



Report on Enforced Disappearance in Mexico 2011

Presented by member organizations of the National Campaign against Enforced Disappearance to the United Nations Working Group on Enforced or Involuntary Disappearances

Mexico City, March 21, 2011

**Working Group on Enforced and Involuntary Disappearances
United Nations Organization**

Dear Working Group members:

We, the undersigned organizations send you a warm welcome and submit for your consideration a brief report on some of the most pressing problems related to the enforced disappearance of persons in Mexico, particularly pertinent to your mandate. In the report you will find succinct references to these matters that are based on direct sources consisting of both

national and international public documents and are confirmed in our everyday experience in the defense of human rights.

The report is divided into four subject areas, which are briefly assessed by the signatories as follows:

1. The Mexican normative framework regarding the enforced disappearance of persons: It is urgent to harmonize federal and local normative frameworks in accord with international standards, including the implementation of criminal typification and sanctions in the 24 federative entities [the states and the Federal District] where they are still not contemplated, as well as the modification of the *amparo* hearing so that people can rely on a mechanism of protection against enforced disappearances.

2. The historic context of enforced disappearance in Mexico: The Mexican State must fully recognize the crimes of the past —and their ongoing effects in the present—, undertake effective investigations that go beyond merely formal procedures and pursue the goal of finding disappeared persons, and guarantee the right to the truth and to full and total reparations for damage to the victims.

3. The current context of enforced disappearance in Mexico: There is a need for an in-depth investigation of the cases of enforced disappearances denounced in recent years, the application of sanctions to responsible parties, and the location of disappeared persons.

4. The paradigmatic case of Mr. Rosendo Radilla and the status of compliance with the Sentence of the Inter-American Court of Human Rights: Each and every requirement of the sentence that condemns the Mexican State for proven human rights violations in this case must be enforced promptly, totally, and without delay, thereby assuring that not a single branch of government or federative entity is able to avoid compliance with its respective international obligations.

We are confident that the dialogue initiated with this message and report will be beneficial for the active defense of human rights in Mexico. We also hope that our proposals will be

considered as a testimony from a sector of Mexican society that is sensitive to the development of the agendas of the authorities with whom you will meet during your visit.

We reiterate our readiness to continue accompanying you in our shared tasks and hope that your trip to Mexico will be beneficial.

Elaborado por:

Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, A.C. (CMDPDH)

Comité Cerezo México

Comité de Familiares de Detenidos-Desaparecidos "Hasta Encontrarlos"

Comité Monseñor Romero

Federación Latinoamericana de Asociaciones de Familiares de Detenidos-Desaparecido
(FEDEFAM)

Nacidos en la Tempestad A.C.

Organizaciones adherentes al informe:

Acción Urgente para Defensores de los Derechos Humanos AC

Brigada Callejera De Apoyo a La Mujer "Elisa Martínez"

Central de Organizaciones Campesinas y Populares COCYP Chiapas-México

Cochitlehua Centro Mexicano de Intercambios A.C.

Comité de campesinos Pobres (CCP)

Frente Democrático Oriental de México Emiliano Zapata (FEDOMEZ)

Frente Magisterial Independiente Nacional (FMIN)

Frente Nacional de Lucha por el Socialismo (FNLS)

Frente Popular " Ricardo Flores Magon" de Ixtapa, Chiapas

La Organización de Pueblos Indígenas Zapotecos A.C

Movimiento Democrático de la Huasteca Veracruzana A.C

Movimiento Estudiantil Revolucionario Internacionalista

Red de Defensa de los Derechos Humanos (REDDH)

Red Magisterial Popular del Bloque Democrático de la Sección 7 de Chiapas-México

Unión de Mujeres de las Huastecas "Humberta Hernández Tovar"

¡¡Si no están ellas..... No estamos todas!!!

Comisión Ética Contra la Tortura - Chile.

Comité argentino contra las desapariciones forzadas en México, Buenos Aires, Argentina.

México, 21 de marzo de 2011

REPORT SUMMARY

Mexico lacks a normative framework that is suitable for protecting people from enforced disappearances. The current manner of **crime typification** results in indulging the avoidance of obligations by different kinds of State agents who do not fall under the category of “public servants” as defined in the Federal Penal Code and local statutes, as well as by third parties that act with the support, authorization or acquiescence of the State, and are not covered by federal legislation. **The protective writ (*amparo*), which should be the perfect judicial recourse for the protection of people from enforced disappearances, has turned out to be ineffective** due to the fact that the requirements of lodging an appeal and ratification of the trial include the presentation in person of the victim and the specification of his or her whereabouts.

The possibilities of seeking justice in international bodies such as the UN Committee against Enforced Disappearance are thwarted by the **Mexican State’s refusal to recognize their jurisdiction.** In the long and tortuous quest for justice, many people have spent decades dealing with impunity and re-victimization when their cases have been brought before international bodies. This has been true in the case of Mr. **Rosendo Radilla Pacheco**, disappeared in 1974, in which the guilty sentence imposed on the Mexican State by the Inter-American Court of Human Rights **still has not been enforced** more than a year after it was issued.

The above issues have resulted in the systematic **denial of rights to truth, justice, and reparations for damages to the victims of enforced disappearance** during historic periods in which this crime has been a frequent practice, including the so-called “dirty war” as well as the present period. The number of victims is now multiplying appreciably due to the increasing wave of violence that the country is experiencing and to the security policy being implemented by the current head of the Executive Branch, who has opted for the **militarization** of the country, with a concurrent **rise in the disappearance of persons.** In this regard, it is important to note that some of the **groups most vulnerable to this situation** are **human rights defenders**, particularly those who deal with case of disappeared people, journalists, women, and others who live in **contexts affected by the so-called “war on organized crime.”**

SYNOPSIS OF DEMANDS CONTAINED IN THE REPORT

1. The Mexican normative framework regarding the enforced disappearance of persons:

- 1) That the State undertake – with the full participation of the civil society – the modification of the internal juridical framework, including the passage of a General Law against the Enforced Disappearance of Persons, with the aim of guaranteeing the prevention of, sanctions for, and eradication of the practice of the enforced disappearance of persons; likewise, the law should include effective, concrete, protective measures and the right to truth, justice, and full and total reparations for damage to the victims of this crime, including indirect victims;
- 2) That Article 215 of the Federal Penal Code be reformed to harmonize the federal criminal typification of the enforced disappearance of persons in accord with the highest international standards in the field;
- 3) That Articles 17 and 117 of the *Amparo* Law be reformed so that the State can guarantee the availability of an effective judicial recourse of protection and access to justice to all people in the cases of enforced disappearance;
- 4) That Article 57 of the Military Justice Code be reformed to harmonize it with the provisions of Article 13 of the Constitution and with international standards in the field, including the express prohibition of the extension of military justice involving any and all crimes that constitute a violation of internationally recognized human rights, and further including the denial of military jurisdiction in all cases involving civilians, regardless of whether their involvement is active or passive.

2. The historic context of enforced disappearance in Mexico:

That the State assume its obligations regarding the investigation of the facts, the application of sanctions to responsible parties, full and total reparations for damages to victims of enforced disappearances and of other serious human rights violations during the period known as the “dirty war”, thereby adopting symbolic, juridical, economic and political measures to guarantee the satisfaction of the expectations of transitional justice in the country and to further guarantee an offensive against impunity.

3. The current context of enforced disappearance in Mexico:

1) That the Mexican State comply with its obligations in the areas of investigation, prosecution, and the application of sanctions in cases of the enforced disappearance of human rights defenders, as well as in cases involving threats, harassment and attacks against the defenders of disappeared persons with the aim of effectively combating the impunity that reigns in these cases;

2) That the Mexican State establish a national public registry of forcibly disappeared persons, to be designed, implemented and monitored with the participation of the civil society, with the aim of preventing the State from eluding its obligations and of assuring statistical control and transparency with regards to this situation;

3) That the Mexican State establish a specialized authoritative entity charged with searching for disappeared persons, as well as an independent, impartial organism that would store and protect DNA samples of consenting family members, with the aim of creating a DNA bank that would be useful in the search for disappeared persons and the registry of particular cases.

4) That more effective performance protocols be adopted in investigating the facts and prosecuting the parties responsible for this crime;

5) That the Mexican State destine more resources to the training and hiring of qualified personnel, as well as to the acquisition of resources and specialized instruments for the investigation of cases of the enforced disappearance of persons;

6) That elements of the Armed Forces be sanctioned effectively under ordinary jurisdiction when involved in cases of enforced disappearance in the current context of the militarization of public safety;

7) That the Mexican State promptly recognize the jurisdiction of the UN Committee against Enforced Disappearance, covered in Article 26 of the International Convention for the Protection of All Persons from Enforced Disappearance, with the aim of reinforcing the structure for the international protection of human rights for all people in cases of enforced disappearance.

4. The paradigmatic case of Mr. Rosendo Radilla and the status of compliance with the Sentence of the Inter-American Court of Human Rights in the case:

That each and every requirement of international sentences condemning Mexico for proven human rights violations be carried out promptly and totally, without delay, assuring that not a single branch of government or federative entity is able to avoid compliance with its respective international obligations.