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MEXICO: PROGRESS IN CASE OF ENFORCED DISAPPEARANCE

Amnesty International notes with satisfaction the amparo ruling in the case of Edmundo Reyes Amaya and Gabriel Alberto Cruz Sánchez, victims of enforced disappearance since 24 May 2007. This judgement is in line with international human rights norms and standards and, if fulfilled promptly and appropriately, could represent an important step forward in achieving truth, justice and reparation in this case.

Enforced disappearances involving State agents and disappearances perpetrated by non-State agents remain commonplace in Mexico. Moreover, those responsible generally benefit from the virtual total impunity that exists in the country. Federal government figures suggest that there are currently at least 40,000 people disappeared in Mexico, although the official statistics do not establish which of these cases relate to enforced disappearances and which to disappearances by non-state agents. In line with its international obligations,¹ Mexican legislation establishes that enforced disappearances are not subject to statutory limitations.²

The judgment issued recently by a federal court in Mexico City in the case of Edmundo Reyes Amaya and Gabriel Alberto Cruz Sánchez is based on recognition of enforced disappearance as a serious human rights violation affecting multiple rights of the victim with effects that extend over time.³ The judgement reaffirms that enforced disappearances are permanent by nature and continue to be committed until the whereabouts or fate of the victims has been established.

The judgement recalls that disappearances are a widespread phenomenon in Mexico, and one that has increased in the context of the militarized public security strategy and high impunity that exists in the country. The decision reiterates the concern expressed by the Inter-American Commission on Human Rights at “the involvement of military forces in professional duties that, by their nature, would correspond exclusively to police forces”,⁴ a concern that Amnesty International has echoed on a number of occasions. In the same vein, the Inter-American Court of Human Rights has established that “maintaining internal public order and public safety must be primarily reserved for the civil police force” and that the involvement of the armed forces in such tasks must be exceptional and subject to strict regulations.⁵

In her decision, the presiding judge of the federal court rejected the arguments of various authorities who claimed that the enforced disappearance of Mr. Reyes Amaya and Mr. Cruz Sánchez could not be proved. Given that perpetrators generally suppress or conceal evidence in these kinds of cases, the judge ruled that the burden of proof was thereby reversed and that it was for the State to prove that an enforced disappearance had not occurred. Citing the case of *Blake v. Guatemala*,⁶ she further recalled that indications of a disappearance were sufficient to submit a request for protection under an amparo ruling because there was an attenuated burden of proof operating in favour of the victims in such cases.

It should be noted that States have a duty to diligently investigate acts that may constitute a crime under international law or a violation of human rights. The judgement emphasizes, however, that the investigation into this case was deficient, among other things because of the unreasonable length of time it had taken – more than 11 years –, because there was still no concrete investigation plan in place, because no relevant evidence had been gathered and because no investigation had been conducted into military personnel who might have been aware of or responsible for the events.

The judge therefore ordered the Attorney General of the Republic to diligently investigate the disappearance of Edmundo Reyes Amaya and Gabriel Alberto Cruz Sánchez and to produce an investigation plan for this purpose. The judgement

¹ See, for example, IA Court. *Case of Gutiérrez Soler v. Colombia*. Judgement of 12 September 2005. Series C No. 132, para. 97.

² Mexico. *General Law on the Enforced Disappearance of Persons, Disappearances Committed by Individuals and the National Missing Persons Search System*. Article 14 of the law stipulates: “The criminal action and the criminal sanctions that may be imposed judicially for the crimes of enforced disappearance of persons and of disappearance committed by individuals are imprescriptible and not subject to statutory limitations nor to forms of alternative solution to the process or similar”.

³ Mexico. *Indirect Appeal 942/2013*, Fourth District Court of Criminal Appeals in Mexico City, judgement of 6 May 2019. This decision has been contested via an “appeal for review” both by the Ministry of National Defence and the Attorney General of the Republic.

⁴ IACHR. *The Human Rights Situation in Mexico*, OEA/Ser.LV/II, Doc. 44/15, 31 December 2015, para. 91.

⁵ IA Court. *Case of Alvarado Espinoza et al v. Mexico*. Merits, Reparations and Costs. Judgement of 28 November 2018. Series C No. 370, para. 182.

⁶ IA Court. *Case of Blake v. Guatemala*. Merits. Judgement of 24 January 1998. Serie C No. 36, para. 49.

states that the investigation will need to include interviews with any military personnel who may have knowledge of the case, and will also need to enable entry on the part of the investigation team to any military facilities requiring inspection.

The judgment further orders an investigative commission to be established for this case, as a further special measure aimed at achieving the investigation's objectives. This measure is similar to that provided in another amparo ruling, of June 2018, regarding the investigation into the enforced disappearance of 43 students from the "Ayotzinapa" Raúl Isidro Burgos Rural School.⁷

The judgement also stipulates other relevant reparatory measures such as the registration of both individuals on the National Disappeared or Missing Persons Register and the registration of their families – recognized as indirect victims in the case – on the National Victims Register.

Finally, the judge established that the amparo ruling could not be considered fulfilled until there had been an effective investigation that exhausted all possibility of determining the whereabouts or fate of the victims. This provision is in line with the Mexican State's obligations given that the Inter-American Court has established that a human rights violation involving enforced disappearance "begins with the victims' deprivation of liberty and continues until the victims' whereabouts are ascertained or, if appropriate, their remains reliably identified".⁸

⁷ Amnesty International, *Order to create investigative commission is an important advance in Ayotzinapa case* (Press release, 5 June 2018).

⁸ IA Court. *Case of Gudiel Álvarez et al ("Diario Militar") v. Guatemala*. Interpretation of the Judgment on merits, reparations, and costs. Judgement of 19 August 2013. Series C No. 262, para. 64.