



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Double Injustice

REPORT ON HUMAN RIGHTS VIOLATIONS IN THE INVESTIGATION OF THE AYOTZINAPA CASE

EXECUTIVE SUMMARY

March 15, 2018

OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS

INTRODUCTION

This report has been prepared by the Office of the United Nations High Commissioner for Human Rights (OHCHR) in Mexico pursuant to its mandate to promote and protect human rights¹. The full version of the report is available in Spanish².

General description of the case

During the night of 26 to 27 September 2014, a large group of students from the “Raúl Isidro Burgos” Normal School of Ayotzinapa, travelling on five buses which they had seized to attend a demonstration in Mexico City, were attacked by municipal police officers in the city of Iguala, State of Guerrero. A group of them were subsequently detained. A bus with members of a local football team and a taxi, both unrelated to the students, were also attacked. During the course of the night, 43 students became victims of enforced disappearance, six persons (including three students) were killed, and at least 40 persons were injured. The role of various security forces in these events is under investigation.

The case – which has become known as the “Iguala case”, based on the place where it happened, or as the “Ayotzinapa case”, based on the location of the school the students attended – has generated unprecedented concern and attention nationally and internationally. While initially investigated by the Office of the Attorney General of the State of Guerrero, on 5 October 2014 it was taken over by the Office of the Attorney General of the Republic (hereinafter “OAG”). On 27 January 2015, the then-Attorney General Jesús Murillo Karam announced that the case was resolved, referring to the findings as “the historic truth”. According to this version, the disappeared students had been handed over by the municipal police forces of Iguala and Cocula to members of a criminal gang called *Guerreros Unidos*, who subsequently killed them, incinerated their bodies in a garbage facility near the town of Cocula, and dumped their ashes and other remains into the nearby San Juan River. In support of this version, the OAG referred to forensic results indicating that a bone fragment found in the river corresponded to the DNA of one of the students.

On 12 November 2014, following intense dialogue between different stakeholders, the Government of Mexico and the Inter-American Commission on Human Rights (IACHR) established an Inter-Disciplinary Group of Independent Experts (known in Spanish under the acronym GIEI), as part of the Precautionary Measure MC/409/14³, with the aim of incorporating international technical assistance, from a human rights perspective, into the investigation of the enforced disappearance of the students. The Inter-American Commission selected five persons⁴ who provided this technical assistance from 2 March 2015 to 26 April 2016. Its comprehensive final report, issued on 24 April 2016, concluded that forensic expertise by recognized international experts did not support the claim that the bodies of all of the students could have

¹ On 1 July 2002, the Government of Mexico and the United Nations High Commissioner for Human Rights signed an Agreement for the establishment of an Office in Mexico.

² See http://hchr.org.mx/images/doc_pub/20180315_DobleInjusticia_InformeONUDHInvestigacionAyotzinapa.pdf

³ Inter-American Commission on Human Rights, Resolution 28/2014, Precautionary Measure 409. Students from the “Raúl Isidro Burgos” rural school in (State of Mexico), 3 October 2014. See <http://www.oas.org/es/cidh/decisiones/pdf/2014/MC409-14-ES.pdf>, Last access on 26 February 2018.

⁴ Claudia Paz y Paz, Ángela Buitrago, Francisco Cox, Carlos Beristain and Alejandro Valencia.

been incinerated in Cocula. The GIEI also indicated that the injuries of at least 17 persons⁵ detained as suspects in the case, based on medical documents in the judicial file, were consistent with acts of torture or ill treatment. It also pointed out irregularities in the steps which led to the discovery on 29 October at San Juan River of the remains of the identified student. Finally, the GIEI made recommendations urging the authorities, *inter alia*, to follow other lines of investigation.

Following the end of the GIEI's mandate, the Government of Mexico and the IACHR agreed to establish a Follow-Up Mechanism to the Ayotzinapa Case, Precautionary Measure 409/14, granted in connection to the students of the Normal School "Raúl Isidro Burgos", of Ayotzinapa. Since the publication of the final report of the GIEI, the Government has repeatedly made assurances that it was indeed following the other lines of investigation recommended by the experts.

Role of the Office of the United Nations High Commissioner for Human Rights

OHCHR has closely followed this emblematic case from the outset, maintaining a steady dialogue not only with relevant authorities but also with the victims of the events of 26-27 September 2014, their legal representatives, the Inter-American Commission on Human Rights, the GIEI, the Follow-up Mechanism and the National Human Rights Commission.

As OHCHR is not a jurisdictional body, it does not gather, process or analyse evidence⁶ aimed at establishing individual criminal responsibilities, which is the task of investigative and judicial authorities. OHCHR's methodology consists of gathering, verifying and analysing information received and/or collected based on the principles of relevance, reliability and diversity of information sources, credibility, preciseness and consistency of the information with other independent sources as well as the contextual analysis of the information received. The analysis of this information in its entirety may provide OHCHR with grounds to believe, with reasonable certainty, that particular events have taken place. In other words, its monitoring of a human rights situation or case allows OHCHR to ascertain, based on reasonable grounds, whether a human rights violation has been committed or not.

On several occasions, the OHCHR Mexico Representative and other staff members of the Office in Mexico met with the families of the 43 disappeared students and expressed their support to the victims of the events of 26-27 September 2014 and the civil society organizations working on the case. The High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, also met victims and their representatives on 5 October 2015, during his visit to Mexico, conveying the same message⁷. On numerous occasions, including during the High Commissioner's visit, OHCHR has publicly urged the authorities to carry out a thorough and impartial investigation in order to guarantee truth and justice to all victims.

⁵ First report of the GIEI, see www.oas.org/es/cidh/actividades/giei/GIEI-InformeAyotzinapa1.pdf, pages 200-205. Last access on 26 February 2018.

Second report of the GIEI, see www.oas.org/es/cidh/actividades/giei/GIEI-InformeAyotzinapa2.pdf, page 406. Last access on 26 February 2018.

⁶ Neither does OHCHR carry out forensic exams, such as the Istanbul Protocol.

⁷ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16578>. Last access on 26 February 2018.

OHCHR has carried out its own documentation of the case, with particular focus on human rights violations committed in the course of the first stages of the investigation from September 2014 to January 2016. This has been done through an in-depth review of certain aspects of the judicial files and case proceedings and through interviews with victims of the events of 26-27 September 2014, detainees, witnesses, lawyers and relevant authorities.

OHCHR repeatedly communicated concerns related to alleged human rights violations to the authorities, starting in early 2015. Moreover, on 6 September 2016, OHCHR sent a formal communication relaying such concerns to the Internal Oversight Office of the OAG (*Visitaduría General*), i.e., the internal investigating authority mandated to address irregularities committed by OAG staff members in the case.

Several United Nations human rights mechanisms (including the Working Group on enforced or involuntary disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment) also publicly expressed their concern regarding the case on several occasions⁸. In February and July 2015, Special Procedures mandate holders sent letters to the Mexican State relating to 13 cases of alleged acts of torture, arbitrary detention and other human rights violations in the Ayotzinapa case⁹. On 10 October 2014, the Committee on Enforced Disappearances issued urgent actions¹⁰ 18-60/2014 relating to the disappearance of the students¹¹.

Scope and objectives of this the report

The report focuses on several key aspects of the first stages¹² of the investigation into the Ayotzinapa case, examining them in light of the applicable human rights standards. While some of these issues have been highlighted by the GIEI, this report aims at shedding further light on several of these aspects.

First, the report focuses on allegations of arbitrary detention and torture of individuals prosecuted in the case. OHCHR examined information relating to 63 persons, out of 129 people prosecuted in relation to the events that occurred on the night of 26 to 27 September in Iguala. In 51 cases, OHCHR gathered information indicating possible acts of torture. This report is based on the analysis of 34 of these cases where OHCHR has strong grounds to believe that torture, arbitrary detention and other human rights violations were committed.

Second, the report examines the case of one of the prosecuted individuals whose statement was used as the basis for the OAG to present the San Juan River as a crime scene.

⁸ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15155> and <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19883&LangID=>. Last access on 26 February 2018.

⁹ See [http://spdb.ohchr.org/hrdb/29th/Public - UA Mexico 25.02.15 \(1.2015\) Pro.pdf](http://spdb.ohchr.org/hrdb/29th/Public - UA Mexico 25.02.15 (1.2015) Pro.pdf) and [http://spdb.ohchr.org/hrdb/31st/public - UA Mexico 10.07.15 \(6.2015\) pro.pdf](http://spdb.ohchr.org/hrdb/31st/public - UA Mexico 10.07.15 (6.2015) pro.pdf). Last access on 26 February 2018.

¹⁰ These urgent appeals (or urgent actions) are used by the United Nations Human Rights Special Procedures to transmit information to a State regarding a violation which allegedly has been, is or will be committed. The aim is to ensure that governments concerned are informed, as quickly as possible, so that they can intervene to prevent, put an end to a reported human rights violation and ensure that the perpetrators are held accountable.

¹¹ See <http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIndex.aspx>, in particular “List of registered urgent actions”. Last access on 26 February 2018.

¹² From September 2014 to January 2016.

Third, the current report contains an assessment of the result of the internal investigation carried out by the OAG's Internal Oversight Office.

It should be emphasized that the report does not aim at presenting an alternative version of the whole case, and does not address the issue of who committed the enforced disappearance of the 43 students and other human rights violations perpetrated during the night of 26 to 27 September 2014. Neither does it analyse the investigation after January 2016.

By documenting human rights violations that occurred in the aforementioned stage of the investigation of the case, the report seeks to contribute to the search for truth and justice in the Ayotzinapa case and, more broadly, to the national agenda to fight against impunity, disappearances and torture in Mexico. A fundamental aim of the report is to support the transformative processes that the OAG is currently set to undergo.

MAIN FINDINGS

Human rights violations

Based on the analysis of the cases of 34 individuals (33 men and one woman) prosecuted in the case, OHCHR has solid grounds to believe that torture was committed against them, as well as other human rights violations, between September 2014 and January 2016. The judicial records provide ample evidence of these alleged human rights violations. In all the cases analysed by OHCHR, the individuals presented numerous physical injuries, certified by medical examinations, which are consistent with injuries resulting from torture. The findings following the reviews of the judicial records corroborate the statements of the 34 detainees interviewed by OHCHR.

The forms of torture identified by OHCHR are consistent with those reported for years by other international bodies in relation to Mexico, namely beatings, kicks, electric shocks, blindfolding, attempted asphyxia, sexual assault and various forms of psychological torture. In several cases, detainees were threatened that their female relatives would be raped.

In the 34 cases, OHCHR identified a consistent pattern of human rights violations and an almost uniform *modus operandi*:

- Arbitrary detention of suspects by federal authorities;
- Significant delays before formally presenting the persons before a public prosecutor of the OAG, thereby often placing them outside the protection of the law;
- Acts of torture occurring mostly in the first 48 hours following the arrest, with the intention of extracting information or a confession;

- Transfer of the detained persons to the Office of the Assistant Attorney-General for Special Investigations on Organized Crime (SEIDO), followed by continued acts of torture with the aim of obtaining a formal statement before a public prosecutor. Some of the self-incriminating statements obtained under torture were used as the basis for the accusation against the detainees, as well as in indictments against other individuals.

The officials involved in this process include staff of the OAG – mainly from SEIDO and the Criminal Investigation Agency – as well as personnel of the Federal Police and the Mexican Navy.

OHCHR found that all the cases of human rights violations it documented occurred after 5 October 2014, namely after the OAG took over the investigation from the Office of the Attorney-General of the State of Guerrero. To date, OHCHR has not received any information regarding allegations of torture during the subsequent detention of the suspects in federal prisons.

During the first stages of the investigation, further cases of human rights violations continued occurring even after well-founded complaints had been filed by the detained suspects. Indeed, in at least one case, human rights violations were committed after information regarding allegations was transmitted by OHCHR and United Nations human rights mechanisms to relevant authorities.

Implausible justifications regarding human rights violations

The report reveals a consistent pattern of implausible and easily refutable justifications of the documented delays in presenting the detained persons before the public prosecutor of the OAG.

OHCHR has documented an equally consistent pattern of implausible and self-contradictory justifications in the judicial record which seek to “explain” the causes of injuries sustained by the detained persons – and what appear to be signs of torture – referring for instance to “self-inflicted harm”, injuries from “days prior to the arrest”, “alcohol intoxication” or “falls” in what appear to be clear signs of torture and other human rights violations. In 26 of the 34 cases analysed by OHCHR, the arrest report states that arrests were carried out without the need to resort to force. However, in all these cases, subsequent medical examination reports provide evidence of injuries.

Finally, there is a series of self-incriminating statements made “freely and spontaneously” by the detained persons before arresting officers. Their supposed voluntary character appears incompatible with the injuries certified in the medical examinations of the detainees.

Judicial proceeding at the San Juan River and its implications

OHCHR concluded that the judicial proceeding carried out on 28 October 2014 at the San Juan River was conducted in violation of due process and judicial guarantees. OHCHR has reasonable grounds to believe that a detainee, Agustín García Reyes (one of the 34 cases documented by OHCHR) was also arbitrarily detained and tortured before the judicial proceeding. It is also documented that he was taken to the San Juan River without due registration, where he was

interrogated, without the presence of his attorney, by the former Director of the Criminal Investigation Agency of the OAG, although the latter did not have the legal mandate to do so.

In this case, the implications go well beyond the findings on torture, arbitrary detention and other violations against Agustín García Reyes. The San Juan River proceeding is of fundamental importance for the Ayotzinapa case as a whole because it constitutes a key element of the version publicly presented by the OAG on 27 January 2015, particularly regarding the identity of the alleged perpetrators and the whereabouts of the 43 forcibly disappeared students.

In this context, OHCHR highlights the absence, in the judicial records, of any mention of the legal basis under which the proceedings were carried out that day, the inaccurate registration and management of the chain of custody of evidence supposedly found in the river, and the false claim by the former Director of the Criminal Investigation Agency of the OAG that OHCHR staff and the Argentine Forensic Anthropology Team were present at the San Juan River proceedings.

Institutional response

OHCHR found that there was, on the part of the Internal Oversight Office of the OAG, a genuine institutional effort to investigate and determine the possible legal responsibilities of certain public officials involved in the investigation of the case. In August 2016, these efforts materialized in a draft resolution which determined these responsibilities. This internal investigation was subsequently thwarted by the replacement of the public officials committed to this effort. The preliminary conclusions of the internal investigation were modified, diluting responsibilities and maintaining impunity for the committed violations.

Based on the result of the internal oversight investigation and the insufficient information provided by the Specialized Unit on Investigations of Torture of the OAG on the state of investigations regarding possible acts of torture, OHCHR considers that human rights violations committed within the first stages of the Ayotzinapa investigation have not been diligently addressed. At the time of finalizing this report, OHCHR had not received any information regarding any prosecution of those responsible for such human rights violations, although some of these took place three years ago. Furthermore, the evidence obtained through acts of torture has not been excluded as valid evidence by judicial authorities, despite the number of elements indicating that such acts had been committed.

General conclusion

The findings demonstrate the need for renewed action by the authorities, in particular those in charge of investigations, to avoid an institutional practice of acts of torture being committed, tolerated and covered up. If acts of torture and other human rights violations are not investigated and punished, and evidence obtained through torture is not excluded, this affects not only the rights of those being prosecuted, but also the right to truth and justice of the victims of the events of 26-27 September 2014.

RECOMMENDATIONS TO THE MEXICAN STATE

Based on the findings presented in this report, OHCHR sets forth the following recommendations (not excluding other actions which the authorities might consider relevant):

To the Office of the Attorney-General

1. Conduct investigations, within a reasonable time limit, and identify those responsible for the arbitrary detentions, acts of torture and other human rights violations described in this report.
2. Incorporate the methodology of context analysis into the investigation of human rights violations in order to accurately identify patterns and responsibilities of hierarchical superiors.
3. Ensure that detention records include reliable, accurate and exhaustive information regarding the circumstances of the detention; investigate and hold accountable any person responsible for not duly registering arrests or for registering information that does not correspond to the facts.
4. Ensure that the investigations of the human rights violations committed in the context of the Ayotzinapa case are conducted in a transparent manner, allowing full access to information by all victims, their relatives and representatives, and the National Human Rights Commission.

To the Internal Oversight Office and the Special Prosecutor for Investigations of Federal Offences of the Office of the Attorney-General

5. Conduct exhaustive investigations to determine the criminal and administrative responsibility of officials, with due diligence, independence and within a reasonable time limit considering the information contained in this report. Such investigations should take into account the responsibility of the hierarchical superiors of perpetrators, as well as all possible cover-up activities which have enabled impunity.

To judicial authorities and the Office of the Attorney-General

6. In accordance with the provisions of the General Law on Torture and international standards, exclude or declare null and void any evidence when there are credible grounds indicating that it has been obtained under torture.
7. Guarantee the incorporation of appraisals and evaluations, including those based on the Istanbul Protocol, carried out by forensic experts independent of the OAG (such as the National Human Rights Commission, the Federal Judicial Council and civil society organizations).
8. Promote and implement the necessary measures to strengthen the independence and capabilities of federal public defenders, in particular those assigned to SEIDO.

9. Adopt measures to guarantee the right to due process of the prosecuted persons, in particular regarding their access to judges and public defenders in the case.

To the Executive Commission for Assistance to Victims

10. Design and implement a comprehensive reparation and rehabilitation policy for victims of torture, with a special emphasis on victims who are deprived of their liberty.

To the Executive Branch

11. Implement the recommendation of the High Commissioner for Human Rights on the creation of an Advisory Council to combat impunity¹³. This Council should propose strategies and reforms to strengthen the capacities of the State to investigate and to sanction perpetrators, and support initiatives aimed at reforming the investigative judicial structures.

To the Legislative Branch

12. Adopt constitutional reforms and the corresponding Organic Law to effectively guarantee the independence, autonomy and professionalism of the Office of the Attorney-General (*Fiscalía*), including internal oversight bodies and accountability processes.

To the Executive and the Legislative Branch

13. Design and implement the National Programme to Prevent and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (under the terms established by the General Law in this area) to effectively contribute to the eradication of torture as a method of investigation.
14. Create a multidisciplinary national forensic sciences institution¹⁴ with the aim of providing an independent service to all organs of administration of justice, including the courts, law enforcement authorities as well as to victims and legal representatives.

To all three levels of Government

15. Refrain from and condemn any incriminating, degrading or disqualifying statements regarding victims of human rights violations, the organizations representing or accompanying them and, in general, any person promoting the eradication of torture in Mexico; as well as against public officials who have participated in the investigations of human rights violations that occurred in the Ayotzinapa case, diligently fulfilling their duties.

¹³ OHCHR, Recommendations to Mexico of the United Nations High Commissioner for Human Rights, Zeid Ra'ad Al Hussein, following up on his official visit to Mexico, in October 2015, Recommendation no. 1. See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20719&LangID=E>. Last access on 26 February 2018.

¹⁴ *Ibid*, Recommendation number 6.