state of México, elevated interconnection with the A.I.C.M. and relocation of military facilities).<sup>351</sup>

246. The IACHR observes that the Advisory Council of the CNDH has made an appeal for the institutions responsible for the federal Government's development projects to implement a Program for Promotion of the Right to Prior, Free, Informed, Good Faith, and Culturally Appropriate Consultation, geared to the indigenous population in general and, in particular, to the peoples and communities that live in the territories considered for the works.<sup>352</sup>

247. As regards the importance of indigenous peoples' rights to consultation and consent, the IACHR has noted that these presuppose ensuring the effective participation of these communities in the processes of designing, implementing, and evaluating development projects that are carried out in their lands and ancestral territories. For the I/A Court HR, this participation presupposes that indigenous peoples are

<sup>347</sup> El Sol de México, [AMLO defiende licitación del Tren Maya sin consultar a pueblos indígenas](#), May 1, 2019; Milenio, [Válido, licitar Tren Maya sin consultar a comunidades: AMLO](#), May 1, 2019; El mañana, [Proceso de licitación del Tren Maya es válido aun sin consulta: AMLO](#), May 1, 2019.

<sup>348</sup> Observations and comments by the State, January 13, 2020, para. 104.

<sup>349</sup> La Jornada, [Procede amparo contra creación del instituto de pueblos indígenas](#), January 28, 2019; El Mañana, [Se amparan indígenas contra un instituto](#), January 29, 2019.

<sup>350</sup> Diario Oficial de la Federación, [Acuerdo por el que se emiten los Lineamientos del Programa de Derechos Indígenas para el ejercicio fiscal 2019, a cargo del Instituto Nacional de los Pueblos Indígenas](#), April 1, 2019; Notimex, [Publican lineamientos del Programa de Derechos Indígenas 2019](#), April 1, 2019.

<sup>351</sup> Observations and comments by the State, January 13, 2020, para. 104.

<sup>352</sup> CNDH México, "Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el 'Informe sobre situación de los Derechos Humanos en México,' publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015," October 2019, p. 19 [in archive of the IACHR].

consulted in keeping with their customs and traditions. As regards consent, the IACHR has held that the objective of every consultation process should be reaching an agreement or obtaining consent. That implies that the peoples must have the capacity to significantly influence the process and decisions that are adopted after it has concluded.<sup>353</sup>

248. In addition, the Commission reiterates what has been noted by the Inter-American Court: “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>354</sup>

249. Based on the foregoing, the IACHR notes partial compliance with this recommendation. While measures have been adopted, they are insufficient for addressing this situation in an integral manner.

## 5. Persons deprived of liberty

- Correct the excessive use of pretrial detention, and apply it exceptionally, using other precautionary measures that do not deprive persons 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. Accordingly, 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 eliminating barriers in the surroundings that complicate the exercise of their rights, 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 processed and those who have been sentenced, with an emphasis on criminal due process and reincorporation into society.

250. As regards the recommendation to **correct the excessive use of pretrial detention**, the State merely indicated that it “reiterates what is indicated in the reports submitted previously.”<sup>355</sup> The previous year

<sup>353</sup> IACHR, [Situation of Human Rights of the Indigenous and Tribal Peoples of the Pan Amazon Region](#), OEA/Ser.L/V/II. Doc. 176, September 29, 2019, para. 34.

<sup>354</sup> I/A Court HR, [Case of the Kichwa Indigenous People of Sarayaku v. Ecuador](#), Series C No. 245, Judgment on the Merits and Reparations, June 27, 2012, para. 186.

<sup>355</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 77.

the State reported advances in the case-law, including an isolated jurisprudential thesis from the Supreme Court, that determine the possibility of persons indicted in the mixed criminal procedure system requesting a review of this custodial measure.<sup>356</sup> While the IACHR positively valued the information reported, in 2019 it has called attention<sup>357</sup>, along with other national<sup>358</sup> and international bodies<sup>359</sup>, to not expanding the list of crimes that merit pretrial detention. Even so, in April 2019 the Mexican State undertook a constitutional amendment establishing presumptive pretrial detention for crimes such as sexual abuse of minors, forced disappearance and disappearance committed by private persons, robbery of transport of any of its modalities, the use of social programs for electoral purposes, as well as crimes related to hydrocarbons, oil-derivatives, and petrochemicals, and in the area of corruption.<sup>360</sup>

251. In this respect, the CNDH told the federal Congress that “expanding the number of situations to which pretrial detention is presumptively applied is not the solution to the problems Mexico faces in the areas of security and justice..., but to the contrary weakens our country’s option for the adversarial criminal justice system without it being allowed to be implemented, operative, and fully consolidated.”<sup>361</sup> In addition, it urged the Mexican State to strengthen the full autonomy and training of the state prosecutorial offices and the federal Office of the Attorney General.<sup>362</sup>

252. In that same vein, the Centro PRODH also stated that presumptive pretrial detention, augmented with the constitutional reform, is contrary to the presumption of innocence, and noted that the “foreseeable reforms will be catastrophic, for they will imply the presumptive incarceration of any number of victims of arbitrary detentions” in addition to pretrial detention being manifestly at odds with the new design of the criminal justice system.<sup>363</sup>

253. The IACHR recalls that in keeping with reiterated and constant pronouncements of the organs of the inter-American system, and mindful of its press released on these specific legislative changes<sup>364</sup>, the application of obligatory pretrial detention based on the type of offense is a violation of the right to personal liberty in the terms of Article 7(3) of the American Convention<sup>365</sup>, in addition to turning pretrial detention into

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<sup>356</sup> Quinto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 51-52.

<sup>357</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 9, 2019.

<sup>358</sup> By multiple press releases and [official notes](#) directed to the competent authorities, the National Commission on Human Rights (CNDH) urged the Mexican State not to expand the list of crimes that merit pretrial detention. CNDH, “[Comunicado de Prensa DGC/041/19](#),” February 6, 2019; CNDH, “[Comunicado de Prensa DGC/056/19](#),” February 19, 2019; CNDH, “[Oficio del Presidente de la CNDH al Presidente de la mesa Directiva del Senado de la República](#),” December 5, 2018.

<sup>359</sup> United Nations High Commissioner for Human Rights; OHCHR - Mexico, “[La ONU-DH lamenta extensión de delitos a los que se aplica la prisión preventiva oficiosa](#),” February 20, 2019.

<sup>360</sup> Diario Oficial de la Federación, “[Decreto por el que se declara reformado el Artículo 19 de la Constitución Política de los Estados Unidos Mexicanos, en materia de prisión preventiva Oficiosa](#),” April 12, 2019. See also IACHR, [2018 Annual Report, Chapter V “Mexico”](#), para. 190.

<sup>361</sup> CNDH, “[Comunicado de Prensa DGC/041/19](#),” February 6, 2019.

<sup>362</sup> CNDH, “[Comunicado de Prensa DGC/056/19](#),” February 19, 2019.

<sup>363</sup> Centro PRODH, Información de seguimiento al Informe “Situación de los derechos humanos en México” 2015. Information sent October 2, 2019, p. 18.

<sup>364</sup> IACHR, [IACHR Calls on the Mexican State to Refrain from Taking Legislative Measures That Run Counter to International Standards on Pretrial Detention](#), January 9, 2019.

<sup>365</sup> IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 42/15 December 31, 2015, para. 558; I/A Court HR. Case of Suárez Rosero v. Ecuador. Judgment of November 12, 1997. Series C No. 35, para. 98.; I/A Court HR. Case of Acosta Calderón v. Ecuador. Judgment of June 24, 2005. Series C No. 129, para. 135; I/A Court HR. Case of López Álvarez v. Honduras. Judgment of February 1, 2006. Series C No. 141, para. 81. As in the inter-American system, the European Court considers that “any 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 of the Court), para. 84.

an anticipated prison sentence<sup>366</sup> that entails the illegitimate interference of the legislator in the powers to weigh and decide that vest in the judicial authority.<sup>367</sup> For the pretrial detention regime to be compatible with the relevant international standards, its application must be based on the consideration of the right to the presumption of innocence, it must take into account its exceptional nature, and it must be governed by the principles of legality, necessity, and proportionality. In this regard, the Commission reiterates that the deprivation of liberty of the person accused should be only procedural in nature, and, accordingly, a foundation can only be laid for it if it is to reasonably avoid the danger of flight or keep the investigations from being thwarted.<sup>368</sup>

254. In this context the Commission reiterates the call made by the Mexican State for the respective legislative organs to ensure that any constitutional reform is in line with inter-American standards on the matter and that the principle of the presumption of innocence is respected, as it constitutes a most elemental judicial guarantee in criminal matters and is expressly recognized by various international human rights instruments.<sup>369</sup> For this reason, and in harmony with what was recommended by other United Nations bodies, the Commission reiterates its appeal to the State to eliminate the prohibition on release for the crimes provided for in the second paragraph of Article 19 of the Constitution.<sup>370</sup> Based on the foregoing, the IACHR observes that the recommendation has not yet met with compliance.

255. As for the recommendation on **adopting all measures necessary to guarantee a strategy of social reinsertion**, the State reported generally that the Federal Penitentiary System promotes the integration of persons deprived of liberty with disabilities, and other vulnerable groups, in educational, cultural, sports, job training, and work programs based on motor skills, needs, and capacities. In addition, the State also indicated that according to the “Integral Model of Social Reinsertion” the work to place persons deprived of liberty is done in keeping with objective criteria.<sup>371</sup> In this same vein, it indicated that the Federal Penitentiary System provides technical services in the areas of physical health, psychological health, and social work for connecting with society, to which end it holds events focused on promoting family unity between persons locked up and their families.<sup>372</sup>

256. Without prejudice to the foregoing, the IACHR notes that the CNDH published three documents related to the prison system and social reinsertion: “A model for social reinsertion”<sup>373</sup>, “A model of

<sup>366</sup> IACHR, [“Report on measures aimed at reducing the use of pretrial detention in the Americas.”](#) OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 91; IACHR, [“Report on the use of pretrial detention in the Americas.”](#) OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, para. 151; IACHR, Report on the Merits No. 86/09, Case 12,553. Merits. Jorge, Jose and Dante Peirano Basso. Uruguay. August 6, 2009, para. 141.

<sup>367</sup> IACHR, [Situation of Human Rights in Honduras](#), OEA/Ser.L/V/II. Doc. 42/15, December 31, 2015, para. 558; IACHR, [“Report on the use of pretrial detention in the Americas.”](#) OEA/Ser.L/V/II. Doc.46/13, December 30, 2013, para. 137.

<sup>368</sup> IACHR, [Report on measures aimed at reducing the use of pretrial detention in the Americas](#), OEA/Ser.L/V/II.163. Doc. 105, July 3, 2017, para. 231. Recommendation A “General Measures in Relation to State Policies,” para. 1.

<sup>369</sup> In particular, the presumption of innocence is contained in the Universal Declaration of Human Rights (Art. 11(1)), the International Covenant on Civil and Political Rights (Art. 14(2)), the American Declaration (Art. XXVI), and the American Convention (Art. 8(2)). In this regard, see also IACHR, [Report on the use of pretrial detention in the Americas](#), OEA/Ser.L/V/II, Doc. 46/13, December 30, 2013, para. 16; IACHR. Report No. 50/00, Case 11,298, Merits, Reinaldo Figueredo Planchart, Venezuela, April 13, 2000, para. 118.

<sup>370</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 9, 2019.

<sup>371</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 78.

<sup>372</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 80.

<sup>373</sup> CNDH, Criterios para un sistema orientado al respeto de los Derechos Humanos. Un modelo de reinsertión social, June 2019.

post-prison care,”<sup>374</sup> and “Cooperation for social reinsertion.”<sup>375</sup> In its observations on the draft of this report the State indicated that the Ministries of Economy, Well-being, Education, Health, and Culture and Sports would form intersectoral commissions for implementing services-related programs and actions with a multidisciplinary approach to reinsertion.<sup>376</sup>

257. While the IACHR attaches a positive value to the existence of institutions of the State that are making proposals to improve the reinsertion of persons deprived of liberty, the State has not described any major gains in this respect. In consideration of the foregoing, the IACHR finds that the recommendation has yet to meet with compliance.

258. With respect to the recommendation concerning **making public the information on ACA standards for accrediting prisons**, the State reiterated that since 2017, in the context of the 15<sup>th</sup> Plenary Assembly of the National Conference of the Penitentiary System, it was agreed to accredit the prisons, for which the personnel would be trained to secure ACA certification.<sup>377</sup> In its observations on the draft of this report the State indicated that the ACA standards were protected by intellectual property rights.<sup>378</sup>

259. The CNDH has noted that one of the issues the Mexican prison system faces when there is co-responsible participation of government institutions and private initiative is the failure to pay for the services provided by private persons.<sup>379</sup> In this vein, the CNDH underscores that even though the State has sufficient resources to assume the costs of the Mexican penitentiary system, signifying that there is not sufficient justification for maintaining this legal form, it continues turning over some prisons to private companies to operate them in concession.<sup>380</sup> In this context, civil society has said that other agencies for protecting human rights must intervene, and even civil society itself, so that the involvement of private enterprise not aggravate the system’s problems, among them the program for rehabilitating persons deprived of liberty.<sup>381</sup>

260. According to press reports, in 2019 the APA reaccredited 12 Mexican prisons and accredited one more for the first time, for a total of 13 prisons accredited. At present there are 98 prisons that have the accreditation.<sup>382</sup> The accreditation program also includes training and study courses for prison workers regarding the accreditation process.

261. In these terms the IACHR observes that there are certifications and recertifications of prisons based on the ACA criteria. Nonetheless, the recommendations note the importance of publicizing the criteria for such certification, which has not yet been reported by the State. In view of the foregoing, the IACHR considers that this recommendation has yet to be implemented.

262. As regards the recommendation to **implement measures to guarantee adequate conditions of detention, particularly for especially vulnerable groups, prison policies with a gender perspective, and eliminating barriers for persons with disabilities**, the State reiterated that as regards indigenous persons, the National Conference of the Federal Penitentiary System approved the protocol for

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<sup>374</sup> CNDH, Un Modelo de Atención Postpenitenciaria. Criterios para un sistema orientado al respeto de los Derechos Humanos. June 2019.

<sup>375</sup> CNDH, Criterios para un sistema orientado al respeto de los Derechos Humanos. Cooperación para la Reinserción Social. June 2019.

<sup>376</sup> Observations and comments by the State, January 13, 2020, para. 105.

<sup>377</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 79.

<sup>378</sup> Observations and comments by the State, January 13, 2020, para. 107.

<sup>379</sup> CNDH, “[Cooperación para la reinserción social](#)”, June 2019, p. 40.

<sup>380</sup> CNDH, “[Cooperación para la reinserción social](#)”, June 2019, p. 40.

<sup>381</sup> CNDH, “[Cooperación para la reinserción social](#)”, June 2019, p. 40.

<sup>382</sup> Quadratin México, “[Iniciativa Mérida da acreditación internacional a 13 penales mexicanos](#)”, August 5, 2019.

action in cases involving that population. In addition, as regards women deprived of liberty, it noted that said National Conference distributed to the prison personnel copies of the “Decalogue of the Rights of Women Deprived of Liberty.” With respect to persons with disabilities, in CEFERESO No. 2 “Occidente” the project was carried out with the modifications needed to make it feasible and adaptation of the accesses and lodging for persons and visitors with disabilities. This project includes the preliminary analysis of the feasibility assessment of the spaces and circulation for guaranteeing access to persons with disabilities, and technical support, to be considered when making the adjustments of spaces referred to in the assessment and list of ramps needed to address issues of access.<sup>383</sup> In its observations on the draft of this report the State indicated that during the period of confinement the State offers health services, social assistance, visits by defense counsel, phone calls, family and intimate visits, dispute resolution, and remunerated work, among other services.<sup>384</sup>

263. In addition, in its observations on the draft of this report, the State reported on the development of courses on human rights and the rights of persons deprived of liberty; and the dissemination of materials (“Decalogue of Rights of Persons Deprived of Liberty,” “Decalogue of the Rights of Women Deprived of Liberty,” “Primer on the Rights and Obligations of Persons Deprived of Liberty”) geared to the prison population.<sup>385</sup>

264. According to the CNDH, the Mexican State continues facing difficulties in respect of women deprived of liberty, for the prison system still lacks dignified spaces and specific services to address the characteristics of this group.<sup>386</sup> In this regard, the Mexican prison system houses 4,902 women deprived of liberty.<sup>387</sup> Even though it is made up of 300 prisons, only 18 are set aside exclusively for women prisoners. Given the limited spaces in women’s prisons, only 40.2% of the female population deprived of liberty is in prisons exclusively for women, whereas the remaining 59.8% are in mixed prisons.<sup>388</sup> In addition, according to information from the National Assessment of Prison Supervision carried out by the CNDH, the mixed prisons that hold women deprived of liberty obtained failing marks when examined from the standpoint of international human rights standards and deprivation of liberty.<sup>389</sup>

265. According to statistics from the INEGI<sup>390</sup>, 80% of the women deprived of liberty are mothers, and of these, 60% have minor children.<sup>391</sup> Considering the large number of mothers in prison, civil society has asked the Mexican State to provide sufficient and adequate infrastructure for women deprived of liberty who are pregnant or breastfeeding.<sup>392</sup> In its observations on the draft of this report the State added that the SNDIF, through the PFPNNA, contributes to the protection of the rights of children who live with their incarcerated mothers in prisons by visits to supervise the application of the protocols implemented by the Deconcentrated Administrative Organ for Prevention and Social Readaptation.<sup>393</sup>

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<sup>383</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” pp. 80-81.

<sup>384</sup> Observations and comments by the State, January 13, 2020, para. 108.

<sup>385</sup> Observations and comments by the State, January 13, 2020, para. 113.

<sup>386</sup> CNDH, “[Comunicado de prensa DGC/091/19](#),” March 15, 2019.

<sup>387</sup> The statistics are from March 2019.

<sup>388</sup> CNDH, “[Comunicado de prensa DGC/091/19](#),” March 15, 2019.

<sup>389</sup> CNDH, “[Comunicado de prensa DGC/091/19](#),” March 15, 2019.

<sup>390</sup> INEGI, “[Encuesta Nacional de Población Privada de la Libertad 2016 \(ENPOL\)](#),” July 31, 2017.

<sup>391</sup> Periódico Sin Embargo, “[Más de 80% de mujeres en prisión son madres con hijos menores que sufren violencia, denuncian](#),” May 10, 2019.

<sup>392</sup> Periódico Sin Embargo, “[Más de 80% de mujeres en prisión son madres con hijos menores que sufren violencia, denuncian](#),” May 10, 2019.

<sup>393</sup> Observations and comments by the State, January 13, 2020, para. 109.



266. With respect to persons with disabilities, in its observations on the draft of this report the State indicated that CONADIS carried out the National Program for the Development and Inclusion of Persons with Disabilities 2019-2024, drawn up with the participation of the federal and state public administrations as well as civil society. According to the information provided, the National Program includes the promotion of rehabilitation actions with a human rights perspective; social programs for women with disabilities or women who have children with disabilities who are in prison, and for their social reinsertion, among other actions.<sup>394</sup>

267. Based on the foregoing, the IACHR considers that this recommendation has met with only partial compliance, and reiterates to the Mexican State that as guarantor of the fundamental rights of persons deprived of liberty it has the legal duty to adopt specific and urgent actions to ensure the enjoyment of their fundamental rights. In particular, the Mexican State should implement prison policies with a gender perspective that address the specific needs of women deprived of liberty.

268. Regarding the recommendation to **take measures to address pretrial detention and the high levels of overcrowding**, in relation to the Federal Penitentiary System, the State reported that there is no overpopulation, since there are 33,024 spaces and the current population comes to 17,281 persons deprived of liberty.<sup>395</sup> In addition, the State indicated that as regards the measures for tackling pretrial detention, persons facing charges are separated from convicts, and legal services are provided so that persons deprived of liberty in pretrial detention are not defenseless. With this same objective in mind, the State reported that the Federal Institute of Public Defense established in its General Terms of Organization and Operation the obligation of public defenders to make prison visits at least once a month and instructed the state heads of that Institute to form legal assistance brigades in coordination with the Deconcentrated Administrative Organ of Services and Social Readaptation.<sup>396</sup>

269. In line with the foregoing, the State also indicated that the federal public defenders have been instructed, in keeping with the Federal Code of Criminal Procedure, to request review of pretrial detention in those cases in which this measure has been ordered. By undertaking the reviews of pretrial detention orders, the State is seeking to have the persons in question regain their freedom in those cases in which detaining them is no longer necessary.<sup>397</sup>

270. The IACHR observes that one of the consequences related to the constitutional reforms approved on obligatory pretrial detention could be regressive as it could lead to a return to high levels of overpopulation, which is hardly effective for resolving the problem of insecurity.<sup>398</sup>

271. In this connection, the IACHR reiterates what was noted regarding the effects of compulsory pretrial detention based on constitutional changes in the area of security and what was noted in the recommendation on correcting the excessive use of pretrial detention (*infra xx*). The IACHR reiterates that the scenarios of presumptive deprivation of liberty are contrary to the American Convention, and violate both the presumption of innocence and judicial independence.<sup>399</sup> In addition, the effect of a provision such as the one adopted may be to foster prison overpopulation, contrary to the recommendation made by the Commission. In these terms, while in 2018 the IACHR considered that the recommendation had met with partial compliance, in view of the regressive situation the Commission considers that the recommendation is still pending

<sup>394</sup> Observations and comments by the State, January 13, 2020, para. 106.

<sup>395</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 82.

<sup>396</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 82.

<sup>397</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 82.

<sup>398</sup> Animal Político, "[Cárceles mexicanas reducen su población, son 57 mil 254 presos menos que hace cuatro años](#)", July 15, 2019.

<sup>399</sup> IACHR, Report on the use of pretrial detention in the Americas, OEA/Ser.L/V/II. Doc. 46/13, December 30, 2013, paras. 107, 131 and 132.

implementation. In its observations on the draft of this report the State indicated that presumptive pretrial detention may be replaced by another precautionary measure when pretrial detention is not proportional or when there is a self-executing agreement between the parties.<sup>400</sup>

272. Finally, as regards the recommendation aimed at ensuring that the **National Criminal Sentencing Law incorporates international standards that guarantee the rights of persons deprived of liberty, with emphasis on criminal due process and reincorporation into society**, the IACHR reiterates that already in 2018 it found that this recommendation had met with full compliance. Even so, the Commission reiterates to the State that all the provisions of this Law should come into force, and that it should adopt the necessary measures for the adequate and prompt implementation of the rights enshrined in the law in question, and that in its next report it should cover this information to determine whether compliance continues.

## 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 UN Guiding Principles on Internal Displacement.
- Adopt specific legislation at the federal and state levels 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.

273. Regarding the recommendation to **carry out the full set of recommendations made in the Report on the Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico**, the State reported on attention to accompanied and unaccompanied migrant children and adolescents, trainings given to state-level officials, and specific cooperation agreements on health care.<sup>401</sup>

274. As regards the attention given to accompanied and unaccompanied migrant children and adolescents, the State informed the IACHR that from January 1 to October 14, 2019, the INM has served 47,665 foreign migrant children and adolescents, 11,031 of whom were travelling unaccompanied. In addition, it noted the creation of the Commission for the Integral Protection of Child and Adolescent Migrants and Asylum-Seekers, along with a Policy for the Protection of Child and Adolescent Migrants and Asylum-Seekers. The State also reported on the establishment, among other actions, of the Path for integral protection of the rights of migrant children and adolescents, to guarantee the rights of children and adolescents in migration.<sup>402</sup>

275. As regards the trainings, the State reported that from April 8 to October 5, 2019, seven workshops were held to train trainers for Detecting and Investigating the Crime of Illicit Smuggling of Migrants and Crimes against Migrants; in all, 24 public servants received training, from nine offices of the National Migration Institute and the DGCOR. They trainings were given by the UNODC.<sup>403</sup> The State also reported that during the period from January 25, 2017 to June 14, 2019, 19 specific cooperation agreements and four modifying agreements have been formalized in relation to health care, in the context of the Terms of

<sup>400</sup> Observations and comments by the State, January 13, 2020, paras. 110-111.

<sup>401</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 84.

<sup>402</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 85.

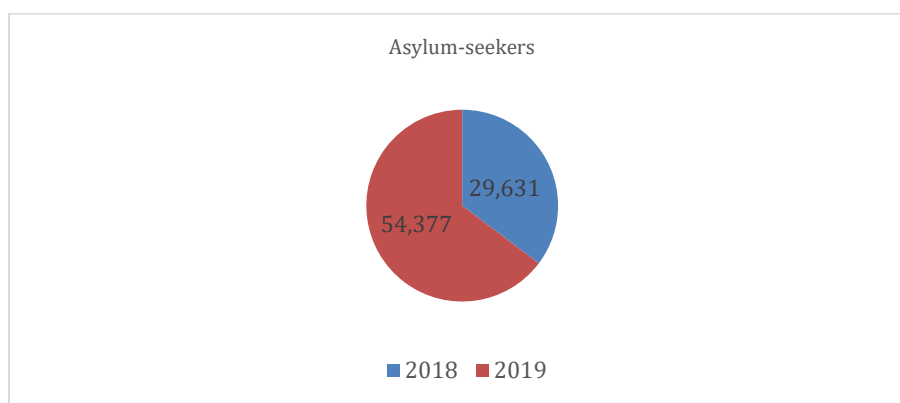
<sup>403</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 84.

Cooperation between the National Migration Institute and the National Center for Epidemiological Surveillance and Disease Control (CENAVECE).<sup>404</sup>

276. The IACHR next notes some aspects related to migrants, asylum-seekers, refugees, beneficiaries of complementary protection, stateless persons, and subjects of international protection that require the State's attention.

277. As regards refugees and asylum seekers, as reflected in its different reports, the IACHR has noted that the number of persons seeking refugee status in Mexico has increased exponentially in recent years.<sup>405</sup> The IACHR observes that according to the most recent figures from the UNHCR, as of yearend 2018 Mexico had: (i) 16,549 persons recognized as refugees and 23,847 asylum seekers with some cases pending resolution, (ii) 13 persons under the UNHCR's mandate on statelessness, (iii) 82,993 persons of interest for the UNHCR, and (iv) 42,104 Venezuelans who have left their country.<sup>406</sup>

278. In this context, the IACHR takes note that the data published by the Mexican Commission for Refugee Assistance (COMAR: Comisión Mexicana de Ayuda a Refugiados) indicate that as of September 30, 2019, a total of 54,377 persons have requested recognition of refugee status, an 83.5% increase over the total 29,631 persons who sought such recognition in 2018. Of all the persons identified, the data by nationality show that 25,265 persons are of Honduran nationality (46.4%); 5,467 are Venezuelan (10.0%); 7,371 Salvadoran (13.5%); 2,733 Guatemalan (5.0%); and 1,899 Nicaraguan (3.4%).<sup>407</sup>



Source: Comisión Mexicana de Ayuda a Refugiados, information available as of September 2019.

279. The IACHR also observes that refugee status or some type of complementary protection has been granted in 1,531 cases, accounting for 99% of 1,552 persons seeking such status of Venezuelan nationality.<sup>408</sup> These data, similar to those provided by Mexico in 2018, respond to the appeal made to the states of the region to adopt measures aimed at providing humanitarian treatment and responses of international protection to persons coming from Venezuela in view of the grave humanitarian crisis there.<sup>409</sup> Similarly, the Commission notes that the rate of recognition of refugee status and the granting of complementary protection has increased in 2019 with respect to persons from Honduras, El Salvador, Guatemala, and Nicaragua. The

<sup>404</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," pp. 84-85.

<sup>405</sup> IACHR, [Annual Report Mexico](#), 2018, para. 216. [Annual Report Mexico](#), 2017, para. 197.

<sup>406</sup> UNHCR, [Global Trends: Forced Displaced in 2018](#), June 20, 2019, p. 67.

<sup>407</sup> COMAR, [La COMAR en números. Actualización al mes de septiembre de 2019](#), September 4, 2019.

<sup>408</sup> COMAR, [La COMAR en números. Actualización al mes de septiembre de 2019](#), September 4, 2019.

<sup>409</sup> IACHR, Press Release 43/17, [IACHR Welcomes Measures to Provide Protection to Venezuelan Migrants in Peru and Calls on States in the Region to Implement Measures for their Protection](#), Washington, D.C., January 25, 2017.

increases over the 2018 figures have been as follows: 17% for Honduras, 5% for El Salvador; 8% for Guatemala, and 4% in the case of Nicaragua.<sup>410</sup>

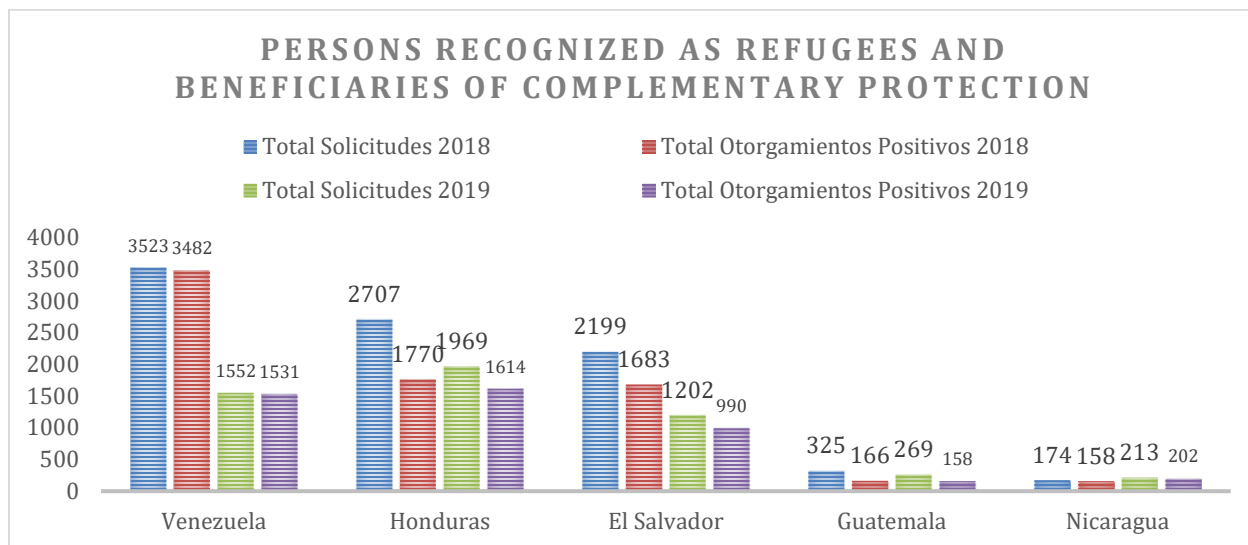


Chart prepared by IACHR. Source: Comisión Mexicana de Ayuda a Refugiados, information available as of September 2019.

280. In addition, the IACHR presented information to the IACHR that indicates that a total of 108,503 foreign persons were brought before the immigration authority as of May 2019. They include 72,906 males, 35,597 females, 32,507 children and adolescents, and 8,033 unaccompanied children and adolescents.<sup>411</sup>

281. In this regard, the Commission positively values the adoption of the ruling by the Supreme Court related to Articles 17, 16(II), 20(VII), 97 first paragraph, 98 and 99 of the Law on Migration<sup>412</sup>, which were found unconstitutional for violating the principle of equality<sup>413</sup>; as well as the finding of unconstitutionality of Article 4 of the Law on Protection and Attention to Migrants in the State of Jalisco in view of Article 124 of the Constitution. This is as a result of the determination that the state authorities lack competence to regulate migration issues related to the entry and exit of Mexicans and foreigners to the territory of Mexico, as well as with the transit and stay of foreigners in the territory, since it corresponds exclusively to the federal authorities.<sup>414</sup>

282. Moreover, the Commission recognizes the important gain established in the judgments in *amparo* proceedings before the Second District Judge of the Auxiliary Center for the First Region, as well as the 4<sup>th</sup> and 6<sup>th</sup> District Judges for Administrative Matters in Mexico City. Those decisions recognize that the legal term of 30 days for requesting international protection granted by one's status as a refugee impedes the individual analysis of cases and, therefore, the right to seek and receive asylum, without there being a legitimate aim to justify the existence of that time limitation. The IACHR underscores that the judgments also determined that the return or refoulement of persons who may be refugees, in addition to exposing them to risks in the

<sup>410</sup> COMAR, [La COMAR en números. Actualización al mes de septiembre de 2019](#), September 4, 2019.

<sup>411</sup> CNDH, Actualización correspondiente al año 2019 de la aportación de la Comisión Nacional de los Derechos Humanos de México (CNDH) en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", publicado por la Comisión Interamericana de Derechos Humanos (CIDH) en 2015, October 2019.

<sup>412</sup> General Congress of the United Mexican States, [Law on Migration](#), current text, latest reform published July 3, 2019.

<sup>413</sup> Supreme Court of Justice of the Nation, [Amparo on review 275/2019](#), Draft resolutions of the Supreme Court of Justice and of the Collegial Circuit Courts, paras. 173, 174, and 175.

<sup>414</sup> Supreme Court of Justice of the Nation, [Comunicado de Prensa. Inválido artículo de ley de protección de los migrantes de Jalisco, que los obligaba a identificarse](#), 005/2019, January 15, 2019.

country of origin, cannot be part of Mexican migration policy for that policy must be in line with the Constitution and the international treaties that compel it to protect refugees. In view of the foregoing, it was determined that Article 18 of the Law on Refugees, Complementary Protection, and Political Asylum, as well as Article 19 of its Regulation, are unconstitutional, as they arbitrarily restrict the right to seek and receive asylum.<sup>415</sup>

283. The IACHR also notes the resolution issued by the 21<sup>st</sup> Collegial Court for Administrative Matters of the First Circuit in a motion to stay an *amparo* filed on behalf of the children and adolescents detained at migration stations in Mexico City. That judgment laid down a criterion on prioritizing the best interest of the child and the use of noncustodial measures prior to detention at migration stations<sup>416</sup>, in keeping with the relevant international and inter-American standards.

284. The IACHR recognizes the positive value of these actions given the obligation of the State for its law enforcement policies and practices not to be geared, without justification, to certain individuals based solely on their ethnic or racial characteristics, such as skin color, accent, ethnicity, or area of residence known for having a particular ethnic population.<sup>417</sup> Nonetheless, the Commission notes that in practice the State continues implementing a migration policy aimed at migrants in irregular circumstances who are in transit through Mexico that is not in keeping with the relevant international standards.

285. As regards migration detention, according to information provided by civil society organizations to the IACHR, from January to June 2019 the National Migration Institute (INM) detained 108,503 migrant persons stemming from the immigration agreement signed by Mexico and the United States.<sup>418</sup>

286. To this is added the concern expressed by the CNDH over the detention of children and adolescents in migration facilities. In this respect, the CNDH noted that this year will be the year with the largest number of detentions, for in July 2019 detentions of children reached 38,581, for a 21% increase over the previous year. Of the total of these cases, 8,744 were unaccompanied persons.<sup>419</sup> In that regard, the Commission notes that the violation of migration laws can never be *per se* comparable to the violation of criminal laws, such that the first response of states to irregular migration is detention.<sup>420</sup> In addition, the IACHR underscores that in the case of migrant children and adolescents, whether accompanied, unaccompanied or separated from their families, as a general rule detention is prohibited.<sup>421</sup> In this context the Commission reminds the State that although the Law on Migration has not been reformed, Article 111 of the Regulation of the General Law on the Rights of Children and Adolescents prohibits their detention independent of whether they are traveling in the company of an adult person.<sup>422</sup>

287. Given the increase in immigration detentions, the IACHR notes the increase in allegations of violations of human rights, mistreatment and torture, overcrowding, and deaths of migrants in the custody of

<sup>415</sup> Ibero, [Jueces declaran inconstitucional el plazo de 30 días establecido en la ley para solicitar el acceso a la condición de refugiado](#), March 20, 2019.

<sup>416</sup> Semanario Judicial de la Federación, Niñas y niños adolescentes migrantes. [Efectos de la suspensión de oficio en el amparo decretada contra su deportación, cuando se encuentran detenidos en estaciones migratorias](#). Thesis I.21o.A.4 A (10a.), Book 69, August 2019, tome IV, p. 4587.

<sup>417</sup> I/A Court HR, Case of Nadege Dorzema et al. v. Dominican Republic, Merits, Reparations and Costs, Judgment of October 24, 2012, para. 205. I/A Court HR, Case of Expelled Dominicans and Haitians v. Dominican Republic, Preliminary Objections, Reparations and Costs, Judgment of August 28, 2014, paras. 261-274.

<sup>418</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>419</sup> CNDH, [Comunicado de prensa. CNDH expresa ante la CIDH persistencia en México de falta de protección y atención a la niñez y adolescencia migrantes, y advierte que este año el número de detenciones de personas menores de edad migrantes será récord](#), DGC/370/19, September 27, 2019.

<sup>420</sup> IACHR, [Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter-American Human Rights System](#), OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 382.

<sup>421</sup> IACHR, [Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter-American Human Rights System](#), OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 406.

<sup>422</sup> IACHR, [Annual Report Mexico](#), 2018, para. 213.

INM agents or held at the migration stations.<sup>423</sup> The IACHR notes that the Government of Mexico recently acknowledged the lamentable state of the detention system and promised that improvements would be made<sup>424</sup>, plus the INM announced the actions that will be taken to guarantee dignified conditions at the migration stations.<sup>425</sup>

288. In this respect, the IACHR notes the work that civil society organizations<sup>426</sup> and the CNDH have done to monitor the reports of human rights violations at migration stations, mainly overcrowding, inadequate infrastructure<sup>427</sup>, and the deaths of migrants. These include the deaths of: (i) three persons, one of Guatemalan origin, who were under the care of the migration officers<sup>428</sup>; (ii) a girl of Guatemalan origin who did not receive timely medical care after suffering a fall in a migration station<sup>429</sup>; and (iii) a migrant of Salvadoran origin who had been at a migration detention center for seven days in the state of Nuevo León, who is identified as a victim in one investigative file.<sup>430</sup> In addition, the IACHR observes that on August 8, 2019 the Centro de Derechos Humanos Fray Matías de Córdova reported the death of a man of Haitian nationality said to have died on August 6, 2019 in solitary confinement in the Siglo XXI Migration Station in Tapachula, Chiapas, after complaining and seeking medical care for hours.<sup>431</sup>

289. In addition, the IACHR learned that a migration agreement was signed by the governments of the United States of America and Mexico that imposes a policy that could affect persons fleeing from violence and persecution and who have the right to international protection and to seek asylum in the United States.<sup>432</sup>

290. According to information provided by civil society organizations to the IACHR, as a result of the signing of that agreement Mexico undertook to register and control entries at the border, as well as to deploy the National Guard, especially at the southern border. That is why 6,000 National Guard forces were deployed to the southern border, giving priority to 11 of the 23 municipalities that make up this border region, and 15,000 guards were ordered to the northern border. According to information from Amnesty International, as the months have gone by the number of National Guard forces at the border increased to more than 25,000, along both the southern and northern borders.<sup>433</sup>

<sup>423</sup> CNDH, [Recomendación No. 37/2019](#), June 24, 2019. CNDH, [Recomendación No. 40/2019](#), June 27, 2019. National Migration Institute, [Recomendaciones que en materia de Derechos Humanos. No Discriminación y/o Equidad de Género. ha recibido la institución. y su curso de acción](#), July 31, 2019. The Siglo XXI Migration Station has capacity for 900 persons and was holding as many as 1,400 persons. Diario del Sur, [Estación Migratoria Siglo XXI está saturada: CNDH](#), April 3, 2019.

<sup>424</sup> The New York Times, [Las pésimas condiciones de los centros de detención de migrantes en México](#), August 5, 2019.

<sup>425</sup> National Migration Institute, [Comunicado de Prensa. Garantiza INM condiciones dignas en las estaciones migratorias, estancias provisionales y albergues temporales](#), No. 037/2019, July 23, 2019.

<sup>426</sup> La Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH), ["Amicus Curiae. Amparo en revisión 275/2019"](#), September 3, 2019.

<sup>427</sup> CNDH, [Inicia CNDH de oficio dos expedientes de queja, por hacinamiento y sobrepoblación en instalaciones del INM en Monterrey, y por la muerte de una persona migrante originaria de El Salvador](#), DGC/274/19, July 17, 2019.

<sup>428</sup> Ministry of Interior, [Identifica INM a persona de nacionalidad guatemalteca que posteriormente sufrió un infarto](#), June 11, 2019.

<sup>429</sup> CNDH, [Comunicado de Prensa. Dirige CNDH recomendación al INM, por la omisión, negligencia e inadecuada atención médica que trajo como consecuencia la pérdida de la vida de una persona menor de edad que cayó de la parte superior de una litera en la estación migratoria de la Ciudad de México](#), DGC/384/19, October 7, 2019; Ministry of Interior, [Tarieta Informativa del Instituto Nacional de Migración](#), May 16, 2019.

<sup>430</sup> CNDH, [Inicia CNDH de oficio dos expedientes de queja, por hacinamiento y sobrepoblación en instalaciones del INM en Monterrey, y por la muerte de una persona migrante originaria de El Salvador](#), DGC/274/19, July 17, 2019.

<sup>431</sup> Centro de Derechos Humanos Fray Matías de Córdova, [Boletín de Prensa. Muere una persona interna en el Centro de detención migratoria de Tapachula](#), August 8, 2019.

<sup>432</sup> United Nations, [Noticias ONU: "La ONU advierte sobre los riesgos de la nueva política de asilo en Estados Unidos"](#), September 13, 2019.

<sup>433</sup> Amnesty International, Document "México, insumos para el Informe Anual de la Comisión Interamericana," October 31, 2019.

291. According to the organizations, this situation has worsened the humanitarian crisis experienced by thousands of migrants and asylum seekers, since the members of the National Guard do not have adequate training to take charge of public security tasks nor are they trained to identify persons in need of international protection.<sup>434</sup> The IACHR reiterates its concern over the policies and measures adopted in relation to migration and asylum in recent years by externalizing borders, and by bolstering the security and military presence at borders.<sup>435</sup>

292. The IACHR also observes that after the signing of the migration agreement between the governments of the United States of America and Mexico, the Minister of Foreign Affairs of Mexico said that the migratory flow through the country had fallen off 56% from May to August.<sup>436</sup> While the IACHR recognizes that in the context of their sovereign powers the states have, first, the power to determine their migration policy and to define the requirements for entry, stay, and expulsion of persons who are not nationals in their territories, that power is limited by the principles of respecting and ensuring human rights.<sup>437</sup>

293. Another measure taken stemming from the immigration agreement and the unilateral decision of the United States to implement migrant protection protocols (MPP)<sup>438</sup>, according to the information submitted by the organizations to the IACHR, is the return of asylum-seekers to Mexican territory, where they must await the resolution of their applications. The IACHR takes note that the civil society organizations, in addition to stating that according to data from Syracuse University, the process may take up to two years to be resolved, which has led to a backlog of at least 700,000 cases pending resolution.<sup>439</sup>

294. The IACHR observes that the Mexican State reports that since April 16, 2019, the date on which the United States resumed implementation of the Migrant Protection Protocols, humanitarian assistance has been provided to and received by 19,911 Spanish-speaking foreigners seeking asylum in the United States<sup>440</sup>, and 18,503 Central American foreigners returned who are seeking asylum in the United States.<sup>441</sup>

295. According to information received, several actions were taken that threaten the work of organizations that defend migrants' rights and the operation of migrant shelters, through alleged financial interference in their operations.<sup>442</sup> In this respect, Mexico's Financial Intelligence Unit, which belongs to the Ministry of Finance and Public Credit, announced the blocking of "the bank accounts of several natural and juridical persons who purportedly have participated in the smuggling of migrants and the illegal organizing of migrant caravans."<sup>443</sup>

296. In this regard, Amnesty International noted that in January and February 2019 Mexico received a series of caravans of migrants and asylum-seekers from Honduras and other countries of Central America, implemented a novel system for personalized needs assessments, and issued 14,174 humanitarian

<sup>434</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>435</sup> In this regard, IACHR, Press Release 180/19 – [IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America](#), Washington DC, July 23, 2019.

<sup>436</sup> BBC, "[Crisis migratoria: México asegura que redujo el flujo de inmigrantes un 56% desde que Trump amenazó con imponer aranceles a sus productos](#)", September 6, 2019.

<sup>437</sup> IACHR, [Human rights of migrants, refugees, stateless persons, victims of human trafficking and internally displaced persons: Norms and standards of the Inter-American Human Rights System](#), OEA/Ser.L/V/II. Doc. 46/15, December 31, 2015, para. 348.

<sup>438</sup> Homeland Security, [Migrant Protection Protocols](#), January 24, 2019.

<sup>439</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>440</sup> National Migration Institute, [Internaciones en México de extranjeros solicitantes de asilo en EU](#), July 11, 2019.

<sup>441</sup> National Migration Institute, [Internaciones de centroamericanos a territorio mexicano en espera de la resolución de su trámite de asilo en Estados Unidos](#), July 7, 2019.

<sup>442</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>443</sup> Ministry of Finance and Public Credit, [Comunicado No. 010 UIF bloquea cuentas presuntamente relacionadas con el tráfico ilegal de migrantes](#), June 6, 2019.

visas at Mexico's southern border. Nonetheless, a few months later there was an abrupt decline in the number of humanitarian visas granted.

297. The IACHR has also observed that irregular-status migrants who transit through Mexico continue to be criminalized. For example, in October 2019 the director of the INM, making reference to deportations in the context of a conference, said "... that is a notice to all transcontinental migration, even if they are from Mars we are going to send them back, to India, to Cameroon, to Africa...."<sup>444</sup> In line with the foregoing the IACHR received information from civil society organizations that indicate that they have documentation that some of the persons held at the migration stations were put in solitary confinement and subjected to interrogation by agents of the INM, accused of the crime of smuggling persons and associated with Pueblos Sin Fronteras, an organization that has been criminalized. The IACHR takes note that criminalization has also affected the Assembly of African Migrants in Tapachula, who have organized in response to the delays and obstacles in their migration procedures and the lack of humanitarian assistance. In this connection, human rights organizations and human rights defenders report having faced a context of hostility, challenges, impediments to their advocacy work, harassment, criminalization, and use of the criminal law against their advocacy work as a strategy for demobilizing the solidarity and humanitarian assistance they provide.<sup>445</sup>

298. The IACHR observes that the CNDH condemned the harassment, threats, and pressures that the personnel of the federal public service brings to bear against the work of persons who defend migrants' rights. In addition, the CNDH granted precautionary measures to prevent the consummation of human rights violations and the possible irreparable harm to those who were negatively impacted by the intervention of members of the National Guard and Federal Police at the *Exodus Came* shelters in Agua Prieta, Sonora and *Casa del Migrante*, in Saltillo, Coahuila, respectively, who entered the places to undertake immigration enforcement actions.<sup>446</sup> These incidents were also reported by civil society organizations to the Commission.<sup>447</sup>

299. In this same context the IACHR has expressed its concern over the increase in measures aimed at criminalizing human rights defenders who provide assistance to migrants and refugees in Mexico. The IACHR observes that on June 5, 2019 migrant rights defenders Cristóbal Sánchez and Irineo Mujica were arrested and accused of smuggling migrants; they were subsequently released on June 11, as sufficient evidence could not be found to pursue the charges at trial.<sup>448</sup>

300. Later, on October 4, 2019, the Commission granted precautionary measures for Messrs. Aaron Casimiro Méndez Ruíz and Alfredo Castillo, who had disappeared after receiving and giving attention to migrants of Cuban and Venezuelan origin at the shelter called "Casa AMAR," in the state of Tamaulipas.<sup>449</sup>

301. The IACHR has recognized the important work done by human rights defenders because of their special contribution to the promotion, respect, and protection of human rights and fundamental freedoms in the Americas, as well as supporting the victims, representing and defending persons whose rights are threatened or violated; in addition, their activities of oversight, denouncing, disseminating, and educating all constitute an essential contribution for the observance of human rights, as they struggle to combat impunity.<sup>450</sup>

<sup>444</sup> Animal Político, [Migrantes serán deportados así sean de Marte: titular de INM; acusa a africanos de agredir a la Guardia](#), October 21, 2019.

<sup>445</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>446</sup> CNDH, Press Release. [Emite CNDH medidas cautelares en favor de albergues para migrantes en Sonora y Coahuila, y condena hostigamiento y amenazas de personal militar y de la Guardia Nacional a personas defensoras de derechos humanos](#), DGC/288/19, July 25, 2019.

<sup>447</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>448</sup> IACHR, [IACHR Expresses Deep Concern about the Situation of Migrants and Refugees in the United States, Mexico, and Central America](#), July 23, 2019.

<sup>449</sup> IACHR, Resolution 51/2019, Precautionary Measure No. 870/2019, Aaron Casimiro Méndez Ruíz and Alfredo Castillo with respect to Mexico, October 4, 2019.

<sup>450</sup> IACHR, [Criminalization of the Work of Human Rights Defenders](#), OEA/Ser.L/V/II. Doc. 49/15, December 31, 2015, para. 21.



302. The Commission also received complaints about the Integral System of Migration Operations (SIOM: Sistema Integral de Operación Migratoria), within which the *migration alerts* operate; these are associated with a legal concept used in the area of national security, thus all the information on these is considered confidential and this translates into a wide margin of discretion for the authorities. It also affects asylum-seekers in any of a number of ways: it keeps them from regularizing their immigration status, renewing a status of stay, obtaining work permits, or applying for replacement of a migration document, among others.<sup>451</sup>

303. On internally displaced persons, the Internal Displacement Monitoring Center reported that as of yearend 2018 in all there were 338,000 displaced persons in Mexico, who were involved in 20,000 displacements due to natural disasters and 11,000 due to conflicts and violence that year. It also noted that 72 displaced persons attained partial progress towards a lasting solution, and noted that with respect to 1,800 internally displaced persons it was not possible to corroborate progress towards a lasting solution, according to the information available.<sup>452</sup>

304. In its observations on the draft of this report the State indicated that it has a Migration and Development Plan that includes operations of the Beta Groups for Protection of Migrants (Grupos Beta de Protección Migrante), which provide orientation, search and rescue, humanitarian assistance, and legal advisory services along the migrant transit routes in Baja California, Sonora, Chihuahua, Coahuila, Tamaulipas, Veracruz, Chiapas, Tabasco, and Oaxaca. It also indicated that the INM acts under the Protocol for Action to Ensure Respect for the Principles for the Protection of the Rights of Children and Adolescents in Administrative Migration Proceedings, which ensures observance of the rights of migrant children and adolescents who may or may not be accompanied. Finally, the State added that there is a national strategy to prevent children and adolescents from being housed at migration stations, which implies prompt notification to the CNDH, PFPNA, SNDIF, or the COMAR, and that its officials attended the Global Refugee Forum in December 2019 in Geneva, Switzerland.<sup>453</sup>

305. On this recommendation, the IACHR observes and considers the challenges pending in Mexico in relation to the approach to internal displacement, access to asylum, migration detention, and the situation of human rights defenders. Accordingly, the IACHR considers that it has met with partial compliance.

306. As regards the recommendation to **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 UN Guiding Principles on Internal Displacement**, the IACHR observes that the State did not provide additional information and referred to what was reported in prior years.<sup>454</sup> In addition, the IACHR values the efforts made by the National Population Council and the Ministry of Interior of Mexico to collect updated information on the issue of forced internal displacement in Mexico and the approach towards the victims of this phenomenon as part of the research methodology undertaken.<sup>455</sup>

307. The report in question highlights the differences in the impact of violence in the central, northern, and southern regions, and how this has caused the forced displacement of persons.<sup>456</sup> The methodology used highlights that “almost all those interviewed agreed on the impossibility of the State

<sup>451</sup> IACHR, Thematic Hearing, Asylum and Refuge in Mexico, 173<sup>rd</sup> period of sessions, September 27, 2019.

<sup>452</sup> Internal Displacement Monitoring Centre, [Country Information Mexico](#), 2018.

<sup>453</sup> Observations and comments by the State, January 13, 2020, paras. 114-118.

<sup>454</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 86.

<sup>455</sup> Díaz Pérez, María Cristina. Raúl Romo Viramontes, [La violencia como causa de desplazamiento interno forzado. Aproximaciones a su análisis en México](#), March 2019.

<sup>456</sup> Díaz Pérez, María Cristina. Raúl Romo Viramontes, [La violencia como causa de desplazamiento interno forzado. Aproximaciones a su análisis en México](#), March 2019, pp. 83, 84.

preventing or defending the population from criminal violence, i.e. crime has overtaken it, for it appears to have an incommensurable and destructive force, capable of subordinating, compromising, and/or involving the authorities; what is most serious about this perception is not only the image of a weakened and fragile State, but the fact of knowing that it is a co-conspirator.”<sup>457</sup> The IACHR recalls that these are some aspects that should be considered when adopting a national policy and measures aimed at responding in keeping with the relevant international standards.

308. The Committee also noted the tensions and protests by African migrants and persons of Haitian origin at INM facilities over alleged acts of corruption by such an entity in delaying the issuance of an official permit to cross the country<sup>458</sup>. According to the information received, the INM and the National Guard have currently implemented a racial profile to detain more African and Haitian migrants in Tijuana<sup>459</sup>. The IACHR emphasizes that the adoption of tactics for allegedly discriminatory reasons of public safety and protection is incompatible with the Inter-American standards of equality and non-discrimination. The Commission emphasizes the State's obligation to ensure that racial profiling and other explicit or implicit discrimination based on racial-ethnic origin and other prohibited grounds are explicitly prohibited and punished.

309. On this recommendation, the IACHR values the actions taken by the National Population Council and the Ministry of Interior of Mexico. Nonetheless, it observes that this assessment is focused exclusively on violence as a factor of displacement; accordingly, a comprehensive study is needed that considers all its causes and that can provide comprehensive information on internal displacement. In this light, the IACHR considers that this recommendation has not yet been implemented.

310. With respect to the recommendation to **adopt specific legislation both federal and state to address internal displacement, in keeping with the Guiding Principles on Internal Displacement**, the State did not provide additional information and referred to what was reported in previous reports.<sup>460</sup> Accordingly, the Commission notes that in September 2019 a bill on the matter was introduced to Congress.<sup>461</sup> It therefore calls on the State, in furtherance of its international obligations, to ensure the protection and recognition of internally displaced persons, see to it that any legal initiative introduced complies with the relevant international standards.<sup>462</sup>

311. The IACHR concludes that while the State has taken some actions with respect to the recommendation, the adoption of specific legislation for addressing internal displacement is still pending. The Commission is concerned about the lack of a federal law on internal displacement. In view of the foregoing, the recommendation continues to meet with partial compliance.

<sup>457</sup> Díaz Pérez, María Cristina. Raúl Romo Viramontes, [La violencia como causa de desplazamiento interno forzado. Aproximaciones a su análisis en México](#), March 2019, pp. 83, 84.

<sup>458</sup> Telemundo Noticias, [Migrantes africanos ponen en jaque al Gobierno mexicano y bloquean el acceso a Estación Migratoria en Chiapas](#), 27 agosto 2019.

<sup>459</sup> El Sol de Tijuana, [Implementa INM perfil racial para detener a migrantes](#), 22 de octubre de 2019.

<sup>460</sup> Ministry of Foreign Affairs, Recomendaciones de la Comisión Interamericana de Derechos Humanos. Emitidas en su informe Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 87.

<sup>461</sup> Ministry of Interior, [Al Congreso iniciativa de ley sobre desplazamiento forzado interno, la próxima semana](#), September 5, 2019.

<sup>462</sup> IACHR, [Desplazamiento Internal displacement in the Northern Triangle of Central America: Public policy guidelines](#), OEA/Ser.L/V/II. Document 101, July 27, 2018.

312. On the recommendation **to ensure that at the federal level there is an institution in charge of protecting persons from forced displacement**, the State did not provide additional information and referred to what was indicated in previous reports.<sup>463</sup>

313. The IACHR and the UN Special Rapporteur on the human rights of internally displaced persons viewed in a positive light the judgment of the 10<sup>th</sup> Collegial Court for Criminal Matters of the First Circuit, which affirmed that internally displaced persons are victims according to the General Law on Victims and that the CEAV has the authority to recognize them as such.<sup>464</sup> In this regard, the Commission learned that cases of internal displacement have been received and are being considered by the CEAV.

314. In addition, according to information provided to the IACHR by the Comisión Mexicana de Defensa y Promoción de Derechos Humanos, an Integral Action Plan (PAI: Plan de Atención Integral, an instrument recognized in the General Law on Victims) will be implemented for a group of victims of internal forced displacement from the state of Chihuahua. It will include the participation of the municipal, state, and federal authorities by establishing different thematic roundtables.<sup>465</sup>

315. With respect to this recommendation, the IACHR finds that while the CEAV currently exercises its mandate of protecting and recognizing displacement persons as victims, it does not carry over to creating or assigning an institution whose exclusive mandate is to address forced displacement and protect displaced persons. Accordingly, the Commission considers that the recommendation is still pending implementation.

## 7. Human rights defenders

- Strengthen the instances 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.

316. The State indicated that it “reiterated what was indicated in the reports previously submitted”<sup>466</sup> on this recommendation. As the IACHR has indicated since the issuance of this recommendation, despite the gains identified with the approval of the Law for the Protection of Human Rights Defenders and Journalists and the creation of the Protection Mechanism, the Commission has continuously received information on serious obstacles that threaten the effectiveness of the mechanism and the application of the above-noted law.

317. Amnesty International noted that during the first year of the new administration violence against human rights defenders and journalists has not diminished. It said that in October the State reported that during the current administration 23 human rights defenders and 15 journalists and other media workers had been assassinated, and that several had alerted others to their situation of risk; three were beneficiaries of the Protection Mechanism for Human Rights Defenders and Journalists. Amnesty International called attention to the fact that the State has accepted that the mechanism has failings, and has been more willing to react to attacks on human rights defenders.<sup>467</sup>

<sup>463</sup> Ministry of Foreign Affairs, Recomendaciones de la Comisión Interamericana de Derechos Humanos. Emitidas en su informe sobre la “Situación de los Derechos Humanos en México”, derivado de su visita realizada a México del 28 de septiembre al 2 de octubre de 2015, p. 87.

<sup>464</sup> IACHR, Press Release 100/19 – [IACHR and the UN Special Rapporteur on the Human Rights of Internally Displaced Persons Welcome Decision for the protection of internally displaced persons in Mexico](#), Washington D.C., April 17, 2019.

<sup>465</sup> CMDPDH, Comunicado - [Por primera ocasión, inicia implementación de Programa de Atención Integral para grupo de víctimas de desplazamiento interno forzado: CEAV y Comisiones Estatales de Atención a Víctimas](#), July 10, 2019.

<sup>466</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 88.

<sup>467</sup> Amnesty International, Document “México, insumos para el Informe Anual de la Comisión Interamericana,” October 31, 2019.

318. The IACHR learned that in 2019, as in prior years, the Protection Mechanism was not clearly assigned political priority by the Government authorities so as to guarantee comprehensive protection for human rights defenders and journalists; this includes not having been allocated sufficient economic resources to be able to operate effectively. In this respect the Commission learned that the budget allocated in 2019 was 207.6 million pesos, corresponding to 64% of anticipated spending and less than the figure for 2018, which came to 275 million pesos.<sup>468</sup> In April 2019, as in 2018, the Ministry of Interior requested an additional 150 million pesos from the Ministry of Finance and Public Credit; as of August 2019 the IACHR had not learned of the institution's response.<sup>469</sup> According to what was noted in the observations on the draft of this report, the State indicated that this budget was allocated.<sup>470</sup>

319. The OHCHR indicated that the number of 34 public servants currently working in the mechanism is unchanged since 2014, whereas the number of persons protected by the mechanism has increased on average 28% per year. This has led the number of beneficiaries for which each staff member is responsible to climb 235% over the same period.<sup>471</sup> In its observations on the draft of this report the State noted that based on the assessment mentioned, it drew up a work plan to address its findings.<sup>472</sup>

320. Specifically, in relation to the Mechanism, the State reported that it recognizes the existence of failings and that changes are planned to improve its operation. According to what was reported, the mechanism gives impetus to initiatives that incorporate the point of view of civil society and promotes a project along with USAID to incorporate good practices to its structure and operation.<sup>473</sup> It also reiterated that the mechanism prepared specific methodologies for individual cases and collective cases, with a gender perspective. In all these cases it states that an assessment is done of the likelihood of an impairment of rights of the beneficiaries in relation to their social, economic, family, and workplace environments, the areas where they live or work.<sup>474</sup>

321. As regards implementing strategies for the different institutions at the federal and state levels to work in coordination with one another, the State reiterated to the IACHR information on the collaboration among the FEADLE, the INACIPE, the Criminal Investigation Agency, and the Federal Police to move forward in building a digital security strategy. In addition, it noted once again that there is permanent coordination of efforts with the FEADLE for protection and prevention of threats and attacks and ongoing exchange of information to support the risk analyses within the Mechanism.<sup>475</sup>

322. In its observations on the draft of this report the State indicated that the bodyguard protection service of the Protection Mechanism ceased being provided through a private company and has been entrusted to the Ministry of Security and Citizen Protection. According to what was indicated, this measure was adopted to better guarantee the beneficiaries, drawing on the police experience of providing them security.<sup>476</sup>

323. The Commission recalls that ensuring an adequate level of personnel trained to receive requests for protection, perform risk analyses, adopt and implement measures of protection, and carry out

<sup>468</sup> OHCHR, [Diagnóstico sobre el funcionamiento del mecanismo](#), Mexico City, July 2019, p. 8.

<sup>469</sup> El Proceso, [En octubre podría darse aumento de 150 mdp al Mecanismo de Protección: Segob](#), August 26, 2019.

<sup>470</sup> Observations and comments by the State, January 13, 2020, para. 120.

<sup>471</sup> OHCHR, [Diagnóstico sobre el funcionamiento del mecanismo](#), Mexico City, July 2019, p. 226.

<sup>472</sup> Observations and comments by the State, January 13, 2020, para. 119.

<sup>473</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 91.

<sup>474</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 91.

<sup>475</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 91.

<sup>476</sup> Observations and comments by the State, January 13, 2020, paras. 121-122.

monitoring to ensure that its implementation is adequate is an integral part of the State's political commitment to its program to protect human rights defenders. Accordingly, the IACHR understands that the State should provide the budgetary and logical resources necessary to ensure that the measures of protection can remain in effect while the risk persists. Therefore, the State must allocate resources in its budget outlays with the aim of covering the costs of personnel to work in the program, as well as the specific expenditures related to the measures of protection granted to persons at risk to ensure that their protection not become a burden for the human rights defender receiving the protection. In its observations on the draft of this report the State noted that the per diem, expenses, and personnel costs of the Mechanism, as well as the installation and implementation of the protection measures, are covered entirely by the Mexican State.<sup>477</sup>

324. In view of the foregoing, the Commission shows its concern over the weaknesses in the protection of human rights defenders. In this vein, and due to the lack of progress, the IACHR considers that this recommendation continues to meet with partial compliance.

## 8. Freedom of expression

- Recognize, at the highest levels of the State, the legitimacy and the value of journalism, and condemn attacks as reprisals for the exercise of the 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, making more effective the exercise of federal jurisdiction over crimes within its competence and guaranteeing 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 relationship between the federal and state jurisdictions with the objective of avoiding jurisdictional 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 for the truth and for clarifying the facts, as well as at the time of seeking reparations.

325. According to the Office of the Special Rapporteur for Freedom of Expression (hereinafter "the Office of the Special Rapporteur") of the IACHR, in 2019 journalism in Mexico continued facing a crisis of violence that took the lives of 11 journalists or other media workers.<sup>478</sup> The attack on journalists persists and is the most direct and significant threat to freedom of expression in the country.<sup>479</sup> The profound security crisis is worsened by the lack of legal consequences, expressed in impunity, which encourages more attacks.

326. As regards the recommendation to **recognize, at the highest levels of the State, the legitimacy and value of journalism and condemn the attacks**, the State reiterated what was indicated in

<sup>477</sup> Observations and comments by the State, January 13, 2020, para. 123.

<sup>478</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. August 30, 2019. [Comunicado de Prensa R213/19 Relatoria Especial condena asesinato de periodista Nevith Condes en Mexico; urge al Estado a revisar y reforzar las medidas de protección y la acción de la Fiscalía Especial frente a la grave situación de violencia contra comunicadores](#). CPI. June 18, 2019. [Cumbre sobre la libertad de prensa insta al Gobierno mexicano a reformar los mecanismos dedicados a la protección de los periodistas](#). RSF. August 27, 2019. [Ola de asesinatos de periodistas en México: las autoridades, impotentes](#).

<sup>479</sup> The New York Times. Spanish. February 11, 2019. [Corren tiempos oscuros para el periodismo mexicano](#).

previous reports.<sup>480</sup> The IACHR has learned that in addition to the assassinations mentioned in the previous paragraph, other types of attacks persist, such as threats, physical and psychological violence, intimidations, and harassment<sup>481</sup>, which are strengthened by the stigmatizing statements by the public authorities against press personnel<sup>482</sup>, which promotes massive online harassment, as has been reported by different organizations and media outlets. In these terms, the Office of the Special Rapporteur has paid special attention to the political pronouncements that the president of the republic has made to the national press. Thus, on July 22, 2019 President López Obrador said that he did not like some media outlets' coverage of his administration. He specifically indicated: "*Well, Revista Proceso, for example, did not behave well with us,*" in the context of being questioned by reporter Arturo Rodríguez on the operation of the Fertinal purchase.<sup>483</sup> On that same occasion he also noted that "*it is very comfortable to say I am independent, or say that journalism shouldn't take sides or accompany the transformation. It is analyzing reality, criticizing reality, but not transforming it. It is editorializing to negatively impact the transformations.*"<sup>484</sup> In addition, in response to the November 4, 2019 operation in Culiacán, Sinaloa to arrest Ovidio Guzmán, already noted in this report, the President criticized the media coverage, even saying that "they are biting the hand of the one who took off their muzzle," referring, as he explained, to the fact before the military coup to assassinate former President Madero the press had undertaken to attack him.<sup>485</sup>

327. Given the lack of up-to-date information and taking into consideration the foregoing examples, the IACHR considers that the recommendation has still met with partial compliance given the lack of any report of gains in its implementation. The Commission urges the State to eradicate any type of pronouncement of an authority that attacks journalistic work.

328. With respect to the recommendations to **define a methodology to generate and publish statistics on violence against journalists and investigations into the attacks, measures of protection adopted, and definition of the state authority in charge of capturing the information and publishing the statistics, and guaranteeing the participation of the victims in criminal proceedings**, the State informed the Office of the Special Rapporteur on the presentation of the CEAV to the Supreme Court in an *amicus curiae* brief with respect to *amparo* on review 835/2018, stemming from the concern that a criterion will be adopted that does not exclude access to the records of the investigation for persons without a degree in law.<sup>486</sup> In addition, the State reported on the design of indicators of crimes against freedom of expression with a gender perspective<sup>487</sup> and indicated that from July 2010 to September 2019, in 55 of the 191 cases being processed (28.8%), women are identified as victims.<sup>488</sup>

<sup>480</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 89.

<sup>481</sup> Forbes México. July 22, 2019. [Saquean casa de Lydia Cacho y envenenan a sus mascotas](#). Animal Político. July 22, 2019. [Saquean casa de la periodista Lydia Cacho y envenenan a sus mascotas](#). The New York Times. Spanish. February 11, 2019. [Corren tiempos oscuros para el periodismo mexicano](#).

<sup>482</sup> Proceso. July 23, 2019. ["Despóticas muestras de intolerancia", las declaraciones de AMLO contra Proceso: Coparmex](#). Expansión Política. July 22, 2019. [AMLLO critica \(otra vez\) a la prensa que no apoya la "transformación"](#). Tabasco Hoy. February 26, 2019. [Oculta edil inseguridad a Presidente](#). Sin Embargo. February 27, 2019. [Alcaldesa de Quintana Roo llama "sicarios periodísticos" a medios locales: Artículo 19 pide no estigmatizar](#).

<sup>483</sup> Proceso. July 20, 2019. [Salinas Pliego, el magnate que movió los hilos en la estafa Pemex-Fertinal](#).

<sup>484</sup> Proceso. July 23, 2019. ["Despóticas muestras de intolerancia", las declaraciones de AMLO contra Proceso: Coparmex](#). Expansión Política. July 22, 2019. [AMLLO critica \(otra vez\) a la prensa que no apoya la "transformación"](#).

<sup>485</sup> Other examples noted in: Amnesty International, Mexico: When Words are Not Enough: The Human Rights Situation One Year into the New Government, November 2019, p. 16.

<sup>486</sup> Ministry of Foreign Affairs. Office of the Vice-Minister for Multilateral Matters and Human Rights. General Bureau of Human Rights and Democracy. Informe sobre recomendaciones emitidas CIDH sobre la "Situación de los Derechos Humanos en México" derivado de su visita realizada a México del 28 de septiembre al 2 de octubre de 2015, p. 93, para. 67.

<sup>487</sup> FEADLE. [Indicadores de delitos contra la libertad de expresión con perspectiva de género](#). September 2019.

<sup>488</sup> Ministry of Foreign Affairs. Office of the Vice-Minister for Multilateral Matters and Human Rights. General Bureau of Human Rights and Democracy. Indicadores de Delitos contra la Libertad de Expresión, con perspectiva de Género.

329. The IACHR observes that the Office of the Special Prosecutor for Crimes against Freedom of Expression (FEADLE) has one of the highest indices of making public information related to the number of investigations, indictments, judgments, lag time, and other data relevant for society regarding the administration of justice.<sup>489</sup> Without prejudice to the foregoing, the IACHR notes that the state and federal prosecutors' offices do not answer to the principle of proactive transparency<sup>490</sup>, which would allow knowledge of the investigations, and they are omissive when it comes to the obligation to prepare statistics on the investigations in which journalists are victims or complaining witnesses. Accordingly, the figures corresponding to the investigation that the FEADLE has initiated reveal the structural issues fighting impunity in crimes committed against the freedom of expression, which no doubt is one element worsening violence against the press in Mexico.<sup>491</sup> In this regard, in its observations on the draft of this report the State noted that in November 2019 the FEADLE submitted the latest update of the systematization of information contained in the preliminary inquiries and investigative files. Of the complaints lodged regarding crimes against the freedom of expression, the FEADLE has 40 cases being processed, and four guilty verdicts. In addition, from 2016 to 2019 there have been 27 matters settled by alternative dispute resolution mechanisms, and the percentage of efficiency in the case of persons of interest is 91.2%.<sup>492</sup>

330. The Commission calls attention to the fact that even though the reports and studies<sup>493</sup> on the structural situation of violence in Mexico indicate that it is worse due to impunity; most of the states continue to lack specialized agencies for investigating crimes against journalists and human rights defenders.<sup>494</sup>

331. As the Office of the Special Rapporteur has indicated in different press releases in 2019<sup>495</sup> and in the above-noted Special Report on the Situation of Freedom of Expression in Mexico, the FEADLE should step up its efforts in terms of having effective investigative plans, exhaust all lines of investigation, identify all persons responsible for crimes (which includes masterminds and accomplices), and analyze the context in which the crimes occurred, particularly the way in which political and criminal power operates at the local level, and in other local realities. There are persistent shortcomings when it comes to protecting the security of witnesses and negligence at the moment of pulling together and effectively preserving police and forensic evidence. In addition, the Office of the Special Rapporteur has received information on the ineffectiveness of investigations into threats to and harassment of journalists<sup>496</sup>, tanto both on line and in traditional media outlets, who are paralyzed by cumbersome legal requirements, such as psychological assessments of the victims and the lack of true coordination among the mechanisms of protection. To that, this Office has identified

<sup>489</sup> FEADLE. [Sistematización averiguaciones previas y carpetas de investigación en torno a las denuncias sobre delitos contra la libertad de expresión](#). September 2019.

<sup>490</sup> Article 19. Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión. Ch. 1, p. 18.

<sup>491</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. June 2018. [Special Report on the Situation of Freedom of Expression in Mexico](#). Ch. IV, paras. 33, 34, 35.

<sup>492</sup> Observations and comments by the State, January 13, 2020, paras. 124-128.

<sup>493</sup> Propuesta Cívica. Frente al riesgo y al caos. Análisis del marco normativo de protección para personas defensores y periodistas en México. June 2019. OHCHR Mexico. Diagnóstico sobre el funcionamiento del mecanismo. July 2019. Article 19. Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión. CPJ. [Cumbre sobre libertad de expresión México](#). June 18, 2019. RSF. [México se moviliza para luchar contra la impunidad de los crímenes cometidos contra periodistas](#). March 12, 2019.

<sup>494</sup> Comisión Nacional de los Derechos Humanos de México (CNDH). Actualización correspondiente al año 2019 de la aportación de la CNDH en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", publicado por la CIDH en 2015.

<sup>495</sup> IACHR. Office of the Special Rapporteur for Freedom of Expression. [Press Releases Mexico 2019](#).

<sup>496</sup> Comisión Nacional de los Derechos Humanos de México (CNDH). Actualización correspondiente al año 2019 de la aportación de la CNDH en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", publicado por la CIDH en 2015. Ch. II. Office in Mexico of the United Nations High Commissioner for Human Rights. July 2019. [Diagnóstico sobre el funcionamiento del Mecanismo](#).

the persistence of the obstacles that affect the participation of the victims in the investigations and on their stigmatization.<sup>497</sup>

332. According to data provided by the FEADLE in January 2019 to the Office of the Special Rapporteur, in the last eight years only 10 of 1,140<sup>498</sup> investigations begun resulted in a judgment. This figure allows one to relate the lack of legal consequences in the face of an attack on journalists with the repetition of the acts and the fostering of a climate of intimidation. Of the 13 assassinations reported by the Office of the Special Rapporteur in 2018, to date there has not been a single conviction.<sup>499</sup> In its observations on the draft of this report the State referred to the case-law of the Supreme Court in recent years that has established constitutional protections for the exercise of journalism, holding that it is not admissible under the Constitution to demand persons engaged in journalism to show that they belong to a particular media outlet as a precondition for covering events of public interest, unless the purpose of such a restriction is to afford them greater security and facilitate their work as journalists. The Supreme Court also ruled that the authorities may not make the existence of a high level of risk a necessary condition for being able to access the administrative mechanisms of protection; rather, it suffices for it to be real and immediate and that it be related to, or stem from, journalistic endeavor.<sup>500</sup>

333. In view of the foregoing, the IACHR considers that both recommendations have met with partial compliance.

334. With respect to the recommendations to **remove all obstacles so that, in practice, the Specialized Prosecutor's Office for Attention to Crimes against Freedom of Expression (FEADLE) may absorb investigations of crimes against journalists and against freedom of expression and improve the relationship of the different jurisdictions**, the State expressed its commitment for the FEADLE to continue exercising its mandate and noted that from 2013 to 2019 that organ exercised its power take charge of cases 60 times.<sup>501</sup>

335. For the IACHR, the FEADLE must have all the conditions to exercise its legal powers to deploy its authority over cases of assassinations, kidnappings, and disappearances of journalists in the states with the highest levels of violence and impunity. In addition, the IACHR observes with concern that the implementation of the Protection Mechanism for journalists continues to be hardly effective, without any evidence, based on reports, of good levels of coordination between the administration and other institutions. The IACHR views positively the signing of cooperation agreements with the 32 states, yet so long as they are not binding and the Federal Government cannot demand their implementation, the impact on the adequate implementation of the measures of protection is worrisome. In addition to the foregoing, the lack of participation of the security forces in the programs, the reactive and police intervention, and the absence of risk analysis and measures of protection in keeping with the needs of the human rights defenders are some of the difficulties with the mechanism.<sup>502</sup> In view of the foregoing, the IACHR considers that the recommendation has met with partial compliance.

<sup>497</sup> Comisión Nacional de los Derechos Humanos de México (CNDH). Actualización correspondiente al año 2019 de la aportación de la CNDH en el marco de la revisión del cumplimiento de recomendaciones contenidas en el "Informe sobre situación de los Derechos Humanos en México", publicado por la CIDH en 2015. Chapters II. III. IV. Office in Mexico of the United Nations High Commissioner for Human Rights. July 2019. [Diagnóstico sobre el funcionamiento del Mecanismo](#).

<sup>498</sup> Debate. February 25, 2019. [Impunes el 99.13 por ciento de delitos contra la prensa](#).

<sup>499</sup> Office of the Attorney General of the Republic of Mexico. Office of the Deputy Attorney General for Human Rights, Crime Prevention, and Community Services. October 25, 2019. [Informe estadístico de la Fiscalía Especial de para la Atención a Delitos cometidos contra la Libertad de Expresión](#). Mexico City: FEADLE.

<sup>500</sup> Observations and comments by the State, January 13, 2020, paras. 129-132.

<sup>501</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 90.

<sup>502</sup> Article 19. Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión. Ch. 1, p. 17.



336. With respect to the recommendation to **maintain the FEADLE's character as a specialized prosecutor's office and vest it with sufficient financial and human resources so that it may do its work and adopt special protocols for investigation in light of which it should completely and sufficiently exhaust the hypothesis of the relationship between the homicide or attack and the journalistic activity**, the State reported that as an evaluation mechanism it drew up a standard of competence for "Investigation of crimes committed against the freedom of expression with a differential and specialized approach," which would make it possible to show the knowledge, skills, and attitudes required for performing such investigations. In addition, the State referred to information from 2018 and indicated that the National Institute of Criminal Sciences (INACIPE: Instituto Nacional de Ciencias Penales), in collaboration with the United States Agency for International Development (USAID), gave the personnel of FEADLE the course "Investigating crimes against freedom of expression" from October 23 to November 6, 2018.<sup>503</sup> The IACHR has also taken note of the coming into force of the Standardized Protocol for Investigating Crimes Committed Against the Freedom of Expression produced by the FEADLE in coordination with the civil society organization ProVoces.<sup>504</sup>

337. According to information provided to the IACHR, in eight years, in the context of the inquisitorial justice system, the FEADLE initiated 1,140 investigations, of which indictments have been handed down, as of September 2019, in 163 investigations.<sup>505</sup> In addition, in the context of the new adversarial criminal justice system the IACHR takes note that FEADLE presented charges in 23 investigations since 2016. Of the 10 judgments stemming from the 1,140 investigations begun by the FEADLE in eight years, at least six have been for crimes committed with the involvement of at least one state agent, depending on the nature of the crime committed, which allows one to make such an association.

338. The IACHR observes that the FEADLE maintains its category as a prosecutorial office, and that special investigative protocols have been adopted, thus it considers that this part of the recommendation has met with compliance, as it was characterized in the 2018 Annual Report. Nonetheless, as regards the part of the recommendation on the operative status of the FEADLE, the IACHR finds that the efforts are insufficient, that the deployment of its operations does not attain a substantial impact that makes it possible to corroborate new gains in implementing the recommendation. Accordingly, the IACHR considers that this recommendation has met with partial compliance.

### 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 what were the causes of the injury and the inability to prevent them.

339. The Office of the Special Rapporteur has taken note in its prior reports of the adoption of the General Law on Transparency and Access to Public Information, which shows a commitment on the part of the

<sup>503</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 91.

<sup>504</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe "Situación de los Derechos Humanos en México," p. 91.

<sup>505</sup> Office of the Attorney General of the Republic of Mexico, Office of the Deputy Attorney General for Human Rights, Crime Prevention, and Community Services. [Informe estadístico de la Fiscalía Especial de para la Atención a Delitos cometidos contra la Libertad de Expresión](#). Mexico City: FEADLE, p. 7.

Mexican State to transparency and the right of access to information. Nonetheless, the Office of the Special Rapporteur has expressed its concern over information received regarding obstacles to guaranteeing access to information related to human rights violations. In addition, the Office of the Special Rapporteur reiterates its concern over the gradual backsliding in the policy of active transparency and public information regarding the deaths of civilians and members of the military in security operations, in particular when the Armed Forces have become involved.<sup>506</sup>

340. With respect to the recommendation indicated by the IACHR, on **regulating the attribution that the Law on Access to Information confers to the Office of the Legal Counsel of the Presidency to appeal any decision to declassify information, made by the National Institute on Access to Information (INAI), if it endangers national security interests**, the State indicated that “if it has updated information it will share it with the Commission.”<sup>507</sup> In its observations on the draft of this report the State indicated that the INAI, along with civil society organizations, developed and coordinated the project “Memory and Truth” (“Memoria y Verdad”) in order to promote guarantees of non-repetition, implement the right to the truth, and facilitate access to information, among other aims.<sup>508</sup>

341. The IACHR notes that for the last two years the State has not submitted relevant information, thus it is considered that it is pending implementation.

342. With respect to the recommendation to **strengthen laws, policies and practices to ensure that judicial authorities have complete access to relevant information when they investigate and process cases of human rights violations attributed to the security forces**, the State noted that it reiterated what was indicated in previous reports.<sup>509</sup> The IACHR thus reiterates that the Mexican State has a legal and institutional framework that broadly favors the exercise of the right of access to public information, as well as promoting this right as an essential element of exercising the freedom of expression. Nonetheless, the Office of the Special Rapporteur reiterates its concern in relation to the second paragraph of Article 36 on the approval of the “General Law on Archives” of 2018<sup>510</sup>, which provides: “Documents that contain sensitive personal data, in keeping with the relevant legal provisions, with respect to which it has determined that their permanent conservation has historical value, shall conserve that status, in the principal archive, for 70 years from the date the document was created, and access shall be restricted during that period.” In this context, information received previously indicated that Article 27 of the Federal Law on Archives, a law that at present has been repealed, provided for personal data to remain under seal from 30 to 70 years, was used on several occasions to hide names of public servants and other information on serious human rights violations.<sup>511</sup> On this matter, in its observations on the draft of this report the State indicated that the Office of Legal Counsel to the Presidency has only used the prerogative conferred on it by law to prevent the declassification of information on four occasions from 2015 to 2017.<sup>512</sup>

343. Related to the foregoing, the Office of the Special Rapporteur has taken note that on April 4, 2019, the Supreme Court of Mexico handed down two judgments in *amparo* proceedings that referred to the right to truth in the cases of the massacres of San Fernando and Cadereyta. This has made it possible for the National Institute for Transparency, Access to Information and Protection of Personal Data (INAI: Instituto

<sup>506</sup> IACHR. [Situation of Human Rights in Mexico](#). OEA/Ser.L/V/II. Doc. 44/15. December 31, 2015, paras. 499 to 505.

<sup>507</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 93.

<sup>508</sup> Observations and comments by the State, January 13, 2020, para. 133.

<sup>509</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 93.

<sup>510</sup> Mexico. Chamber of Deputies. [General Law on Archives](#), June 15, 2018.

<sup>511</sup> Office of the Special Rapporteur for Freedom of Expression of the IACHR / Office of the United Nations Special Rapporteur on the promotion and protection of the right to freedom of opinion. [Special Report on the Situation of Freedom of Expression in Mexico, June 2018](#), para. 58.

<sup>512</sup> Observations and comments by the State, January 13, 2020, paras. 134 and 135.

Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales) to categorize serious human rights violations for purposes of access to information, and it would no longer be necessary to have a determination by the CNDH as a condition for accessing such information in a given case.

344. In light of the request for information made by a citizen after the assassination of journalist Norma Sarabia, on June 12, 2019, the INAI reminded the FGR of Mexico of its obligation to make known the number of complaints, preliminary inquiries, investigative files, and arrest warrants due to crimes against the freedom of expression, lesions, torture, kidnapping, homicide, forced disappearance, violation of correspondence, or revelation of sources or secrets committed against journalists and human rights defenders in 2017 and 2018.<sup>513</sup> In addition, it indicated that they must report on the operational work plan and the percentages of compliance with the Protection Mechanism for the Protection of Journalists and Human Rights Defenders, as well as the number of complaints lodged with the Office of the Attorney General when it was known in Spanish as the Procuraduría General de la República.

345. In consideration of the foregoing, despite the lack of information presented by the State, the IACHR considers that this recommendation has met with partial compliance.

346. As regards the recommendations 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 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**, the State reported that when the naval personnel of the Ministry of the Navy makes arrests it does so in keeping with the constitutional provisions, the Organic Law of the Federal Public Administration, the Organic Law of the FGR, and the Federal Code of Criminal Procedure.<sup>514</sup>

347. In this regard, the IACHR reiterates its comments related to the obligation to issue detailed and public reports on the operations in which the State makes use of force, as has been established in the Law on the Use of Force (*infra xx*). While the information submitted by the State is too general, the IACHR finds that what was determined by the Law on the Use of Force allows one to consider that there is progress in relation to this recommendation. Nonetheless, the IACHR reiterates that the difference between the detailed internal reports and the public reports whose aim is to present the systematized information could generate a double standard and selectivity of the information by the operators, determining *a priori* a restriction on access to information, without the legitimacy of that restriction being evident. In view of the foregoing, the IACHR considers that the measure has met with partial substantial compliance.

#### IV. Mechanism of Protection and 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

<sup>514</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 93.

protection and review schemes regarding the adequacy of the risk evaluation processes, guarantee 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 of 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 (*sua sponte*) in those cases which, because of their gravity and urgency, require them immediately.
- Urge the State to redouble its 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.

348. The IACHR recognizes the important measures adopted by the State vis-à-vis the significant increase in human rights defenders and journalists who are beneficiaries of the Protection Mechanism, including beneficiaries of precautionary measures granted by this Commission<sup>515</sup> and provisional measures granted by the Inter-American Court.<sup>516</sup> Despite these efforts, the IACHR found that during 2019 the Federal

<sup>515</sup> IACHR, Resolution 82/2018, Precautionary Measure No. 1165/18, Matter of Sergio López Cantera with respect to Mexico, October 18, 2018; IACHR, Resolution 27/2018, Precautionary Measure No. 1014/17, Matter of indigenous girl U.V.O. and family with respect to Mexico, May 5, 2018; IACHR, Resolution 1/2018, Precautionary Measure No. 685/16, Matter of Lucila Bettina Cruz and her nuclear family with respect to Mexico, January 4, 2018; IACHR, Resolution 31/2017, Precautionary Measure No. 209/17, Matter of Francisco Javier Barraza Gómez with respect to Mexico, August 15, 2017; IACHR, Resolution 24/2016, Precautionary Measure No. 29/16, Matter of Margarita Marín Yan and others with respect to Mexico, April 15, 2016; IACHR, Resolution 20/2016, Precautionary Measure No. 451/14, Matter of Norma Madero Jiménez and others with respect to Mexico, April 7, 2016; IACHR, Resolution 7/2016, Precautionary Measure No. 452/13, Matter of Lauro Baumea Mora and others with respect to Mexico, March 2, 2016; IACHR, Resolution 1/2016, Precautionary Measure No. 388/12, Matter of Edgar Ismael Solorio Solís and others with respect to Mexico, January 13, 2016; IACHR, Resolution 16/2015, Precautionary Measure No. 513/15, Matter of X and others with respect to Mexico, November 16, 2015; IACHR, Resolution 44/2015, Precautionary Measure No. 561/2015, Matter of Zenaida Candia Espinobarros and her nuclear family with respect to Mexico, November 10, 2015; IACHR, Resolution 30/2015, Precautionary Measure No. 506/14, Matter of Marcelo Pérez and Isidro Hernández Gutiérrez with respect to Mexico, September 1, 2015; IACHR, Resolution 15/2015, Precautionary Measure No. 106/15, Matter of Cruz Sánchez Lagarda and others with respect to Mexico, April 27, 2015; IACHR, Resolution 14/2015, Precautionary Measure No. 77/15, Matter of Defenders E. and K. and their family members with respect to Mexico, April 27, 2015; IACHR, Resolution 5/2015, Precautionary Measure No. 13/15, Matter of Norma Mesino and 10 members of her family with respect to Mexico, February 25, 2015; IACHR, Resolution 1/2018, Precautionary Measure No. 5/15, Matter of José Moisés Sánchez Cerezo, with respect to Mexico, January 26, 2015; and other precautionary measures; I/A Court HR. Case of Fernández Ortega et al. v. Mexico.

<sup>516</sup> Provisional Measures. Resolution of the Inter-American Court of Human Rights of March 13, 2019; I/A Court HR. Matter of Alvarado Reyes and others with respect to Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of March 14, 2018; I/A Court HR. Matter of Alvarado Reyes and others with respect to Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 14, 2017; I/A Court HR. Matter of Castro Rodríguez with respect to Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of November 14, 2017; I/A Court HR. Matter of Members of the Indigenous Community of Asunto Choréachi with respect to Mexico. Request for Provisional Measures. Resolution of the Inter-American Court of Human Rights of March 25, 2017; I/A Court HR. Case of Fernández Ortega and others v. Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of February 7, 2017; I/A Court HR. Case of Fernández Ortega and others v. Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of February 23, 2016; I/A Court HR. Case of Rosendo Cantú and one

Mechanism for the Protection of Human Rights Defenders and Journalists continued facing a series of obstacles to carrying out the recommendations issued by the Commission, noted above in the section “Human rights defenders.”

349. With respect to 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 reiterates the approval of the “Guidelines for Recognizing the Work of Human Rights Defenders and Journalists,” which picks up on some recommendations of the IACHR and its Office of the Special Rapporteur for Freedom of Expression. In addition, the Commission salutes the recent presentation of the “Assessment of the Operation of the Mechanism” by the OHCHR at the request of the Office of the Vice-Minister for Human Rights in the Ministry of Interior, based on which the State asserts that the relevant changes will be made to improve and strengthen the structure of the Mechanism, as well as to protect the beneficiaries.<sup>517</sup>

350. Based on the evaluation done, the IACHR understands that this recommendation has met with partial compliance. In this regard, the Commission urges the State to continue making progress on strengthening and implementing its policy for protection and prevention in keeping with the recommendations noted.

351. In relation to 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 IACHR reiterates what is indicated in this report regarding the failure to finance the protection mechanism in the section on recommendations in relation to human rights defenders. Taking into consideration the budget crisis of the Prevention Mechanism and its implications for deploying effective protection, the IACHR reiterates that this recommendation is still considered as having met with partial compliance.

352. With respect to the recommendation to **adopt all necessary measures and assign and train all necessary personnel for its adequate operation**, the IACHR learned that in 2019 the Federal Protection Service (SPF: Servicio de Protección Federal), through its ongoing programs for professionalization, trained some of the security agents responsible for ensuring the protection of human rights defenders and journalists, so as to strengthen their capacities to study the surroundings of protected persons, physical, social, and digital; as well as their exposure to situations of risk.<sup>518</sup> Nonetheless, during the same year the IACHR has received information on the lack of programs and training manuals for public officials who operate within the mechanism and the members of the Governing Board.<sup>519</sup>

353. In its observations on the draft of this report the State noted that the Mechanism’s personnel received several trainings on human rights. Moreover, it said that from August 5 to 9, 2019 an intensive training was conducted for personnel of the Mechanism on applying risk analysis methodologies with a gender perspective, and on designing comprehensive protection plans with a differential approach.<sup>520</sup>

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other v. Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of February 23, 2016; I/A Court HR. Case of Rosendo Cantú and one other v. Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of June 23, 2015; I/A Court HR. Matter of Alvarado Reyes and others with respect to Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of June 23, 2015; I/A Court HR. Matter of Castro Rodríguez with respect to Mexico. Provisional Measures. Resolution of the Inter-American Court of Human Rights of June 23, 2015; and other provisional measures.

<sup>517</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 96.

<sup>518</sup> Government of Mexico, [Elementos del Servicio de Protección Federal son capacitados para el mecanismo de seguridad a defensores de derechos humanos y periodistas](#), September 22, 2019.

<sup>519</sup> OHCHR, [Diagnóstico sobre el funcionamiento del mecanismo](#), Mexico City, July 2019, p. 232.

<sup>520</sup> Observations and comments by the State, January 13, 2020, paras. 136-137.

354. In these terms, and taking into consideration that the State did not submit additional information with respect to 2019, the IACHR considers that this recommendation continues to be pending in the understanding that the new legal and protocolary tools should be introduced in the competent institutions and geared to the public servants in charge of carrying out the corresponding procedures and protocols. In this regard, it urges the State to take necessary measures to assure the constant and progressive training of all the personnel in charge of implementing the measures of protection.

355. As regards the recommendation **to 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, and guarantee 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 once again informed the IACHR that “within the Mechanism a methodology was developed to evaluate the implementation of measures of protection in which the beneficiaries are to be consulted, and to review the procedures for implementation by those who are involved.” In addition, it reiterated that the Risk Assessment Unit “periodically assesses the suitability and efficacy of the measures of protection granted in each case”<sup>521</sup>; and in its observations on the draft of this report it added that at present the instrument is being improved with the assistance of an international expert.<sup>522</sup>

356. The IACHR has learned that in 2018 human rights organizations held a series of meetings with civil society and officials of the mechanism to contribute to the design of the risk analysis protocols, nonetheless, in 2019, some of these officials left the institution, thus weakening the commitment and dialogue between the two sectors.<sup>523</sup> In addition, in May 2019 the IACHR received information that human rights organizations condemned the reduction of spaces for dialogue between civil society and the government, especially the lack of participation in framing security policies.<sup>524</sup> In its observations on the draft of this report the State indicated that the members of the Citizen Advisory Council (Consejo Consultivo Ciudadano) attend the meetings of the governing body (Junta de Gobierno).<sup>525</sup>

357. Based on the information available in considering that the State did not produce new information on compliance with and follow-up on this recommendation in 2019, the IACHR concludes that this recommendation continues to meet with partial compliance. In this context, it invites the State to redouble its efforts to adopt measures to ensure the work of human rights defenders and journalists in light of the particular risks they face and for reasons of gender, and to strengthen the spaces for participation and dialogue with civil society and the beneficiaries of the protection mechanisms.

358. With respect to the recommendation **to evaluate and adopt differentiated measures of protection for women, indigenous leaders, and defenders of the environment**, the IACHR did not receive information on specific actions by the State. Noting the lack of information, and taking into account the attacks already mentioned against journalists and indigenous leaders, the IACHR considers that this recommendation continues to meet with partial compliance.

359. In relation to the recommendation **to urge the State to implement strategies so that the various institutions at the state and federal levels 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

<sup>521</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 74.

<sup>522</sup> Observations and comments by the State, January 13, 2020, para. 138.

<sup>523</sup> WOLA, [Turning the Tide on Impunity for Crimes Against Journalists, Human Rights Defenders in Mexico](#), March 2019, p. 9.

<sup>524</sup> CMDPDH, [Carta de las OSC Mexicanas, Personas Defensoras junto con el apoyo de Organizaciones Internacionales en seguimiento a la visita de la Alta Comisionada para los Derechos Humanos de la ONU a México](#), May 6, 2019.

<sup>525</sup> Observations and comments by the State, January 13, 2020, para. 139.

reiterated what was indicated in its previous reports.<sup>526</sup> In this respect, the Office of the Special Rapporteur for Freedom of Expression of the IACHR indicated that implementation of the Protection Mechanism for journalists continues to be hardly effective, as coordination among all levels of government and among institutions is deficient. Despite having signed cooperation agreements with the 32 states, these are not binding and the Federal Government cannot require their implementation, which makes adequate implementation of the protection measures impossible. In addition, the lack of participation of the security forces in the programs, the reactive and police intervention, the lack of analysis of risk and measures of protection in keeping with the needs of human rights defenders and journalists, and the privatization of security measures are just some of the difficulties of the mechanism.<sup>527</sup>

360. The IACHR considers that the recommendation has met with partial compliance, considering that there are federal and state strategies, yet their implementation still faces challenges that compromise the effectiveness of the system.

361. 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 keeping 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**, the State reiterated what was already noted in relation to the operativity of the website <<https://www.gob.mx/defensorasyperiodistas>>.<sup>528</sup> With respect to the content of the website, the State indicated that “there are several documents to report on the Mechanism’s trust, recognition of the work of human rights defenders and journalists, and in particular about the work done.” The IACHR notes that the platform has general information on the Mechanism of Protection, press articles about the actions taken, in addition to public contact information, including two phone numbers, an email, and the organization’s address. Based on the foregoing, and considering that the State did not submit additional information on compliance and follow-up on this recommendation in 2019, the IACHR considers that it continues to meet with partial compliance.

362. As regards the recommendation **to encourage the mechanism to adopt a process that allows it to issue protection measures directly and of its own initiative (*sua sponte*) in those cases which, because of their gravity and urgency, require them immediately**, in its observations on the draft of this report the State indicated that in 2019 the Mechanism granted a total of 663 urgent measures of protection.<sup>529</sup> While the Commission recognizes that the granting of measures of protection shows that the mechanism is working, the recommendation has to do with the *sua sponte* procedure, with respect to which the State did not provide any information. Given the aforementioned, the IACHR considers that this recommendation continues to meet with partial compliance.

363. As regards the recommendation **to urge the State to redouble its 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**, the IACHR did not receive any information on specific actions by the State. Noting the lack of information, the IACHR considers that this recommendation has yet to be implemented.

364. With respect to the recommendation **to encourage the mechanism to adopt tools that allow it to evaluate the effectiveness of the implemented protection measures, as well as to increase**

<sup>526</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 93.

<sup>527</sup> Article 19. Protocolo de la impunidad en delitos contra periodistas. Análisis de investigaciones sobre delitos contra la Libertad de Expresión. Ch. 1, p. 17.

<sup>528</sup> Sexto Informe del Estado mexicano sobre el cumplimiento y seguimiento de las recomendaciones contenidas en el informe “Situación de los Derechos Humanos en México,” p. 100.

<sup>529</sup> Observations and comments by the State, January 13, 2020, para. 140.

**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,** in its observations on the draft of this report the State indicated that the Mechanism may be contacted electronically and that it posts statistical and budgetary information on its website.<sup>530</sup> Noting the lack of specific information, the IACHR considers that this recommendation has yet to be implemented.

## V. CONCLUSIONS

1. The Commission reiterates to the Mexican State the recommendations made in its 2015 Country Report. While there have been significant gains in implementing the recommendations, serious challenges persist in relation to protection for vulnerable populations, security, and impunity.

2. During 2019 the high number of disappearances and homicides without a proper investigation continue to be matters of special concern, as well as the situation of insecurity of the persons or groups most exposed for reasons of historical discrimination, such as women, children, migrants, indigenous peoples, African decedents persons, persons deprived of liberty, or for their activities, such as human rights defenders and journalists, who are victims of assassinations, disappearances, kidnappings, torture, threats, and harassment.

3. As the Commission noted in its Country Report, the challenge of the Mexican State is to close the gap between its legal framework and recognition of human rights, on the one hand, and the reality experienced by a large number of inhabitants when they seek prompt and effective justice, and concomitantly to redouble its efforts to prevent human rights violations.

4. Access to justice continues to pose one of the most important challenges to the Mexican State. Efficient and effective justice is key in the fight against impunity and the central line in response to any human rights violation.

5. The Commission reaffirms its commitment to collaborate with the Mexican State in the search for solutions to the problems and challenges identified, and to offer accompaniment in carrying out its international obligations in respect of human rights.

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<sup>530</sup> Observations and comments by the State, January 13, 2020, para. 141.