



General Assembly

Distr.: General
27 February 2012

English and Spanish only

Human Rights Council

Nineteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the World Organisation Against Torture, a non-governmental organization in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[13 February 2012]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Mexico must end impunity for enforced disappearances**

The World Organisation Against Torture (OMCT) and its member organisations in Mexico, the Mexican Commission for the Defense and Promotion of Human Rights (CMDPDH) and the Association of Families of Detained Disappeared and Victims of Human Rights Violations in Mexico (AFADEM-FEDEFAM), welcome the report of the visit to Mexico of the Working Group on Enforced or Involuntary Disappearances. Our organisations wish to seize this opportunity to share our concerns on the practice of enforced disappearances in the country and urge the Mexican government to implement promptly the recommendations formulated in the report of the Working Group.

In the context of the so-called “war against organised crime”, launched by the Mexican government since late 2006, insecurity and violence in Mexico have alarmingly deteriorated. Violence has appreciably increased in the last five years, being one of the most notorious causes and manifestations of the militarisation of public security throughout the country. As a direct effect of the current security policy, cases of enforced disappearance, torture, illegal detentions and extrajudicial executions by the army, police forces and paramilitary groups have multiplied.

According to official data, there are currently over 45.000 elements of the Armed Forces performing tasks of public security that, in a state of democratic normality, must be taken by civil authorities.¹ Today, 17 out of the 32 states of Mexico have military elements in charge of local police institutions, in addition to other military elements in charge of municipal police agencies in more than 25 states.²

The engagement of the Armed Forces in public security tasks has had a direct effect on the rise of serious human rights violations. Complaints presented to Mexico's National Commission of Human Rights due to human rights violations committed by the military have increased about 1.000% between 2006 and 2011. It is of particular concern the increase of cases of enforced disappearances since the current government took into office.³

Various civil society organisations have documented many cases of enforced disappearance that are reflected, for example, in the increasing complaints presented before the National Commission of Human Rights between December 2006 and 2011. During this period, 436 complaints of enforced disappearance have been presented, of which 230 were during 2010 and 2011 (more than 52%).

The United Nations Working Group on Enforced or Involuntary Disappearances stated in its report that, according to estimations made by civil society organisations, more than 3.000 disappearances may have occurred in the country since 2006.⁴

** The Mexican Commission for the Defense and Promotion of Human Rights (Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, CMDPDH) – a member of OMCT, Association of Families of Detained Disappeared and Victims of Human Rights Violations in Mexico (Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México (AFADEM –FEDEDAM) – a member of OMCT, NGOs without consultative status, also share the views expressed in this statement.

¹ “Hay más de 45 mil militares en lucha antinarco: Sedena”, El Universal de 6 de mayo de 2011.

² “Militares a cargo de la seguridad en 17 entidades”, El Universal, 28 de febrero de 2011.

³ See Annual Reports of the Human Rights National Commission, available at www.cndh.org.mx

⁴ Working Group on Enforced or Involuntary Disappearances. United Nations, Sign A/HRC/19/58/Add.2 Par. 20

Hence, the Working Group pointed out that the increase in enforced disappearances in Mexico responds to the strategy implemented by President Calderon to face public security problems in the country. In its opinion, the deployment of thousands of military elements to perform public security tasks has fostered crime and human rights violations, since the Armed Forces are not limited to act only to support civil authorities and accept their orders, but instead they have performed tasks that are exclusively reserved to civil authorities. For this reason, the Working Group recommended to the Mexican government to consider the withdrawal of military forces from public security operations in the short term.⁵

There is a clear pattern common to all cases of enforced disappearance in which victims are arbitrarily detained by military or police forces. Regularly, these types of detention are not registered and people are not taken immediately before the State Prosecutor's Office, as required by law. In such cases in which their relatives turn to military authorities to ask about the whereabouts of their relative, they are denied any information, even if an accusation has been presented before civil authorities.⁶ In many cases, families are intimidated by the authorities who suggest other reasons for the disappearance, such as the alleged involvement of the victim with criminal gangs. This type of treatment is followed by the denial of the relevant authorities to investigate, and many times the Prosecutor recommends not presenting a formal complaint.

It is therefore urgent for the Mexican State to develop more effective protocols for the police in relation to investigation and prosecution of cases of enforced disappearance in order to launch the inquiry as soon as they have been noticed. Likewise, the State must allocate more resources and develop more specialised tools for the investigation of these cases, such as the creation of an independent and impartial body to be in charge of conducting the search for missing persons.

Besides, the primacy of military jurisdiction in cases of human rights violations in which militaries are involved has hindered the possibility for victims to present an effective recourse with regard to a case of an enforced disappearance. The existence of military jurisdiction and its prevalence over civilian courts favors the current context of impunity in Mexico. According to official records of the Armed Forces, from 2001 to 2009, the Office of the Military Prosecutor has not known of any case of enforced disappearance and, "therefore, no one has been punished or prosecuted for that crime".⁷

In this regard, the Inter-American Court of Human Rights has condemned Mexico in four different occasions to reform the Military Code of Justice to exclude from military jurisdiction any case of human rights violations in which military elements are involved (cases of Rosendo Radilla Pacheco; Ines Fernandez Ortega; Valentina Rosendo Cantu; and Teodoro Montiel and Rodolfo Cabrera). However, more than two years after the first of these judgments was released, the State has not yet fulfilled this obligation.

It is evident that the current strategy implemented by the Mexican government to address public security problems based on the use of force and militarisation is damaging the respect and protection of human rights, and even has put at risk the rule of law. The deployment of thousands of military forces to perform public security tasks has fostered crime and human rights violations, in particular torture and enforced disappearances, since the Armed Forces are not limited to the support of civil authorities but have performed tasks that are exclusively reserved to civil forces.

⁵ Working Group on Enforced or Involuntary Disappearances. United Nations, Sign A/HRC/19/58/Add.2 Par. 90

⁶ Human Rights Watch. "Ni seguridad ni derechos: Ejecuciones, desapariciones y tortura en la 'guerra contra el narcotráfico' de México". November 2011.

⁷ Access to Public Information, file 0000700153309.

Recommendations

We therefore urge the Human Rights Council to call on the Mexican government to:

- Implement the recommendations issued by the Working Group on Enforced or Involuntary Disappearances in its report of its visit to Mexico;
- Create an independent and impartial agency to work as a specialised unit to look for disappeared persons, and to, among other functions, be in charge of preserving DNA samples of the relatives that give their consent for it, in order to develop a database used to register and investigate cases of enforced disappearance;
- Establish clear and effective protocols for police while investigating and prosecuting enforced disappearance in order to begin the inquiry as soon as they have been noticed;
- Prosecute in civil courts all military elements involved in cases of enforced disappearance in the current context of militarisation;
- Recognize, as soon as possible, the competence of the United Nations Committee against Enforced Disappearances to receive and examine individual communications in accordance with article 31 of the International Convention for the Protection of All Persons from Enforced Disappearance;
- Remove, as soon as possible, the reservation and the interpretative declaration made when ratifying the Inter-American Convention on the Forced Disappearance of Persons.

Also, we call on the Working Group on Enforced or Involuntary Disappearances to follow-up closely on the status of implementation by the Mexican government of the recommendations formulated in its report.
