Law and Business Review of the Americas

Volume 21 | Number 3 Article 4

2015

Ya Me Canse: How the Iguala Mass Kidnapping Demonstrates Mexico's Continued Failure to Adhere to Its International Human Rights Obligations

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Recommended Citation
Justin A. Behravesh, *Ya Me Canse: How the Iguala Mass Kidnapping Demonstrates Mexico's Continued Failure to Adhere to Its International Human Rights Obligations*, 21 LAW & BUS. REV. AM. 291 (2015)
https://scholar.smu.edu/lbra/vol21/iss3/4

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"YA ME CANSE"[1]: HOW THE IGUALA MASS KIDNAPPING DEMONSTRATES MEXICO'S CONTINUED FAILURE TO ADHERE TO ITS INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

*Justin A. Behravesh**

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1. In a press conference following the kidnapping, Mexico's Attorney General Jesus Murillo Karam put an end to questioning by stating "ya me canse," which is Spanish for "enough I'm tired." *See* Associated Press, *'I've had enough,' says Mexican attorney general in missing students gaffe*, THE GUARDIAN (Nov. 8, 2014, 10:33 PM), http://www.theguardian.com/world/2014/nov/09/protests-flare-in-mexico-after-attorney-generals-enough-im-tired-remarks/. "Ya me canse" subsequently became the rally cry for protestors in Mexico. *See id.* In February 2015, it was announced that Murillo Karam would resign from his position as Attorney General of Mexico, "following months of blistering criticism that he bungled the investigation" of the Iguala Mass Kidnapping. Tracy Wilkinson, *Mexico's embattled attorney general stepping down*, L.A. TIMES (Feb. 27, 2015, 9:54 AM), http://www.latimes.com/world/mexico-americas/la-fg-mexico-attorney-general-quits-20150227-story.html.

* Law Clerk, United States District Court, Southern District of California. This article is dedicated to the brave young men who lost their lives in the Iguala Mass Kidnapping.

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I. INTRODUCTION

ON September 26, 2014, college students gathered in the town of Iguala, Mexico, located in the state of Guerrero, to protest teacher-hiring practices that they viewed as discriminatory.[2] When José Luis Abarca (Abarca), the mayor of Iguala, learned that these protests might interfere with a speech being given by his wife, María de los Ángeles Pineda Villa (Pineda Villa), he told Iguala police to "teach the[ ] [students] a lesson."[3] Iguala police responded to these orders by attacking the students with gunfire, killing six people,[4] including three of the students,[5] and injuring twenty-five others.[6] Forty-three students went missing for several weeks[7] after being taken into police custody.[8] Tragically, these missing students appear to have been killed by drug gangs at a garbage dump, their bodies then set ablaze.[9] Forensic testing confirmed that a bone fragment found at the dump belonged to one of the missing

2. *See Mexican students missing after protest in Iguala*, BBC NEWS (Sept. 29, 2014), http://www.bbc.com/news/world-latin-america-29406630 ("The students from the Ayotzinapa teacher training college were protesting against what they say are discriminatory hiring practices for teachers which favour urban students over rural ones."). Although there have been subsequent factual revelations between the time of writing this article and the time of publication, none materially affect my ultimate conclusion. As a result, for the purposes of this article, I assume the facts as they were known to the public in March 2015.
3. Randal C. Archibold, *Investigators in Mexico Detain Mayor and His Wife Over Missing Students*, N.Y. TIMES (Nov. 4, 2014), http://www.nytimes.com/2014/11/05/world/americas/Iguala-mayor-wife-missing-students-mexico.html?_r=0. Jesus Murillo Karam, the former Attorney General of Mexico, stated during a press conference that police officers indicated they were told to stop the students "'on the mayor's orders.'" *Missing Mexico students: Iguala mayor 'ordered attack'*, BBC NEWS (Oct. 23, 2014), http://www.bbc.com/news/world-latin-america-29732720.
4. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
5. Gail Sullivan, *Charred bodies found in 'the land of the wicked' may be missing Mexican students*, WASH. POST (Oct. 6, 2014), http://www.washingtonpost.com/news/morning-mix/wp/2014/10/06/charred-bodies-found-in-the-land-of-the-wicked-may-be-missing-mexican-students/.
6. Ludovica Laccino, *Mexico's 43 Missing Students: Theories Behind Mysterious Disappearance*, INT'L BUS. TIMES (Oct. 22, 2014, 3:43 PM), http://www.ibtimes.co.uk/mexicos-43-missing-students-theories-behind-mysterious-disappearance-1471291.
7. Carrie Kahn, *In Mexico, Protests Over Missing 43 Students Continue*, NPR (Nov. 14, 2014, 4:23 PM), http://www.npr.org/2014/11/14/364138347/in-mexico-protests-over-missing-43-students-continue.
8. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
9. Randal C. Archibold, *Drug Gang Killed Students, Mexican Law Official Says*, N.Y. TIMES (Nov. 7, 2014), http://www.nytimes.com/2014/11/08/world/americas/drug-gang-killed-students-mexico-law-official-says.html?_r=0.

students.[10] The government later declared the remaining students dead.[11] Abarca and Pineda Villa became fugitives on September 28, 2014,[12] but were detained on November 4, 2014.[13]

Under Article One of the International Convention for the Protection of All Persons from Enforced Disappearance (the Convention), "[n]o one shall be subjected to enforced disappearance."[14] Ratifying nations additionally have an obligation under Article Six to "take the necessary measures to hold criminally responsible . . . [a]ny person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance."[15] Moreover, under article twenty-three, "[e]ach State Party shall ensure that the training of law enforcement personnel . . . includes the necessary education and information regarding the relevant provisions of this Convention, in order to . . . [p]revent the involvement of such officials in enforced disappearances."[16] Article Twenty-Three further requires States Parties to ensure that government officials with knowledge of an enforced disappearance report that information to appropriate authorities.[17]

Mexico became a State Party to the Convention on March 18, 2008.[18] Despite Mexico's ratification of the Convention, however, enforced disappearances remain a significant problem in the country.[19] Forty-three college students' disappearance and subsequent murder in September 2014 (the Iguala Mass Kidnapping) marks the latest example of this epidemic in Mexico. Using the Iguala Mass Kidnapping as a case study, this article addresses how Mexico is failing to meet its international human rights obligations under the Convention. Part II provides background on

10. Tim Johnson, *A charred eye socket provides proof that 43 missing Mexico students are dead*, MCCLATCHY DC NEWS (Dec. 7, 2014), http://www.mcclatchydc.com/news/nation-world/world/latin-america/article24777175.html.
11. Eyder Peralta, *Mexico Officially Declares 43 Missing Students Dead*, NPR (Jan. 28, 2015, 9:49 AM), http://www.npr.org/blogs/thetwo-way/2015/01/28/382103750/mexico-officially-declares-43-missing-students-dead.
12. *Fugitive Mexican mayor detained by police*, AL JAZEERA (Nov. 4, 2014, 3:38 PM), http://www.aljazeera.com/news/americas/2014/11/fugitive-mexican-mayor-detained-police-201411412363398559.html.
13. *Mexican Authorities Unable to Charge Iguala Mayor and His Wife*, TELESUR (Jan. 8, 2015), http://www.telesurtv.net/english/news/Mexican-Authorities-Unable-to-Charge-Iguala-Mayor-and-His-Wife-20150108-0026.html.
14. Convention for the Protection of All Persons from Enforced Disappearance art. 1.1, *adopted* Dec. 20, 2006, 61 U.N.T.S. 488 (entered into force Dec. 23, 2010) [hereinafter Convention].
15. *Id.* art. 6.1(a).
16. *Id.* art. 23.1(a).
17. *Id.* art. 23.3.
18. *International Convention for the Protection of All Persons from Enforced Disappearance, Chapter IV Human Rights: 16*, UNITED NATIONS TREATY COLLECTION, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-16&chapter=4&lang=en (last visited Feb. 8, 2015).
19. *See Mexico: Thousands missing in drugs war says CNDH*, BBC NEWS (Apr. 3, 2011), http://www.bbc.co.uk/news/world-latin-america-12948840 ("Mexico's human rights commission, CNDH, said 5,397 people had been reported missing since President Felipe Calderon declared war on the drug cartels.").

the Convention and highlights three of its particularly relevant articles: one, six, and twenty-three. Part III addresses Mexico's compliance with the Convention prior to the Iguala Mass Kidnapping. Part IV gives factual background on the Iguala Mass Kidnapping, including the protests by the students that led to their attack, the attack itself, the students' subsequent kidnapping, and the arrests of and charges against Abarca and Pineda Villa. Part V discusses how the Iguala Mass Kidnapping violated articles one, six, and twenty-three of the Convention. Part VI outlines three recommendations for the Mexican government on how to handle the Iguala Mass Kidnapping and prevent similar atrocities from occurring in the future. Part VII concludes the article with a plea to the Mexican government to take immediate action to show the international community that it is ready to comply with the Convention's mandates.

At the outset, however, it is necessary to express the narrow purpose of my research. The goal of this article is to address the specific failures of Mexico's *government* in preventing, investigating, and prosecuting enforced disappearances, per its obligations under the Convention. In no way whatsoever should this article be interpreted as condemning the *people* of Mexico. To the contrary, I have had the tremendous privilege of living only a few miles from the United States-Mexico border for the last three years, and have had the enormous pleasure of taking two surfing trips to Mexico. During both trips, I was charmed by Mexico's warm people, enamored by its beautiful landscape, and overwhelmed by its delicious and inexpensive cuisine. Mexico remains a wonderful place to visit, particularly for surfers.[20] Yet despite Mexico's status as a premier surf destination, human rights violations perpetrated by the government regrettably continue to be a prevalent phenomenon there. Thus, while remaining inspired by the cultural and geographic offerings of Mexico, this article's sole purpose is to highlight the continued failings of the Mexican government to adhere to its international human rights obligations.[21]

II. THE INTERNATIONAL CONVENTION FOR THE PROTECTION OF ALL PERSONS FROM ENFORCED DISAPPEARANCE

To provide background on how the Iguala Mass Kidnapping violated Mexico's obligations under the Convention, this section addresses the

20. *See, e.g.*, MIKE PARISE, THE SURFER'S GUIDE TO BAJA 3 (2d ed. 2005) ("I can't tell you how many times I've driven up to perfect point breaks that everyone knows only to see an empty lineup. . . . The fact is, most of Baja is unsurfed most of the time . . . . [a]nd it probably will stay uncrowded for a while."); *see also* ALLAN C. WEISBECKER, IN SEARCH OF CAPTAIN ZERO: A SURFER'S ROAD TRIP BEYOND THE END OF THE ROAD (2001) (telling the phenomenal true story of one surfer's road trip through parts of Latin America, beginning in Mexico).

21. Moreover, it would be impossible to have an open dialogue about international human rights without being able to value and respect cultural differences. I am indebted to my partner Jes, whose family comes in part from Mexico, for providing me with this insight during my writing process.

Convention in depth and pays special attention to those articles that Mexico violated through the incident: One, Six, and Twenty-three.

A. The History of the Convention

In 1978, during the thirty-third session of the United Nations (U.N.) General Assembly,[22] the General Assembly indicated its deep concern about global reports on involuntary disappearances of individuals at the hands of law enforcement.[23] The General Assembly thus requested that the Commission on Human Rights (the Commission)[24] "consider the question of disappeared persons with a view to making appropriate recommendations."[25] This resolution has been noted as "the first instance in which the General Assembly moved away from the country-specific approach that prevailed up until 1978, instead approaching the phenomenon of disappearances as a universal and distinct issue."[26] Subsequently, in 1992, the forty-seventh session of the General Assembly proclaimed the "Declaration on the Protection of All Persons from Enforced Disappearance" (the Declaration).[27] This resolution was passed out of concern

> that in many countries, often in a persistent manner, enforced disappearances occur, in the sense that persons are arrested, detained or abducted against their will or otherwise deprived of their liberty by officials of different branches or levels of Government, or by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence of the Government, followed by a refusal to disclose the fate or whereabouts of the persons concerned or a refusal to acknowledge the deprivation of their liberty, which places such persons outside the protection of the

22. The General Assembly "is the main deliberative, policymaking and representative organ of the U[.]N." *About the General Assembly*, General Assembly of the United Nations, http://www.un.org/en/ga/about/index.shtml (last visited Jan. 11, 2015). All 193 U.N. members, including Mexico, participate in the General Assembly. *Home*, General Assembly of the United Nations, http://www.un.org/en/ga/ (last visited Jan. 11, 2015); *Members of the United Nations*, United Nations, http://www.un.org/en/members/ (last visited Jan. 11, 2015). Every country in the General Assembly has one vote. *About the General Assembly*, *supra*. While some General Assembly decisions require just a majority vote, other more important decisions require a two-thirds majority vote. *Id.*

23. G.A. Res. 33/173, U.N. Doc. A/RES/33/173 (Dec. 20, 1978).

24. Fifty-three Member States comprised the Commission, which "was established in 1946 to weave the international legal fabric that protects our fundamental rights and freedoms." *Commission on Human Rights*, OHCHR, http://www2.ohchr.org/english/bodies/chr/ (last visited Jan. 11, 2015). The Commission was replaced by the Human Rights Council in 2006. *United Nations Human Rights Council*, OHCHR, http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx (last visited Jan. 11, 2015); *Commission on Human Rights*, *supra*.

25. G.A. Res. 33/173, *supra* note 23, ¶ 2.

26. Nikolas Kyriakou, *The International Convention for the Protection of All Persons from Enforced Disappearance and Its Contributions to International Human Rights Law, with Specific Reference to Extraordinary Rendition*, 13 Melb. J. Int'l L. 424, 433 (2012).

27. Declaration on the Protection of All Persons from Enforced Disappearance, G.A. Res. 47/133, U.N. Doc. A/RES/47/133 (Dec. 18, 1992) [hereinafter *Declaration*].

law.[28]

The General Assembly opined that "enforced disappearance undermines the deepest values of any society committed to respect for the rule of law, human rights and fundamental freedoms, and that the systematic practice of such acts is of the nature of a crime against humanity."[29] Seeking to create a document that would set standards for preventing and punishing enforced disappearances,[30] the drafters of the Declaration ultimately set forth twenty-one articles.[31] Notably, Articles One and Six of the Convention loosely resemble Articles One and Six of the Declaration.[32]

In 2003, the Commission created an "Inter-sessional Open-ended Working Group to elaborate a draft legally binding normative instrument for the protection of all persons from enforced disappearance."[33] The Convention was drafted over the course of three years, with participation by more than seventy states in the working group sessions.[34] The Human Rights Council[35] (the Council) adopted the Convention on June 29, 2006,[36] and the General Assembly subsequently adopted the Convention on December 20, 2006.[37] The Convention was opened for signature on February 6, 2007 in Paris, France.[38] On that date, fifty-seven countries signed the Convention.[39] Mexico was one of them.[40]

---

28. *Id.* preamble.
29. *Id.*
30. The Declaration states:
    > [W]hile the acts which comprise enforced disappearance constitute a violation of the prohibitions found in the [other] international instruments, it is none the less important to devise an instrument which characterizes all acts of enforced disappearance of persons as very serious offen[s]es and sets forth standards designed to punish and prevent their commission.

    Id. Other relevant international treaties mentioned in the Declaration include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. *Id.*
31. *See id.*
32. *Compare* Convention, *supra* note 14, arts. 1, 6, *with* Declaration, *supra* note 27, arts. 1, 6.
33. *The Working Group and the Committee on Enforced Disappearance*, OHCHR, http://www.ohchr.org/EN/Issues/Disappearances/Pages/WGInternationalConvention.aspx (last visited Jan. 11, 2015).
34. *Id.*
35. "The Human Rights Council is an inter-governmental body within the United Nations system responsible for strengthening the promotion and protection of human rights around the globe and for addressing situations of human rights violations and make recommendations on them." *United Nations Human Rights Council*, *supra* note 24. Forty-seven Member States of the United Nations comprise the Human Rights Council. *Id.*
36. *See* H.R.C. Res. 1/1, U.N. Doc. A/HRC/RES/1/1 (June 29, 2006).
37. *See* G.A. Res. 61/177, U.N. Doc. A/RES/61/177 (Dec. 20, 2006).
38. *The Working Group and the Committee on Enforced Disappearance*, *supra* note 33.
39. *See International Convention for the Protection of All Persons from Enforced Disappearance*, *supra* note 18.
40. *Id.*

On December 23, 2010, the Convention went into effect[41] and became what has been called "the first legally binding universal instrument that creates an autonomous and non-derogable right not to be subjected to enforced disappearance."[42] The Committee on Enforced Disappearances (the Committee) was also created.[43] The Committee is a "body of independent experts that monitors implementation of the Convention by the States Parties."[44] Specifically, all States parties are obliged to submit reports to the Committee on how the rights are being implemented. States must report within two years of ratifying the Convention. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations[."][45] The Committee meets twice annually.[46]

B. General Provisions of the Convention

In addition to the three specific articles of the Convention that this article addresses, some general information about the Convention is helpful to lay a framework for the purpose and design of the instrument. The Convention contains forty-five articles, spanning a total of seventeen pages.[47] The preamble to the Convention indicates that States Parties to the Convention are "[*a*]*ware* of the extreme seriousness of enforced disappearance, which constitutes a crime and, in certain circumstances defined in international law, a crime against humanity."[48] Article Two of the Convention defines "enforced disappearance" as

> the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State,

41. *The Working Group and the Committee on Enforced Disappearance*, *supra* note 33.
42. Marthe Lot Vermeulen, Enforced Disappearance: Determining State Responsibility under the International Convention for the Protection of All Persons from Enforced Disappearance 28 (School of Human Rights Research Series, Vol. 51, 2012). The precise methods by which the Convention is legally binding on States Parties are beyond the scope of this article but, generally speaking, "[o]n the basis of the several procedures available to the [Committee on Enforced Disappearances], the implementation and compliance of the States Parties can be monitored. In particular, through the optional complaint procedures, States Parties may be held responsible for concrete cases of enforced disappearance." *Id.* at 30.
43. *The Working Group and the Committee on Enforced Disappearance*, *supra* note 33.
44. *Committee on Enforced Disappearances*, OHCHR, http://www.ohchr.org/EN/HRBodies/CED/Pages/CEDIntro.aspx (last visited Jan. 11, 2015). Under the Convention, "[t]he Committee shall consist of ten experts of high moral character and recognized competence in the field of human rights, who shall serve in their personal capacity and be independent and impartial." Convention, *supra* note 14, art. 26.1. Committee members are selected through election by States Parties and serve four-year terms. *Id.* arts. 26.1, 26.4.
45. *Committee on Enforced Disappearances*, *supra* note 44.
46. *Committee on Enforced Disappearances*, *supra* note 44.
47. *See* Convention, *supra* note 14, arts. 1–44.
48. *Id.* preamble.

> followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.[49]

Article Two's definition notably includes an element of sanctioning or assent by the state as a necessary component.[50] The Convention also provides, under article four, that every State Party must "take the necessary measures to ensure that enforced disappearance constitutes an offen[s]e under its criminal law."[51] Article Five goes on to state that enforced disappearances are a crime under international law.[52] States Parties additionally have an obligation under Article Twenty-Four to "take all appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains."[53]

Within two years of becoming a party to the Convention, States Parties have a reporting requirement to the Committee.[54] Specifically, states must submit "a report on the measures taken to give effect to its obligations under this Convention."[55] Upon considering this report, the Committee gives the reporting country "comments, observations or recommendations."[56] The State Party may then respond to the Committee's feedback.[57] As discussed below, Mexico's State Party Report to the Committee was comprehensive, but painted a deceptively positive picture of how the country is addressing its obligations under the Convention.[58]

C. Articles One, Six, and Twenty-Three

As discussed above, this article's focus is Mexico's violations of Articles One, Six, and Twenty-Three of the Convention through the Iguala Mass Kidnapping. Each of these provisions of the Convention is briefly outlined below.

1. Article One: The Absolute Prohibition on Enforced Disappearances

Article One of the Convention provides:

> 1. No one shall be subjected to enforced disappearance.
> 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification for enforced disappear-

49. *Id.* art 2.
50. *Id.*
51. *Id.* art. 4; *see also id.* art. 7.2.(a)–(b) (indicating that States Parties may establish both mitigating and aggravating circumstances for enforced disappearances under their penal codes).
52. *Id.* art. 5.
53. *Id.* art. 23.3.
54. *Id.* art 29.
55. *Id.* art. 29.1.
56. *Id.* art. 29.3.
57. *Id.* art. 29.3.
58. *See infra* Part III.B (discussing Mexico's purported compliance with articles two, six, and twenty-three, prior to the Iguala Mass Kidnapping).

ance.[59] Under the strict language of Article One, then, enforced disappearances are completely forbidden, without any excuse.[60] Consistent with this language, Mexico's 2014 State Party Report to the Committee referred to Article One as an "[a]bsolute prohibition of enforced disappearance."[61] As discussed below in Part V.A, the Iguala Mass Kidnapping constituted an enforced disappearance within the definition used in the Convention, and Mexico thus violated its Article One obligations through this atrocity.

2. Article Six: Criminal Responsibility

Under Article Six of the Convention:

1. Each State Party shall take the necessary measures to hold criminally responsible at least:

(a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;

(b) A superior who:

(i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;

(ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and

(iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution;

(c) Subparagraph (b) above is without prejudice to the higher standards of responsibility applicable under relevant international law to a military commander or to a person effectively acting as a military commander.

2. No order or instruction from any public authority, civilian, military or other, may be invoked to justify an offen[s]e of enforced disappearance.[62]

Similar to the language prohibiting excused enforced disappearances in Article One,[63] Article Six articulates that following orders is not a justification for enforced disappearance.[64] As discussed below in Part V.B, the

59. Convention, *supra* note 14, art. 1.1.–2.
60. *See id.*
61. Comm. on Enforced Disappearances, Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention, Reps. of States parties due in 2012, Mexico, at 15, U.N. Doc. CED/C/MEX/1 (Apr. 17, 2014) [hereinafter State Party Report].
62. Convention, *supra* note 14, art. 6.1.–2.
63. *See id.* art. 1.2
64. *Id.* art. 6.2.

Iguala Mass Kidnapping amounted to violations of three separate provisions of Article Six of the Convention.

3. *Article Twenty-Three: Training Requirements and Prohibition of Ordering Enforced Disappearances*

Article Twenty-Three of the Convention states:

> 1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
>
> (a) Prevent the involvement of such officials in enforced disappearances;
>
> (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
>
> (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
>
> 2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.
>
> 3. Each State Party shall take the necessary measures to ensure that the persons referred to in Paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.[65]

Article Twenty-Three thus creates an obligation on States Parties to train officials to prevent, investigate, and resolve enforced disappearances.[66] Additionally, like the prohibition against ordering enforced disappearances in Article Six,[67] Article Twenty-Three also prohibits officials from ordering enforced disappearances.[68] As discussed below in Part V.C, Mexico violated two separate subsections of Article Twenty-Three with the Iguala Mass Kidnapping.

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65. *Id.* art. 23.1–3.
66. *Id.* arts. 23.1.(a)–(c), 23.3. Failure to provide such trainings can constitute a violation of the Convention. *See* VERMEULEN, *supra* note 42, at 467 ("As training is included as one of the provisions of the [Convention], state responsibility can be determined if they fail to provide comprehensive training programmes on a regular basis.").
67. *See* Convention, *supra* note 14, art. 6.1.(a)–(b)(ii).
68. *Id.* art. 23.2.

III. MEXICO'S COMPLIANCE WITH THE CONVENTION PRIOR TO THE IGUALA MASS KIDNAPPINGS

To give context to Mexico's adherence to the Convention when the Iguala Mass Kidnapping took place, this section discusses the extent to which Mexico complied with the Convention before September 2014. This section focuses on the period between February 6, 2007, the day Mexico signed the Convention,[69] and September 26, 2014, the day the forty-three students went missing.[70]

Mexico ratified the Convention on March 18, 2008.[71] Since then, two significant events have happened regarding Mexico's relationship to the Convention prior to the Iguala Mass Kidnapping. First, in March 2011, the Working Group on Enforced or Involuntary Disappearances (the "Working Group") conducted a visit to Mexico,[72] and subsequently produced a report on their findings (the Working Group Report).[73] Second, on March 11, 2014, Mexico filed its first report on how the country is implementing the Convention.[74] Both of these important events are discussed below.

A. THE WORKING GROUP'S VISIT TO MEXICO AND SUBSEQUENT REPORT

From March 18 to March 31, 2011, the Working Group visited Mexico "to learn about Mexico's efforts in dealing with the issue of enforced disappearances."[75] The Working Group was especially interested in assessing "the status of the investigations of old and recent cases, steps taken to prevent and eradicate enforced disappearances, what is being done to combat impunity,[76] and other issues, including matters concerning truth,

69. *See International Convention for the Protection of All Persons from Enforced Disappearance*, *supra* note 18.
70. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
71. *See International Convention for the Protection of All Persons from Enforced Disappearance*, *supra* note 18. As of January 2015, forty-four nations have become States Parties to the Convention. *See Status of Ratification Interactive Dashboard*, OHCHR, http://indicators.ohchr.org/ (last visited Jan. 17, 2015) (with "International Convention for the Protection of all Persons from Enforced Disappearance" selected). An additional fifty-five countries have signed the Convention. *See id.*
72. *United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico*, OHCHR (Mar. 31, 2011), http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=10907&LangID=E. Country visits are conducted only by invitation of a State Party. *Working Group on Enforced or Involuntary Disappearances-Country visits*, OHCHR, http://www.ohchr.org/EN/Issues/Disappearances/Pages/Visits.aspx (last visited Feb. 7, 2015). At the time of writing this article, the Working Group had conducted twenty-six country visits. *See id.*
73. *See* H.R.C. Rep. of the Working Group on Enforced or Involuntary Disappearances, Addendum, Mission to Mexico, U.N. Doc. A/HRC/19/58/Add.2; 19th Sess. (Dec. 20, 2011) [hereinafter Working Group Report].
74. *See* State Party Report, *supra* note 61.
75. *United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico*, *supra* note 72.
76. Impunity is defined as "[e]xemption from punishment; immunity from the detrimental effects of one's actions." 876 BLACK'S LAW DICTIONARY (10th ed. 2014).

justice and reparations for victims of enforced disappearances."[77] The Working Group Report centered on two time periods in Mexico's history, "during which a great number of enforced disappearances took place."[78] The first time period was the "Dirty War," from the late 1960's to early 1980's.[79] Without minimizing the atrocities that took place during the "Dirty War,"[80] the focus of this article is the second time period of the Working Group Report, "the current security situation in which multiple cases of enforced disappearance have been and continue to be reported."[81] It is significant to note, however, that the Working Group Report indicated that these two time periods have similar patterns, including "widespread impunity, withholding of the whole truth and lack of reparation for the victims."[82]

1. Inadequacies of the Legislative Framework in Mexico

The Working Group Report began by addressing some of the difficulties with the current legislative framework in Mexico that creates problems with adherence to the Convention.[83] The Working Group Report first noted that as of 2001, enforced disappearance has been a crime under Mexico's Código Penal Federal (the Federal Criminal Code).[84] Specifically, under Article 215-A of the Federal Criminal Code, "[a] public servant who—regardless of whether (s)he has participated in the legal or illegal detention of an individual or various individuals—helps to secure their secret detention or deliberately conceals information about it, commits the offen[s]e of an enforced disappearance."[85] As indicated in a February 2013 report by Human Rights Watch, however, there is an issue with this article in the Federal Criminal Code: it "only imposes criminal

77. *United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico*, *supra* note 72.
78. Working Group Report, *supra* note 73, ¶ 9.
79. *Id.* During the "Dirty War," "security forces carried out a policy of systematic prosecution against students, indigenous peoples, peasants, social activists and anyone suspected of being part of an opposition movement." *Id.* In this time period, "[t]he serious abuses committed included student massacres in 1968 and 1971 and the torture, execution and enforced disappearance of hundreds of dissidents and suspected sympathizers." *Id.*
80. *See supra* note 79.
81. Working Group Report, *supra* note 73, ¶ 9.
82. *Id.*
83. *See id.* ¶¶ 10–15.
84. *Id.* ¶ 13.
85. HUMAN RIGHTS WATCH, MEXICO'S DISAPPEARED: THE ENDURING COST OF A CRISIS IGNORED 129 (2013) [hereinafter Mexico's Disappeared] (citing Código Penal Federal [CPF] [Federal Criminal Code], *as amended*, art. 215-A, Diario Oficial de la Federación [DO], 25 de Enero de 2013 (Mex.)). The author is indebted to Human Rights Watch for their English translation of Article 215-A of the Federal Criminal Code. Although Human Rights Watch cites to the January 25, 2013 publication of the Federal Criminal Code, the language of article 215-A has not changed between that publication and the most recent publication of the Federal Criminal Code. *Compare* CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.), *with* CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 14 de Julio de 2014 (Mex.).

responsibility for enforced disappearances on 'public servants' who participate in or are aware of detentions."[86] Consistent with this interpretation, in addressing both Article 215-A of the Federal Criminal Code and state legislative provisions prohibiting enforced disappearances, the Working Group Report indicated that most of these legislative attempts "refer merely to acts committed by public officials and exclude the possibility that enforced disappearances may be perpetrated by organized groups or individuals acting on behalf of the Government or with its direct or indirect support, authorization or acquiescence."[87]

The Working Group Report also noted that the Federal Criminal Code definition of enforced disappearance is different than the one articulated in the Declaration.[88] For the purposes of this article, it is additionally important to note that the definition in the Federal Criminal Code is different from the one used in the Convention, which defines "enforced disappearance" as including "the arrest, detention, abduction or any other form of deprivation of liberty . . . by *persons or groups of persons acting with the authorization, support or acquiescence of the State.*"[89] In an attempt to address this inconsistency, "President Peña Nieto has repeatedly pledged to bring the definition of enforced disappearance in Mexico's federal law into full compliance with international standards."[90] Despite this pledge, the most current version of the Federal Criminal Code limits the offense of enforced disappearance to public servants.[91]

The Working Group Report additionally indicated that enforced disappearance had been made criminal by only eight of the thirty-two federal entities in Mexico.[92] As of March 2014, an additional eleven federal entities have made enforced disappearance an offense, bringing the total number of federal entities that prohibit enforced disappearance to nineteen,[93] alongside the federal prohibition against enforced disappear-

86. MEXICO'S DISAPPEARED, *supra* note 85, at 131.
87. Working Group Report, *supra* note 73, ¶ 13. In its February 2013 report on disappearances in Mexico, Human Rights Watch commented that, because of the limited definition in the Federal Criminal Code, "prosecutors could claim they have no authority to investigate or prosecute a whole subset of potential enforced disappearance cases recognized under international law." MEXICO'S DISAPPEARED, *supra* note 85, at 129.
88. Working Group Report, *supra* note 73, ¶ 13.
89. Convention, *supra* note 14, art. 2 (emphasis added).
90. MEXICO'S DISAPPEARED, *supra* note 85, at 131 (citing President Enrique Peña Nieto, *II Sesión Extraordinaria del Consejo Nacional de Seguridad Pública [Second Session of the National Public Security Council]*, MÉXICO, PRESIDENCIA DE LA REPÚBLICA (Dec. 17, 2012), http://www.presidencia.gob.mx/articulos-prensa/ii-sesion-extraordinaria-del-consejo-nacional-de-seguridad-publica/).
91. *See* CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 14 de Julio de 2014 (Mex.).
92. Working Group Report, *supra* note 73, ¶¶ 10, 13. At the time of the Working Group Report, the eight states that had made enforced disappearance criminal were: "Aguascalientes, Chiapas, Chihuahua, Durango, Federal District, Guerrero, Nayarit and Oaxaca." *Id.* ¶ 13.
93. *See* State Party Report, *supra* note 61, ¶ 75. Enforced disappearance is an offense "in the criminal codes of 17 of the country's states and in special laws in two of the states." *Id.* ¶ 20 (internal citations omitted). The federal entities that list enforced

ances in Article 215-A of the Federal Criminal Code.[94] The Working Group Report indicated, however, that "[t]he Federal Criminal Code and the legislation of the states which have classified enforced disappearance as an offen[s]e do not use the same definition, or the definition set out in the Declaration."[95] Moreover, and as mentioned above, most of these criminal codes do not account for the possibility of enforced disappearances occurring by private parties acting with the government's authority or encouragement.[96] As with the Federal Criminal Code, such limited definitions of enforced disappearance are additionally inconsistent with the definition in the Convention.[97]

Another issue with the various codifications of enforced disappearances across Mexico is that "[p]enalties vary according to the jurisdiction, and are not necessarily proportionate to the seriousness of the offen[s]e when compared with that of other offen[s]es such as abduction."[98] Perhaps even more troubling, though, were the Working Group's comments on the difficulties of enforcing existing laws on enforced disappearances.[99] The Working Group noted that, during its visit to Mexico,

> [t]he majority of Government officials, NGOs and victims of enforced disappearance highlighted the problem of the lack of vertical and horizontal coordination among Government authorities in the prevention and investigation of enforced disappearances and the search for disappeared persons. In the Working Group's meetings with the federal authorities, it was explained that some of the tasks

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disappearance in their criminal codes include: "Aguascalientes, Baja California, Campeche, Chihuahua, Coahuila, Colima, Durango, Federal District, Guanajuato, Hidalgo, Michoacán, Nayarit, Nuevo León, Oaxaca, Puebla, San Luis Potosí and Zacatecas." *Id.* ¶ 20 n.1. The federal entities that list enforced disappearance in their special laws are Guerrero and Chiapas. *Id.* ¶ 20 n.2. The Working Group opined that, in the federal entities where enforced disappearance is not an offense,

> enforced disappearances are treated like abuse of authority, unlawful aggravated deprivation of liberty, abuse of public authority, offen[s]e against justice, unlawful detention, abduction or a combination of these offen[s]es. However, either such offen[s]es do not have the necessary scope to encompass enforced disappearances or the severity of the penalty is inappropriate.

Working Group Report, *supra* note 73, ¶ 14. Though not a central point of discussion in this article, those thirteen federal entities that do not include enforced disappearance in their criminal codes arguably violate article four of the Convention, which mandates that "[e]ach State Party shall take the necessary measures to ensure that enforced disappearance constitutes an offen[s]e under its criminal law." Convention, *supra* note 14, art. 4.

94. *See* CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 14 de Julio de 2014 (Mex.).

95. Working Group Report, *supra* note 73, ¶ 13. In short, "[t]he inconsistencies in the definition of the crime of enforced disappearance with the Declaration and other relevant international instruments and the fact that the vast majority of the states have not yet criminalized enforced disappearances as an autonomous offense contribute to impunity." *United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico*, *supra* note 72.

96. Working Group Report, *supra* note 73, ¶ 13.

97. *See supra* text accompanying note 89.

98. Working Group Report, *supra* note 73, ¶ 13.

99. *See id.* ¶ 12.

> related to enforced disappearances fall within the competence of the states. Yet, the state authorities asserted that the Federal Government has responsibility for central issues such as the fight against organized crime, abductions and guaranteeing security through the presence of the Federal Police, the army and the navy.[100]

Thus, the confusion among state and federal authorities, as well as the inconsistencies within Mexican law, make it difficult for Mexico to adhere to its international obligations under the Convention.[101]

2. *The Current State of Enforced Disappearances in Mexico*

The Working Group Report next addressed "[e]nforced disappearances in the current security context."[102] This section of the Working Group Report and the sections that precede it contain two phenomena that are relevant to this article. The first is the prevalence of enforced disappearances by or with consent from public officials. The second is the failure of the Mexican government to prevent, investigate, and prosecute enforced disappearances. Both are discussed below.

a. The Prevalence of Enforced Disappearances by or with Consent from Public Officials

The Working Group Report noted that, despite the increase in violence from organized crime in the country, "not all disappeared persons were abducted by independent organized criminal groups; the State is also involved in enforced disappearances in Mexico."[103] The Working Group "received specific, detailed and reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials."[104] Specifically, at the time of the Working Group Report in 2011, organizations in Mexico estimated that over 3,000 enforced disappearances had occurred in Mexico since 2006.[105] The Working Group indicated that "some of these

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100. *Id.* Consistent with the confusion as to who has jurisdiction over enforced disappearances, the Working Group Report later stated:

> Federal authorities maintained that [ninety-two] percent of offen[s]es committed in Mexico come under local and not federal jurisdiction. Many federal authorities claim that federal institutions tend to be well equipped and have trained professional staff, while local institutions tend to be weak, have fewer professional development opportunities and scant human and financial resources.

Id. ¶ 22.

101. *See id.* ¶ 12 (noting that the duties of local and federal officials are diluted by "[t]he division of power, absence of a general law regulating all aspects of enforced disappearance, existence of security forces at the federal, state and municipal levels and the possibility for offen[s]es to be investigated at either the federal or state level depending on the identity of the alleged perpetrator").

102. Working Group Report, *supra* note 73, ¶ 16.

103. *Id.* ¶ 17.

104. *Id.*

105. *Id.* ¶ 20. Another report indicated an even more staggering number, stating that "[m]ore than 9,000 people have gone missing since 2013, under the administration of Peña Nieto." Emilio Godoy, *Forced Disappearances are Humanitarian Crisis in*

cases could be described as enforced disappearances due to the direct or indirect involvement of public officials."[106]

Consistent with the Working Group Report's findings, in its February 2013 report on disappearances in Mexico, Human Rights Watch stated that it had kept track of almost 250 disappearances in the country since the year 2007.[107] The organization indicated that "[i]n more than 140 of these cases, evidence suggests that these were *enforced* disappearances—meaning that state agents participated directly in the crime, or indirectly through support or acquiescence."[108] Most heinously, "[t]hese crimes were committed by *members of every security force involved in public security operations*."[109] Specifically, the organization "documented more than *20 cases* of enforced disappearances perpetrated by members of the Navy in June and July 2011,"[110] "found strong evidence in *95 cases* that local police participated directly or indirectly in enforced disappearances,"[111] and "found strong evidence that *13 enforced disappearances* were carried out by federal police."[112] The organization additionally noted that public security officials "sometimes act[ed] in conjunction with organized crime."[113] Over sixty cases in particular provided "compelling evidence of cooperation between security forces and organized crime in disappearances."[114]

Thus, even prior to the tragic events in Iguala in the fall of 2014, enforced disappearances were a prevalent occurrence in Mexico by every level of public security forces. The Iguala Mass Kidnapping continued this unfortunate trend.

b. The Failure of the Mexican Government to Prevent, Investigate, and Prosecute Enforced Disappearances

This subsection addresses the Working Group's findings with regard to Mexico's efforts towards the prevention, investigation, and prosecution of enforced disappearances in the country.

i. Prevention

With regard to preventing enforced disappearances, the Working Group quite frighteningly indicated that, during the time it spent in Mexico conducting its country visit, it "did not receive any information about the existence and implementation of mechanisms monitoring the use of

Mexico, NEW AM. MEDIA (Jan. 26, 2015), http://newamericamedia.org/2015/01/forced-disappearances-are-humanitarian-crisis-in-mexico.php.

106. Working Group Report, *supra* note 73, ¶ 20.
107. MEXICO'S DISAPPEARED, *supra* note 85, at 1.
108. *Id.*
109. *Id.* (emphasis added).
110. *Id.* at 18.
111. *Id.* at 26 (internal citations omitted).
112. *Id.* at 28.
113. *Id.* at 1 (emphasis added).
114. *Id.* at 29

force by police and military personnel."[115] Additionally, when the Working Group Report was written, "only the Federal District police force ha[d] legislation and regulations governing the use of force."[116] Other government agencies had only guidelines on the use of force.[117]

Since the publication of the Working Group Report, however, Mexico's federal government passed "The Protocols for the Use of Force, the Preservation of Evidence, and the Presentation of Detainees to the Authorities" (the Protocols).[118] Effective April 23, 2012, the Protocols "are to be followed by the army, navy, air force, federal police, and the Public Prosecutor's Office . . . and establish when the use of lethal force can be applied."[119] Under the Protocols, force may be used by these government agencies only as a last resort.[120] This legislation particularly provides that "the armed forces will no longer be able to shoot people who evade, flee, or attempt to escape from them, unless such persons seriously resist authority or present imminent danger of death or serious injury to others."[121] Although the Protocols do not apply to local police,[122] they are a welcome step for Mexico's federal government, as "such legislation is essential for limiting the use of excessive force and preventing enforced disappearances."[123]

ii. Investigation

During the Working Group's visit to Mexico, it "observed severe problems relating to investigations into enforced disappearances, including omissions, delays and lack of due diligence."[124] Worst of all, "[m]any prosecution services refuse[d] to handle complaints of enforced disappearances, agreeing only to draw up a detailed report of events without launching a proper investigation."[125] Human Rights Watch similarly "found that prosecutors routinely fail to conduct preliminary inquiries or open investigations immediately after disappearances are reported."[126] In many of the cases documented by Human Rights Watch, the families of enforced disappearance victims were told that they needed to wait three days before an investigation could be opened.[127] Other times, vic-

115. Working Group Report, *supra* note 73, ¶ 29.
116. *Id.*
117. *Id.*
118. Norma Gutierrez, *Mexico: Federal Government Regulates Use of Force by Military and Police*, LIBR. OF CONGRESS (May 10, 2012), http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403140_text (citing Doris Gómora & Silvia Otero, *Regulan el uso de la fuerza pública*, EL UNIVERSAL (Apr. 24, 2012), http://www.eluniversal.com.mx/primera/39312.html).
119. *Id.*
120. *Id.*
121. *Id.*
122. *See id.*
123. Working Group Report, *supra* note 73, ¶ 29.
124. *Id.* ¶ 34.
125. *Id.*
126. MEXICO'S DISAPPEARED, *supra* note 85, at 35.
127. *Id.* at 36.

tims' families were told that an investigation would not be worthwhile because "the missing person had most likely been detained by security forces, and would eventually be handed over to justice officials or released without charge."[128] This problem is compounded by the finding of the Working Group that "[m]any authorities, both civil and military, refuse to work with the investigating authorities."[129]

Regrettably, both the Working Group Report and the February 2013 Human Rights Watch report indicated that enforced disappearance victims are often so fearful of speaking to authorities about their experiences that the disappearances go unreported.[130] According to the Working Group, in many instances, "the relatives of the victims of enforced disappearance have been subject to intimidation, threats and reprisals because they insisted that a proper investigation be carried out."[131] The Working Group also received information from multiple sources that "authorities—particularly the prosecution services—try to discredit disappeared persons by claiming that they have been involved with criminal groups, without providing any evidence or conducting any investigation to prove otherwise."[132] Human Rights Watch similarly noted the prevalence of blaming the enforced disappearance victim for involvement in criminal activity:

> [A]ccording to nearly every family interviewed by Human Rights Watch, law enforcement and prosecutors' reflexive assumption in disappearance cases is that the victim was targeted for belonging to a criminal group. Authorities repeatedly embraced this theory, and indeed often voiced it to families, before undertaking a preliminary investigation into the case.[133]

The organization indicated that the assumption that the victim was involved in crime was frequently cited as a rationale for not opening up an investigation.[134] Moreover, in addressing what it described as "prevailing impunity" towards enforced disappearances, the Working Group Report indicated that "many cases which could come under the scope of the offen[s]e of enforced disappearance are reported and investigated as different offen[s]es, or are not even considered to be offen[s]es."[135] More specifically, the Working Group

> received many reports of cases in which unlawful or arbitrary deprivation of liberty was classified as a different offen[s]e, such as abduction or abuse of authority, or persons were simply considered 'missing' or 'lost' (particularly groups such as women, children and migrants); proper investigations are not being conducted to rule out

128. *Id.*
129. Working Group Report, *supra* note 73, ¶ 34.
130. *See id.* ¶ 33; MEXICO'S DISAPPEARED, *supra* note 85, at 40–42.
131. Working Group Report, *supra* note 73, ¶ 33.
132. *Id.*
133. MEXICO'S DISAPPEARED, *supra* note 85, at 40.
134. *Id.*
135. Working Group Report, *supra* note 73, ¶ 18.

the possibility that such persons might be victims of enforced disappearance.[136]

Put simply, investigation into enforced disappearances remains wanting in Mexico. So much so, in fact, that the Working Group Report posited that Mexico is either "unwilling or unable to conduct effective investigations into cases of enforced disappearance."[137] This leads to a lack of trust in the government by victims,[138] and makes it difficult to accurately state how many enforced disappearances have taken place in Mexico.[139]

iii. Prosecution

The Working Group Report indicated that prosecution for enforced disappearances is rare in Mexico.[140] In fact, "[t]he Working Group was only informed of two convictions currently under appeal for the offen[s]e of enforced disappearance, despite the high number of offen[s]es reported."[141] Unfortunately, the dearth of convictions reported by the Working Group comports with a 2011 report by Human Rights Watch, which indicated that, at the time the report was written, "not a single military officer ha[d] been convicted for the crime of enforced disappearance in the military justice system."[142] Even more amazing is that, of all the cases heard by the Supreme Court of Justice of Mexico[143] between 1995 and 2011, only one involved enforced disappearance.[144] That case, however, "did not address the criminal liability of the defendants or the rights of the victims, but involved a constitutional challenge over the application of an international treaty."[145]

In addition to Mexico's inadequate legislative framework[146] and failure

136. *Id.*
137. *Id.* ¶ 76.
138. *See id.* ("The victims of enforced disappearances have no faith in the justice system, prosecution services, the police or Armed Forces.").
139. *Id.* ¶ 21 ("A potential enforced disappearance may only be ruled out after a complete, independent and impartial investigation. Therefore, the number of cases of enforced disappearance cannot be fully established without proper investigation.").
140. *Id.* ¶ 32.
141. *Id.*
142. HUMAN RIGHTS WATCH, NEITHER RIGHTS NOR SECURITY: KILLINGS, TORTURE, AND DISAPPEARANCES IN MEXICO'S "WAR ON DRUGS" 134 (2011). The report also indicated that "[m]ilitary prosecutors routinely fail to conduct adequate investigations into alleged enforced disappearances, including not interviewing key witnesses, not visiting the crime scene, and failing to pursue possible leads." *Id.*; *see also* MEXICO'S DISAPPEARED, *supra* note 85, at 134–42 (discussing the inadequacies of Mexico's military justice system with regard to prosecuting enforced disappearances).
143. "The Supreme Court of the Nation is the Highest Court of Justice of México . . . . [I]ts main function is to enforce the law and preserve the order established by the Supreme Law: the Constitution of the Mexican States." *The Supreme Court of Justice in Mexico*, EXPLORANDO MÉXICO, http://www.explorandomexico.com/about-mexico/10/406/ (last visited Feb. 7, 2015) (emphasis omitted).
144. Working Group Report, *supra* note 73, ¶ 32.
145. *Id.*
146. *See supra* Part III.A.1.

to investigate enforced disappearances,[147] one of the reasons for the low number of prosecutions for enforced disappearances is the classification of offenses.[148] According to the Working Group Report, "[o]ften, the prosecution services submit cases as minor offen[s]es instead of the offen[s]e of enforced disappearance (in those federal entities where the act has been classified as an offen[s]e) and judges do not use their powers to reclassify the offen[s]es."[149] Another reason is the "dilution of responsibility and the ambiguities regarding jurisdiction" of investigating and prosecuting enforced disappearances.[150] In its 2013 report, Human Rights Watch noted that state and federal prosecutors use this dilution to "preemptively decline to investigate cases, transferring them instead to counterparts."[151] This is often done even before determining whether the prosecutor has jurisdiction over the case.[152] According to Human Rights Watch, this "suggests that [prosecutors] are more concerned with avoiding adding cases to their docket than fulfilling their obligation to investigate these serious crimes."[153]

Thus, prosecution for enforced disappearances remains scant in Mexico. As discussed below in Part IV.B, this trend was regrettably continued by the failure of federal authorities to prosecute Mayor Abarca and his wife Pineda Villa for the crime of enforced disappearance under the Federal Criminal Code following the events of the Iguala Mass Kidnapping.

3. The Working Group's Recommendations to Mexico

At the conclusion of the Working Group Report, the Working Group set forth a number of recommendations for Mexico.[154] At the outset, and in an apparent attempt to alert Mexico's government of the significance of the problem of enforced disappearances in the country, the Working Group recommended "that the scale of the problem of enforced disappearances should be recognized as the first step required to implement comprehensive and effective measures for its eradication."[155] It is interesting to note that such strong language does not always appear in the Working Group's reports following a country visit. For example, in the

147. *See supra* Part III.A.2.b.ii.
148. *See* Working Group Report, *supra* note 73, ¶ 34.
149. *Id.* A similar phenomenon prevails in Mexico's military justice system. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 138 ("Human Rights Watch found strong evidence in several cases that military prosecutors had charged members of the military alleged to have committed enforced disappearances for lesser crimes.").
150. MEXICO'S DISAPPEARED, *supra* note 85, at 58; *see also id.* ¶ 12 (noting that, among other factors, the "existence of security forces at the federal, state and municipal levels and the possibility for offen[s]es to be investigated at either the federal or state level depending on the identity of the alleged perpetrator dilute the responsibility of the federal and local authorities").
151. MEXICO'S DISAPPEARED, *supra* note 85, at 58.
152. *Id.*
153. *Id.*
154. Working Group Report, *supra* note 73, ¶¶ 79–113.
155. *Id.* ¶ 80.

Working Group's report after its country visit to Spain, no such language regarding the Spanish government's recognition of the scale of the issue of enforced disappearances was included in the Working Group's recommendations.[156] The language in the Working Group's report following its trip to Mexico, by contrast, divulges the Working Group's opinion that the Mexican government is unaware of just how prevalent the problem of enforced disappearances is in the country.[157]

Although the Working Group made a number of specific recommendations to the Mexican government, a few are particularly pertinent here. First, the Working Group recommended that "that the offen[s]e of enforced disappearance should be included in the criminal codes of all states and that a comprehensive law on enforced or involuntary disappearances should be adopted without delay."[158] As discussed above in Part III.A.1, as of March 2014, only nineteen of Mexico's thirty-two federal entities have made enforced disappearance an offense.[159] Second, the Working Group advised "that the definition of enforced disappearance in criminal law should be brought into line with that contained in the Declaration and other relevant international instruments."[160] Third, the Working Group prescribed "the adoption of legislation, standards and protocols to regulate the use of force by the army and all police forces as a preventive measure against enforced disappearances."[161] As discussed above in Part III.A.2.b.i, in April 2012, Mexico adopted the Protocols, which apply to military and federal police, but not to local police.[162] Fourth, the Working Group recommended "that coordination among the authorities responsible for public safety should be ensured in order to prevent and investigate enforced disappearances."[163] Fifth, and finally, the Working Group advised "that the right to justice and the fight against impunity should be guaranteed through judicial training and the enforcement of the law, the adoption of protocols for investigations and the protection of witnesses and relatives."[164]

In sum, the Working Group Report paints a grim picture of the prevalence of enforced disappearances in Mexico. Such disappearances are widespread, and are often perpetrated by government officials. Investigatory systems are severely lacking, and prosecution for this crime is a rarity. As discussed below, however, Mexico's State Party Report to the

156. *See* H.R.C. Rep. of the Working Group on Enforced or Involuntary Disappearances, Addendum, Mission to Spain, ¶ 67, U.N. Doc. A/HRC/27/49/Add.1; 27th Sess. (July 2, 2014).

157. Working Group Report, *supra* note 73, ¶ 80.

158. *Id.*

159. *See* State Party Report, *supra* note 61, ¶ 75.

160. Working Group Report, *supra* note 73, ¶ 87.

161. *Id.* ¶ 91.

162. *See* Gutierrez, *supra* note 118 (citing Doris Gómora & Silvia Otero, *supra* note 118).

163. Working Group Report, *supra* note 73, ¶ 92.

164. *Id.* ¶ 96.

Committee contains a much different depiction of how Mexico is adhering to its international obligations under the Convention.

B. Mexico's 2014 State Party Report to the Committee

Under Article Twenty-Nine of the Convention, every State Party must submit a report to the Committee on how it is adhering to the Convention within two years of the Convention being effective for that State Party.[165] As mentioned above, Mexico ratified the Convention on March 18, 2008,[166] and the Convention became effective on December 23, 2010.[167] On March 11, 2014, Mexico filed its "Reports of States parties due in 2012" (State Party Report).[168] Spanning forty-four pages, the State Party Report gives general information regarding Mexico's stated adherence to the Convention and discusses how the country is purportedly adhering to each specific provision of the Convention.[169] The discussion below addresses both Mexico's alleged adherence to the Convention generally and Mexico's stated adherence to the Convention articles this paper focuses on: One, Six, and Twenty-Three.

1. Mexico's Claim of General Adherence to the Convention

The State Party Report's introduction quite optimistically states that "Mexico is complying with this international obligation at a time when there has been significant progress in the advancement and protection of and respect for human rights in the country."[170] It subsequently indicates, however, that "Mexico has recognized the major challenges it faces in the area of human rights,"[171] specifying that "[e]nforced disappearance, together with the delicate task of providing support to victims' families and organizations of victims, is one of the most significant challenges facing Mexico."[172] Noting that "[i]ncreased efforts have . . . been made to combat enforced disappearances,"[173] the State Party Report details a number of measures to comply with the Convention's obligations.[174]

The State Party Report additionally addressed the recommendations made by the Working Group Report,[175] discussed above in Part III.A.

165. Convention, *supra* note 14, art. 29.1.
166. *International Convention for the Protection of All Persons from Enforced Disappearance*, *supra* note 18.
167. *The Working Group and the Committee on Enforced Disappearance*, *supra* note 33.
168. *See* State Party Report, *supra* note 61, ¶ 1. It is noteworthy that Mexico filed the State Party Report two years late.
169. *See id.* at ¶¶ 1–44.
170. *Id.* ¶ 2.
171. *Id.* ¶ 4.
172. *Id.* ¶ 5.
173. *Id.* ¶ 4.
174. *See id.* ¶¶ 6–12. For instance, the State Party Report indicated that "[i]n October 2013, in the area of legislative harmonization, the Senate considered a presidential initiative to bring the definition of the offen[s]e of enforced disappearance into line with international standards." *Id.* ¶ 9.
175. *See id.* ¶ 13.

Specifically, the State Party Report indicated that "the Government is determined to comply with the recommendations contained in the 2011 report of the Working Group on Enforced or Involuntary Disappearances, recognizing that such disappearances are among the most serious and painful offen[s]ses against personal dignity and also infringe other fundamental rights."[176] The introduction concludes by asserting that "[t]he current Mexican legal system provides greater protection for human rights than ever before, with public policies based on international standards and a Government that has the will and desire to take preventive and punitive measures in relation to the offen[s]e of enforced disappearance in accordance with international law."[177] Unfortunately, such protections were not strong enough to protect the forty-three victims of the Iguala Mass Kidnapping, which occurred a mere six months following Mexico's filing of the State Party Report.[178]

2. *Mexico's Stated Adherence to Article One*

As discussed above in Part II.C.1, Article One of the Convention completely prohibits enforced disappearances with no exceptions or justifications.[179] In addressing Mexico's adherence to its Article One obligations, the State Party Report indicates:

> In Mexico, enforced disappearance is defined as a serious offen[s]e in the Federal Criminal Code and in the codes or special legislation of 19 of the country's federal entities. Furthermore, the prohibition of enforced disappearance is provided for in the Constitution, where it is listed as one of the circumstances in which the State may in no case suspend guarantees.[180]

The State Party Report then addresses how the Mexican Constitution prohibits any restriction of Mexican citizens' right to freedom from enforced disappearance.[181] To implement this prohibition, "[a]ny decrees issued by the executive power during the restriction or suspension [of the exercise of rights] are to be immediately reviewed *ex officio* by the Supreme Court of Justice, which is to rule as soon as possible on their constitutionality and validity."[182] While Mexico's purported compliance with Article One as described in the State Party Report is directly aligned with the mandates of that Article,[183] it proved insufficient to prevent the atrocities of the Iguala Mass Kidnapping.

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176. *Id.*
177. *Id.* ¶ 14.
178. *See Charred bodies found in 'the land of the wicked' may be missing Mexican students*, *supra* note 5; *The Working Group and the Committee on Enforced Disappearance*, *supra* note 33.
179. *See* Convention, *supra* note 14, art. 1.1.–2.
180. State Party Report, *supra* note 61, ¶ 75.
181. *See id.* ¶ 77.
182. *Id.* ¶ 78.
183. *Compare id.* ¶¶ 75–78, *with* Convention, *supra* note 14, art. 1.1.–2.

3. *Mexico's Stated Adherence to Article Six*

As addressed above in Part II.C.2, Article Six of the Convention mandates that States Parties hold those who have any involvement in enforced disappearances criminally responsible.[184] Article Six further directs that following orders does not excuse the perpetration of an enforced disappearance.[185] In addressing Mexico's adherence to this article of the Convention, the State Party Report notes that a

> proposed amendment to Article 215 of the Federal Criminal Code[186] submitted to Congress on 22 October 2013 would codify the criminal responsibility of superior officials who fail to use their authority to prevent the offen[s]e of enforced disappearance. This would penalize government officials who are aware that their subordinates have committed the offen[s]e, regardless of whether they themselves have been active participants.[187]

This amendment would therefore apparently bring the Federal Criminal Code in line with subsection (b) of the first part of Article Six of the Convention, which puts a duty on States Parties to hold superiors criminally liable for enforced disappearances by their subordinates, even if the superiors had only mere knowledge of the enforced disappearance.[188]

The amendment would allegedly "also provide for the criminal responsibility of any person taking part in the enforced disappearance with the consent or backing of a public servant or in his or her support."[189] That clause appears to address the second part of Article Six, which indicates that "[n]o order or instruction from any public authority, civilian, military or other, may be invoked to justify an offen[s]e of enforced disappearance."[190] This portion of the amendment also seems to supplement Mexico's existing criminal legal structure, which "does not provide for the principle of due obedience to exempt from punishment a subordinate who receives an order from a superior official. Both perpetrators and accomplices are criminally responsible."[191] Finally, this amendment would provide that there is no alternative to imprisonment for those who commit enforced disappearances.[192] This appears to be consistent with the general mandate in the first part of Article Six of the Convention that States Parties must hold those who perpetrate enforced disappearances criminally liable.[193]

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184. Convention, *supra* note 14, art. 6.1.
185. *Id.* art. 6.2.
186. See *supra* Part III.A.1 for a discussion of article 215-A of the Federal Criminal Code.
187. State Party Report, *supra* note 61, ¶ 118.
188. Convention, *supra* note 14, art. 6.1.(b).
189. State Party Report, *supra* note 61, ¶ 119.
190. Convention, *supra* note 14, art. 6.2.
191. State Party Report, *supra* note 61, ¶ 120.
192. *Id.* ¶ 121.
193. Convention, *supra* note 14, art. 6.1.

The first part of the amendment, which addresses superior liability for enforced disappearance regardless of the superior's involvement in such disappearance, is now reflected in the most recently published version of the Federal Criminal Code.[194] Unfortunately, however, the second and third parts of the amendment, which respectively address liability for those acting with consent of public officials and mandatory imprisonment for the crime of enforced disappearance,[195] have not been incorporated into the Federal Criminal Code.[196] Thus, although the Federal Criminal Code makes superiors criminally responsible regardless of their participation in an enforced disappearance,[197] the other two portions of the amendment, which would have brought Article 215-A of the Federal Criminal Code into alignment with Article Six of the Convention, did not go into effect. Although it is unlikely that additional statutory compliance with the Convention would have prevented the Iguala Mass Kidnapping,[198] in failing to pass this amendment, Mexico missed a significant opportunity to take an important step toward compliance with its international obligations.

4. Mexico's Stated Adherence to Article Twenty-Three

Finally, as addressed above in Part II.C.3, Article Twenty-Three of the Convention mandates that States Parties prevent, investigate, and resolve enforced disappearances through training of officials.[199] Article Twenty-Three additionally proscribes the ordering of disappearances by officials.[200] In discussing Mexico's alleged compliance with Article Twenty-Three, the State Party Report outlines a number of different training efforts that take place across different government entities in the country.[201] Although the State Party Report does not go into significant detail about these trainings,[202] it does address a cooperation agreement between Mexico and the International Committee of the Red Cross,[203] an internal enforced disappearances working group created by Mexico's

194. *See* CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 14 de Julio de 2014 (Mex.) (emphasis added) ("Comete el delito de desaparición forzada de personas, el servidor público que, *independientemente de que haya participado en la detención* legal o ilegal de una o varias personas, propicie o mantenga dolosamente su ocultamiento bajo cualquier forma de detención.").
195. State Party Report, *supra* note 61, ¶¶ 119, 121.
196. *See* CPF [Federal Criminal Code], arts. 215-A–D.
197. *Id.* art. 215-A.
198. *See* Paul H. Robinson & John M. Darley, *The Role of Deterrence in the Formulation of Criminal Law Rules: At Its Worst When Doing Its Best*, 91 GEO. L.J. 949, 951 (2003) ("Having a punishment system does deter. But there is growing evidence to suggest skepticism about the *criminal law's* deterrent effect—that is, skepticism about the ability to deter crime through the manipulation of criminal law rules and penalties.").
199. Convention, *supra* note 14, arts. 23.1.(a)–(c), 23.3.
200. *Id.* art. 23.2.
201. State Party Report, *supra* note 61, ¶¶ 226–44.
202. *See id.*
203. *Id.* ¶¶ 226–28.

government,[204] and human rights trainings in place for the armed forces, security forces, migration authorities, and judiciary.[205] Thus, while Mexico appears to have some internal mechanisms in place to ensure that government officials are trained in the topic of enforced disappearance, they were insufficient to prevent the Iguala Mass Kidnapping.

Another interesting but troublesome note is that, although the State Party Report spends three pages discussing trainings within the country that purportedly bring Mexico in alignment with its Article Twenty-Three obligations, it does not address article twenty-three's prohibition on *ordering* enforced disappearances.[206] Given that the Iguala Mass Kidnapping began with an order by the mayor of Iguala and his wife to local police forces to stop the protesting college students,[207] the State Party Report's silence on the issue is worrisome, to say the least.

In sum, though the State Party Report paints a relatively rosy picture of Mexico's adherence to the Convention, any such appearance of compliance with its international obligations was completely shattered by the Iguala Mass Kidnapping. This atrocity, addressed in detail below, occurred a mere six months following Mexico's filing of the State Party Report.

IV. THE IGUALA MASS KIDNAPPING

To address how the Iguala Mass Kidnapping demonstrated Mexico's failure to adhere to its obligations under the Convention, this part of the article focuses on the kidnapping's factual details, which can be divided into four sections: the protests by the students that led to their attack, the attack on the students itself, the subsequent kidnapping of the students, and the arrests of and charges against Abarca and Pineda Villa.

A. THE STUDENT PROTESTS

On September 26, 2014, students from The Raul Isidro Burgos Normal Rural School,[208] a teacher training college in Tixtla, Mexico, assembled in Iguala to protest hiring practices they believed to be discriminatory.[209] Students from the college were "known for militant and radical protests that often involve hijacking buses and delivery trucks."[210] For instance,

204. *Id.* ¶¶ 229–31.
205. *Id.* ¶¶ 232–44.
206. *Id.* ¶¶ 226–44.
207. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
208. This school "is one of 16 institutions around Mexico that arose following Mexico's revolution nearly a century ago with the aim of training teachers to raise literacy and standards of living among the rural poor." Tim Johnson, *At college of missing Mexican students, history of revolutionary zeal*, CHRISTIAN SCI. MONITOR (Oct. 13, 2014), http://www.csmonitor.com/World/Americas/2014/1013/At-college-of-missing-Mexican-students-history-of-revolutionary-zeal.
209. *See Mexican students missing after protest in Iguala*, *supra* note 2; *id.*
210. Jose Antonio Rivera, *Mass grave found as Mexico probes town's violence*, DETROIT NEWS (Oct. 5, 2014, 11:01 AM), http://www.detroitnews.com/story/news/nation/2014/10/05/mass-grave-found-mexico-probes-towns-violence/16763339/.

> In December 2011, two students from Aytozinapa died in a clash with police on the highway that leads to the Pacific coast resort of Acapulco. Students had allegedly hijacked buses and blocked the road to press demands for more funding and assured jobs after graduation. Two state police officers were charged in the shootings.
>
> During that confrontation, students apparently set fire to pumps at a gas station on the highway when federal and state police moved in to quell the protest, and a gas station employee later died of burns suffered in the attack.[211]

Some reports indicated that, on the day of the Iguala Mass Kidnapping, the students "came to Iguala to raise funds for a planned protest against hiring practices that, in their view, favor urban students over rural ones."[212] Other reports stated that the students "hoped to raise money for a delegation to travel to Mexico City to take part in an annual march that commemorates the Oct[ober] 2, 1968, Tlatelolco massacre."[213] Regardless of their motivation, over one hundred students traveled to Iguala, Mexico on September 26, 2014.[214] The students were "all boys in their late teens and early twenties."[215]

Mere blocks from where the students were conducting their protest on that fateful day in September 2014, Pineda Villa, wife of then Iguala Mayor Abarca, was scheduled to speak at a party.[216] Her speech, regarding "her activities as the head of the local family services office,"[217] was to be delivered at what has been described as "a party she was throwing in honor of herself."[218] One account indicated that 3,000 people were in attendance at this party,[219] the purpose of which was apparently "to celebrate Pineda's many good works as the head of the town's social-welfare agency and to kick off her campaign to succeed her husband," as mayor.[220]

Reportedly, Pineda Villa was about to give her speech when she learned that the students were approaching the plaza where the party was

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211. *Id.*
212. Sullivan, *supra* note 5.
213. Johnson, *supra* note 208. During the Tlatelolco Massacre, government forces clashed with student protestors in Mexico City, leaving hundreds dead or injured. Kate Doyle, *TLATELOLCO MASSACRE: DECLASSIFIED U.S. DOCUMENTS ON MEXICO AND THE EVENTS OF 1968, National Security Archive*, GEORGE WASHINGTON UNIVERSITY, http://www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB10/intro.htm (last visited Feb. 28, 2015).
214. Johnson, *supra* note 208.
215. Karla Zabludovsky, *Suspected Student Massacre Shocks Violence-Weary Mexico*, NEWSWEEK (Oct. 10, 2014, 12:11 PM), http://www.newsweek.com/suspected-student-massacre-shocks-violence-weary-mexico-276561.
216. *Id.*
217. *Id.*
218. Michael Daly, *Mexico's First Lady of Murder Is on the Lam*, DAILY BEAST (Oct. 29, 2014), http://www.thedailybeast.com/articles/2014/10/29/mexico-s-first-lady-of-murder-is-on-the-lam.html.
219. *Mayor's Wife Responsible For Massacre?*, BORDERLAND BEAT (Oct. 15, 2014), http://www.borderlandbeat.com/2014/10/mayors-wife-responsible-for-massacre.html.
220. Daly, *supra* note 218.

taking place.[221] According to one report, Pineda Villa told one of her guards to "STOP THEM,"[222] with another account indicating that she gave orders to "[t]each them a lesson."[223] Yet another report stated that it was in fact Abarca who told the police to "teach them a lesson."[224] The Attorney General's office also purportedly has a recording of Abarca telling police to stop the students from coming to the plaza "in any way possible."[225] Irrespective of who gave the orders or what the orders specifically entailed, Pineda Villa's speech was undisturbed, and "[s]he and her husband danced to the band in the plaza as the students were being tortured and shot in a remote place outside of town."[226]

B. The Attack on the Students

The events that unfolded following the orders from Abarca and Pineda Villa are somewhat unclear, but every account paints a very tragic picture. Upon hearing the orders from the mayor and his wife, Iguala police responded by firing on the students.[227] In defense of their actions, Mexican authorities asserted that the students had hijacked a bus; but students from the college, who indicated that they were attempting to hitchhike a ride from a local bus so that they could return to school, disputed this claim.[228] Regardless of the motivations of the attackers, police forces, along with other "unidentified gunmen," began to shoot at the buses as they were driving away.[229] Mexican prosecutors subsequently indicated that the drug gang "Guerreros Unidos," with whom Pineda Villa has close family ties, took part in the attack.[230] Thus, they were likely the other gunmen referred to in earlier reports.

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221. *Id.*
222. *Mayor's Wife Responsible For Massacre?*, *supra* note 219.
223. Daly, *supra* note 218.
224. *Investigators in Mexico Detain Mayor and His Wife Over Missing Students*, *supra* note 3.
225. *Mexican Authorities Unable to Charge Iguala Mayor and His Wife*, *supra* note 13.
226. Daly, *supra* note 218.
227. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
228. Sullivan, *supra* note 5; *Mexican students missing after protest in Iguala*, *supra* note 2.
229. Jo Tuckman, *Scores of students still missing after ambush by Mexican police and gunmen*, The Guardian (Sept. 30, 2015, 5:02 PM), http://www.theguardian.com/world/2014/sep/30/scores-students-missing-after-ambush-gunmen-mexican-police; Sullivan, *supra* note 5.
230. Ludovica Laccino, *Mexico missing students: Iguala mayor's wife Maria Pineda Villa charged with organised crime*, Int'l Bus. Times (Jan. 6, 2015, 11:04 AM), http://www.ibtimes.co.uk/mexico-missing-students-iguala-mayors-wife-maria-pineda-villa-charged-organised-crime-1482092; Leticia Pineda, *Mexico leader vows justice over 43 missing students*, Yahoo! News (Oct. 6, 2014, 5:38 PM), http://news.yahoo.com/hitmen-admit-killing-17-mexican-students-prosecutor-005040009.html;_ylt=awrSyCTVHDJUp1wALnrQtDMD. One report described Pineda Villa as "the boss of Guerreros Unidos . . . within the Iguala government." Dave Graham & Lizbeth Diaz, *Fugitive Mexican mayor suspected in abduction of 43 students captured*, Reuters (Nov. 4, 2014, 5:50 PM), http://www.reuters.com/article/2014/11/04/us-mexico-violence-idUSKBN0IO14420141104. Additionally, Pineda Villa has three brothers who belong to the Beltran Leyva drug cartel. Al Jazeera, *supra* note 12.

The buses at which the police were firing then stopped and some of the students, who were unarmed, stepped out.[231] These actions by the students only increased the attack by the police and gunmen.[232] Three students were killed in this initial attack,[233] and most atrociously, one of their bodies "was found dumped nearby later, his face reportedly skinned and his eyes gouged out."[234] Many students attempted to flee during this initial attack by the police,[235] but a number of students were taken into police custody.[236] When some students came back to the scene of the shooting a few hours later to speak to reporters, they were once again greeted with gunfire.[237] Though none of the students were killed in this subsequent attack, three bystanders were hit by bullets.[238] Between the two attacks, a total of six people were killed.[239] Twenty-five more were injured.[240] Fifty-seven students went missing initially, fourteen of whom thankfully reappeared.[241] In total, however, forty-three students were not heard from again.[242]

C. The Subsequent Kidnapping

Those who witnessed the attacks indicated that the surviving students were placed in police vehicles and taken into custody by Iguala police.[243] According to Mexican authorities, Iguala police then gave the students to police "in the neighboring town of Cocula, who delivered the [forty-three] young men to the Guerreros Unidos,"[244] the drug gang to which Pineda Villa has family ties to.[245] According to Sidronio Casarrubias Salgado (Casarrubias), the leader of Guerreros Unidos, once the students were turned over to him, one of his gang members indicated to him that the students were members of a rival gang.[246] Upon hearing this, Casar-

231. Tuckman, *supra* note 229.
232. *Id.*
233. Sullivan, *supra* note 5.
234. Tuckman, *supra* note 229.
235. *Id.*
236. *See id.*
237. *Id.*
238. Sullivan, *supra* note 5. Although the reports of what happened are conflicting, the three bystanders have been described as "the driver of a bus carrying a soccer team, a 15-year-old player and a woman in a taxi." *Id.* One account stated that "[s]hots were . . . fired at a bus carrying third division football team Los Avispones, which the gunmen presumably mistook for a bus seized by the students," and that the driver and soccer player were killed when the bus crashed. *Mexican students missing after protest in Iguala*, *supra* note 2.
239. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
240. Laccino, *supra* note 6.
241. *See* Tuckman, *supra* note 229.
242. Laccino, *supra* note 6.
243. *Id.*
244. AFP, *Mexico catches chief of gang in missing students case*, The Telegraph (Oct. 18, 2014, 1:34 AM), http://www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/11171233/Mexico-catches-chief-of-gang-in-missing-students-case.html.
245. Laccino, *supra* note 230.
246. *See Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.

rubias "ordered their disappearance."[247] Members of Guerreros Unidos then put the students in a truck, and drove them to Pueblo Viejo.[248]

According to another member of Guerreros Unidos, while in the truck, the students "were so tightly-packed . . . that 15 died of suffocation in transit" to the garbage dump where the gang members planned to take them.[249] Upon arriving at the dump, gang members shot and killed the surviving students.[250] They then placed the students' bodies in a pile with wood and set them on fire.[251] The fire burned for many hours and, when it cooled, the gang members put the students' remains in plastic bags and deposited them in a river.[252] A bone fragment found at the dump has been confirmed as belonging to Alexander Mora Venancio, one of the missing students.[253] On January 27, 2015, Mexico's government officially declared that the forty-three students who went missing were dead, on the basis of forensic testing and confessions by those involved.[254]

D. The Arrests of and Charges against Abarca and Pineda Villa

Initially following the attack on the protesting students, Mayor Abarca asserted "he had no knowledge of the shooting because he was too busy 'dancing' at his wife's party when it happened."[255] In a radio interview on the evening of the attack, Abarca purportedly stated: "Believe me, I am very sorry. . . . And with all the truth I say I don't know what happened."[256] Abarca then "requested a 30-day leave of absence, which was granted."[257] This leave of absence took place right before federal officials in Mexico found the mass graves where the students had been killed.[258] According to one report, following the grant of his leave of absence, Abarca "walked out the back door of City Hall."[259] Another report stated that Abarca had been "last seen being led away by local

247. *Id.*
248. *Id.*
249. Harriet Alexander, *Missing Mexico students: 'We shot them then burnt the bodies'*, The Telegraph (Nov. 8, 2014, 7:27 PM), www.telegraph.co.uk/news/worldnews/centralamericaandthecaribbean/mexico/11218356/Missing-Mexico-students-We-shot-them-then-burnt-the-bodies.html.
250. *Id.*
251. *Id.*
252. *Id.*
253. Johnson, *supra* note 10.
254. Peralta, *supra* note 11.
255. Jean Guerrero, *Mexico's Guerrero Student Massacre: What We Know A Month Later*, Beacon Reader (Oct. 26, 2014, 4:29 PM), https://www.beaconreader.com/jean-guerrero/mexicos-guerrero-student-massacre-what-we-know-a-month-later.
256. Tracy Wilkinson, *Iguala's fugitive mayor a symbol of Mexico's ills*, L.A. Times (Oct. 9, 2014, 4:20 PM), http://www.latimes.com/world/mexico-americas/la-fg-mexico-mayor-20141010-story.html#page=1 (internal quotation marks omitted).
257. Guerrero, *supra* note 255.
258. Tracy Wilkinson, *Mexico arrest of fugitive mayor may shed light on missing students*, L.A. Times (Nov. 4, 2014, 5:23 PM), http://www.latimes.com/world/mexico-americas/la-fg-mayor-iguala-arrested-20141104-story.html#page=1.
259. *See* Wilkinson, *supra* note 256.

police."[260] Regardless, Abarca and his wife Pineda Villa both went missing following the events of September 26, 2014, at which point federal officials began searching for them.[261] On October 22, 2014, Mexican officials indicated that arrests warrant for Abarca, Pineda Villa, and the chief of police of Iguala had been issued.[262]

On November 4, 2014, Abarca and Pineda Villa were arrested outside of Mexico City in a house they had been renting.[263] The couple supposedly chose that particular house as a hideout because it looked like it was abandoned.[264] Neither resisted their arrest,[265] and they were subsequently taken in by federal authorities for interrogation.[266] On November 14, 2014, Guerrero state prosecutors charged Abarca with "six counts of aggravated homicide and one count of attempted homicide" for the attack that took place on September 26, 2014.[267] According to one report, however, these charges only came after the Working Group "implored . . . the Mexican government to investigate the disappearances and noted that the steps taken would show the country's willingness to respond to allegations of human rights violations."[268]

On January 13, 2015, federal authorities announced that Abarca would face charges for the Iguala Mass Kidnapping[269] despite previously indicating that they lacked the evidence to file charges against either Abarca or Pineda Villa.[270] Abarca's charges, however, were for kidnapping—not enforced disappearance.[271] Mexico's former Attorney General Jesus Murillo Karam had previously indicated on December 7, 2014, that Abarca and Pineda Villa would be charged with forced disappearance.[272] Some earlier reports of the arrest of Abarca and Pineda Villa also stated that

260. *See* Wilkinson, *supra* note 258.
261. *Id.*
262. *Mexico missing case: Iguala Mayor Jose Luis Abarca held*, BBC NEWS (Nov. 4, 2014, 3:42 PM), http://www.bbc.com/news/world-latin-america-29896513.
263. *See id.*
264. Wilkinson, *supra* note 258.
265. *See Mexico missing case: Iguala Mayor Jose Luis Abarca held*, *supra* note 262. Speaking about his arrest, Abarca purportedly stated: "I could no longer stand hiding." *Ayotzinapa: A Timeline of the Mass Disappearance That Has Shaken Mexico*, VICE NEWS (Dec. 9, 2014, 2:20 PM), https://news.vice.com/article/ayotzinapa-a-timeline-of-the-mass-disappearance-that-has-shaken-mexico.
266. *See* Wilkinson, *supra* note 258.
267. Valerie Howell, *Former Mexico mayor formally charged in disappearance of 43 students*, JURIST (Nov. 14, 2014, 2:11 PM), http://jurist.org/paperchase/2014/11/former-mexico-mayor-formally-charged-in-the-disappearance-of-43-students.php.
268. *Id.*
269. *Jose Luis Abarca, Former Mexican Mayor, Faces Kidnapping Charge In Case Of 43 Missing Students*, THE WORLD POST (Jan. 14, 2015, 1:59 AM), http://www.huffingtonpost.com/2015/01/14/jose-luis-abarca-missing-students_n_6467668.html.
270. *Mexican Authorities Unable to Charge Iguala Mayor and His Wife*, *supra* note 13.
271. *Jose Luis Abarca, Former Mexican Mayor, Faces Kidnapping Charge In Case Of 43 Missing Students*, *supra* note 269.
272. *Ayotzinapa: A Timeline of the Mass Disappearance That Has Shaken Mexico*, *supra* note 265. According to another report, a state prosecutor indicated that those involved in the Iguala Mass Kidnapping could be charged with "forced disappearance." Tuckman, *supra* note 229.

the couple had in fact been charged with forced disappearance.[273] As of the time of writing this article, however, the Attorney General's Office has charged neither Abarca nor Pineda Villa with forced disappearance under Article 215-A of the Federal Criminal Code.[274] Moreover, with the recent kidnapping charge against Abarca, a subsequent charge of enforced disappearance against him seems unlikely. In the words of one source,

> [I]t is noteworthy the fact that the Federal Public Ministry has now chosen to exercise criminal action for the crime of kidnapping, because it is likely, that if in the future the prosecutors charge him with enforced disappearance, Abarca can apply for and obtain an amparo, on grounds of being tried twice for the same events.[275]

Federal authorities have also yet to charge Pineda Villa with enforced disappearance.[276]

In sum, the evidence overwhelmingly suggests that through personal motives and corruption, Abarca and Pineda Villa committed a horrible atrocity in the Iguala Mass Kidnapping. This tragedy has been exacerbated by the federal government's failure to formally charge either of them with the crime of enforced disappearance. As discussed below, the actions of Abarca and Pineda Villa, as well as the federal government's failure to charge either with the enforced disappearance, violated Articles One, Six, and Twenty-Three of the Convention.

V. MEXICO'S FAILURE TO ADHERE TO THE CONVENTION

This part of the article discusses how the events surrounding the Iguala Mass Kidnapping, as well as federal officials' failure to prosecute Abarca and Pineda Villa for enforced disappearance, violated the Convention. While Mexico's government arguably violated other articles of the Convention through the Iguala Mass Kidnapping,[277] the focus here is on Articles One, Six, and Twenty-Three.

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273. *See, e.g.*, *Federal Police Capture Fugitive Iguala Mayor, Wife in Mexico City*, PANAM POST (Nov. 4, 2014, 3:15 PM), http://panampost.com/panam-staff/2014/11/04/federal-police-capture-fugitive-iguala-mayor-wife-in-mexico-city/.

274. *See* Alfredo Méndez, *Iguala, Guerrero, Mexico: Former Mayor Formally Charged With Kidnapping 43 Ayotzinapa Students*, MEXICO VOICES: ADDRESSING MEXICO'S CHALLENGES (Feb. 25, 2015), http://mexicovoices.blogspot.com/2015/02/iguala-guerrero-mexico-former-mayor.html.

275. *Iguala mayor finally charged in the disappearance of normalistas; if justice was served in another case the students would be alive*, BORDERLAND BEAT (Feb. 25, 2015), http://www.borderlandbeat.com/2015/02/iguala-mayor-finally-charged-in.html.

276. *See* Méndez, *supra* note 274. Pineda Villa has been charged with "organi[z]eed crime and use of illicit funds," but it is not clear whether these charges are related to the Iguala Mass Kidnapping. Laccino, *supra* note 230.

277. *See, e.g.*, AMNESTY INTERNATIONAL, *Mexico: Submission To The UN Committee On Enforced Disappearances* 7–8 (2015) (discussing how the actions of local police in the Iguala Mass Kidnapping violated article seventeen of the Convention).

A. VIOLATION OF ARTICLE ONE

As discussed above in Part II.C.1, Article One of the Convention provides that "[n]o one shall be subjected to enforced disappearance."[278] An obvious yet necessary preliminary question, then, is whether the actions of Abarca and Pineda Villa, local police forces, and the Guerreros Unidos constituted an "enforced disappearance" within the definition used by the Convention.[279] The Convention defines "enforced disappearance" as:

> [1] the arrest, detention, abduction or any other form of deprivation of liberty [2] by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, [3] followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, [4] which place such a person outside the protection of the law.[280]

For purposes of clarity, the above definition has been broken down into four subparts, each of which will be addressed below.

1. Deprivation of Liberty

First, there must be an "arrest, detention, abduction or any other form of deprivation of liberty."[281] As discussed above, during the Iguala Mass Kidnapping, the forty-three college students were placed in police cars and then handed over to members of the Guerreros Unidos, who took the students to a garbage dump to kill them.[282] Such actions clearly satisfy the definition of a deprivation of liberty because the students were left completely helpless at the hands of police forces and gang members. Thus, the first part of the definition of "enforced disappearance" under the Convention has been met.

2. State Agents or Support

Second, the deprivation of liberty must be "by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State."[283] Thus, there are two alternative ways to

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278. Convention, *supra* note 14, art. 1.1.

279. In addressing the inevitable inquiry as to whether the actions of *individual* state actors can violate the Convention, scholarly commentary suggests that they can. One author in particular posited:

> Determining state responsibility presupposes the involvement of the state in the crime for which it can be held responsible. The exploration of the phenomenon of enforced disappearances . . . illustrate[s] that states have been involved in different ways in enforced disappearance. Most obviously, there are instances where state agents themselves are the perpetrators of this crime. The police, security forces or the intelligence services arrest a person and hold him or her in secret prisons while categorically denying the act to the outside world.

VERMEULEN, *supra* note 42, at 97.

280. Convention, *supra* note 14, art. 2.

281. *Id.*

282. *See supra* Part IV.C (discussing the kidnapping of the forty-three college students).

283. Convention, *supra* note 14, art. 2.

meet this part of the definition: through action by a state agent, or through support of a state agent.[284] During the Iguala Mass Kidnapping, Iguala police initially took the students away on orders of Abarca and Pineda Villa.[285] Iguala police then handed the students over to Cocula police, who in turn gave the students to members of Guerreros Unidos.[286] As a result, for purposes of the Convention, the initial deprivation of liberty—that is, when the students were *first* taken away by the police—clearly meets the definition under Article Two because the police detained the students on orders by and with support of Abarca and Pineda Villa.

A more difficult question is whether the members of the Guerreros Unidos were acting "with the authorization, support or acquiescence of the State"[287] when they took the students to the garbage dump and killed them. Reports indicate that the students were ordered to be disappeared by Casarrubias, the leader of Guerreros Unidos, after he was told that they were members of a rival gang.[288] While this points to Guerreros Unidos having a motive other than orders from Iguala or Cocula police to kill the students, such motivation does not preclude a finding of "enforced disappearance" under the meaning of Article Two. Rather, Article Two encompasses a broad definition, whereby an enforced disappearance may occur by mere "*acquiescence* of the State."[289] The fact that Cocula police handed the students over to the Guerreros Unidos, a gang known for its violence,[290] shows that they acquiesced to whatever the gang intended to do with the students. Their actions were therefore clearly within the definition of Article Two. Accordingly, the second part of the definition of "enforced disappearance" under Article Two of the Convention has been met, both through the students' initial by the police on orders by Abarca and Pineda Villa and through the police acquiescence to the actions of the members of Guerreros Unidos.

3. Concealment of the Fate

Third, the deprivation of liberty must be "followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person."[291] In the case of the Iguala

284. *See id.*
285. *See supra* Parts IV.B–C.
286. *See supra* Part IV.C.
287. Convention, *supra* note 14, art. 2.
288. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
289. Convention, *supra* note 14, art. 2. (emphasis added).
290. *See, e.g.*, Chivis Martinez, *10 Decapitated Heads Found at Slaughterhouse*, BORDERLAND BEAT (Mar. 18, 2012), http://www.borderlandbeat.com/2012/03/10-decapitated-heads-found-at.html (describing the gruesome killing of ten people outside of Acapulco, Mexico, where the victims' heads were decapitated and placed in a row next to a message written by Guerreros Unidos that stated: "This is what will happen to all those who continue supporting the [La Familia Michoacán] fucking shit kidnappers, don't continue living of the people, your father is here already, kidnappers and fucking extortionists.").
291. Convention, *supra* note 14, art. 2.

Mass Kidnapping, two different actions can arguably satisfy this requirement.

First, as discussed above, Mayor Abarca expressly denied any knowledge of the attack and subsequent kidnapping of the forty-three college students.[292] His statements, coupled with his actions in fleeing Iguala with Pineda Villa for over a month, constituted a concealment of the fate of the forty-three college students. While it is unclear whether Abarca and Pineda Villa knew exactly where the students had been taken by the police and subsequently by the Guerreros Unidos, there is no question that that, given Pineda Villa's ties to the gang, the two possessed knowledge that could have ultimately led to the students' whereabouts. Their actions thus satisfy this portion of the definition in Article Two.

Second, as discussed above in Part IV.C, after killing the students, members of the Guerreros Unidos burned their bodies, placed the remains in garbage bags, and dumped them in a river.[293] Most obviously, the heinous actions by the Guerreros Unidos in attempting to hide the remains of the forty-three college students were a "concealment of the fate or whereabouts of the disappeared person,"[294]—the entire purpose was to prevent the discovery of the location of the students' remains. Moreover, as they were acting with the acquiescence of the state at this time,[295] their actions meet the third part of the definition of "enforced disappearance" in article two of the Convention.

4. Placement outside Protections of Law

Finally, the Convention states that the actions by the state actors must "place such a person outside the protection of the law."[296] In the Iguala Mass Kidnapping, the forty-three college students were placed outside of the protection of the law at two separate times. First, they were placed outside of legal protection when they were abducted and detained by members of their own government.[297] During this detention, any attempt to ask for help or protection most certainly would have been futile as the perpetrators were those who were supposed to be enforcing the law: the police. Second, the students were placed outside of the law's protection when the police gave them to members of Guerreros Unidos.[298] Through these actions, the police demonstrated not only that they themselves were not going to be of assistance to the students, but also that the police were going to make themselves scarce, thus removing what little to non-existent protection they would have theoretically provided to the students when the gang members took them to the garbage dump. In both cases,

292. *See supra* Part IV.D.
293. *See supra* Part IV.C.
294. Convention, *supra* note 14, art. 2.
295. *See supra* Part V.A.2.
296. Convention, *supra* note 14, art. 2.
297. *See supra* Part IV.C.
298. *Id.*

the police placed the students outside of the protections of the law and satisfied the final part of the definition of "enforced disappearance."

Simply put, the actions by Abarca, Pineda Villa, local police forces, and the Guerreros Unidos, constituted an "enforced disappearance" within the meaning of Article Two of the Convention. As Article One creates a complete prohibition of enforced disappearances, these state actors—and non-state actors operating under the acquiescence of state actors—violated Article One of the Convention through their actions in the Iguala Mass Kidnapping.

B. Violations of Article Six

As discussed above in Part II.C.2, Article Six of the convention mandates:

> 1. Each State Party shall take the necessary measures to hold criminally responsible at least:
>
> (a) Any person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance;
>
> (b) A superior who:
>
> (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
>
> (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
>
> (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution . . . .[299]

Although many state actors should be held criminally responsible for the Iguala Mass Kidnapping, this discussion focuses on the culpability of Abarca and Pineda Villa.

1. The Meaning of "Criminally Responsible"

A critical threshold question in addressing whether the Mexican government violated Article Aix is the meaning of the words "criminally responsible" in that portion of the Convention. Article Six indicates that "[e]ach State Party shall take the necessary measures to hold criminally responsible" those who are involved in enforced disappearances.[300] This Article is silent, however, as to whether holding those involved criminally responsible means prosecuting them for the crime of enforced disappear-

299. Convention, *supra* note 14, art. 6.1.(a)–(b). Article six contains two additional provisions but neither are central to the discussion here. *See supra* Part II.C.2

300. Convention, *supra* note 14, art. 6.1.(a)–(b).

ance.[301] As discussed above, Abarca has been charged with the crime of *kidnapping* for his actions in the Iguala tragedy.[302] Thus, if one were to look solely to the text of Article Six, which mandates only that States Parties hold those who perpetrate enforced disappearances "criminally responsible,"[303] one could argue that Mexico's government is complying with this Article by bringing *any criminal charge* against Abarca for the Iguala Mass Kidnapping.

But the broader context of Article Six shows that the drafters of the Convention intended "criminally responsible" to mean prosecution for the crime of enforced disappearance. For instance, Article Seven states that "[e]ach State Party shall *make the offen[s]e of enforced disappearance* punishable by appropriate penalties which take into account its extreme seriousness."[304] This language indicates that the drafters of the Convention had a vested interest in States Parties prosecuting those who commit enforced disappearances with the crime of enforced disappearance. Moreover, after the Working Group's visit to Mexico, it appeared to show disdain for the practice of enforced disappearances being charged as lesser offenses.[305]

Thus, between Article Seven's language and the Working Group's comments about the prosecution of enforced disappearances, it is reasonable to conclude that the words "criminally responsible" in Article Six mean charging the perpetrator of the enforced disappearance with the crime of enforced disappearance and not another crime. This interpretation of Article Six will be examined in the discussion below.

2. *Subsection 1(a) of Article Six*

Subsection 1(a) of Article Six explicitly states that States Parties to the Convention must hold criminally responsible "[a]ny person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or participates in an enforced disappearance."[306] Hence, there is broad culpability for those who have any sort of involvement in an enforced disappearance.[307]

As discussed above, accounts of the Iguala Mass Kidnapping give differing reports as to whether Abarca or Pineda Villa ordered the Iguala police to stop the student protests.[308] Additionally, none of the reports

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301. *See id.* art. 6.1.
302. *Jose Luis Abarca, Former Mexican Mayor, Faces Kidnapping Charge In Case Of 43 Missing Students*, *supra* note 269.
303. Convention, *supra* note 14, art. 6.1.(a)–(b).
304. *Id.* art. 7.1. (emphasis added).
305. *See* Working Group Report, *supra* note 73, ¶ 34 ("Often, the prosecution services submit cases as minor offen[s]es instead of the offen[s]e of enforced disappearance (in those federal entities where the act has been classified as an offen[s]e) and judges do not use their powers to reclassify the offen[s]es.").
306. Convention, *supra* note 14, art. 6.1.(a).
307. *See id.*
308. *See supra* Part IV.A. For the purposes of this article, it is presumed that both Abarca and Pineda Villa gave some sort of order to stop the students from pro-

indicate that either expressly ordered that the students disappear. To the contrary, most reports indicate that Abarca and Pineda Villa ordered the police to stop the students or to teach them a lesson, not necessarily to cause their disappearance.[309]

It instead appears that the leader of Guerreros Unidos ordered the students to disappear.[310] Under the language of subsection 1.(a) that requires States Parties to hold criminally responsible those who "order" or "solicit" an enforced disappearance, then, Abarca and Pineda Villa's actions were insufficient to trigger State Party responsibility for enforced disappearance prosecution.

But Article Six is broader than that. Indeed, it contains expansive language that brings Abarca and Pineda Villa's conduct within the meaning of the Article and triggers Mexico's prosecutorial responsibility. Subsection 1.(a) specifically states that States Parties have an obligation to prosecute those who "*induce*[ ] *the commission* of . . . an enforced disappearance."[311] As discussed above, Abarca and Pineda Villa ordered the police to either stop the students or teach them a lesson.[312] While these actions alone may not be sufficient to trigger State Party responsibility under Article Six, the broader context of Abarca and Pineda Villa's relationship to the community in Iguala demonstrates that these actions induced the students' enforced disappearance by police and the Guerreros Unidos gang. In fact, after the Iguala Mass Kidnapping, the leader of Guerreros Unidos stated that Abarca "had bribed local police to let the gang act with impunity and had even allowed gang members to infiltrate the force."[313] Moreover, as discussed above, Pineda Villa has family members in the Guerreros Unidos gang.[314] These relationships suggest that the couple had little investment in holding either local police or the Guerreros Unidos responsible for their criminal activities in Iguala. Orders to the police to stop the students or teach them a lesson therefore clearly gave the police and the Guerreros Unidos free reign to do as they pleased with the students. For that reason—and even though they may not have expressly ordered or solicited an enforced disappearance—Abarca and Pineda Villa's directives to the police on the day of the Iguala

testing, thus triggering a responsibility on the part of the Mexican government to prosecute them for the crime of enforced disappearance.

309. *See supra* Part IV.A.

310. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.

311. Convention, *supra* note 14, art. 6.1.(a).

312. *See supra* Part IV.A.

313. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3. Regrettably, corruption between police forces and drug trafficking organizations remains widespread across Mexico. *See* Rosa Acevedo, *Stepping Up the mérida Initiative: Community Policing As A Foundation for Building Resilient Communities and Reforming the Rule of Law in Mexico*, 44 CAL. W. INT'L L.J. 225, 235 (2014) ("The combination of the lucrative bribes the [drug trafficking organizations] provide to all levels of ranking police officials and the high impunity rates creates a breeding ground for corruption to thrive in a system the Mexican public does not trust.").

314. Laccino, *supra* note 230.

Mass Kidnapping *induced* the police to commit actions that ultimately led to the student's disappearance.

Accordingly, Abarca and Pineda Villa' actions triggered a duty on the part of the Mexican government to prosecute them for the crime of enforced disappearance under Article Six of the Convention. The federal government's failure to do so constitutes a violation of this important provision.

3. Subsection 1.(b) of Article Six

Alternatively, Mexico's government has a duty to charge Abarca and Pineda Villa with the crime of enforced disappearance based on the language in subsection 1.(b) of Article Six. Under that subsection, a State Party must prosecute

> [a] superior who:
>
> (i) Knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance;
>
> (ii) Exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and
>
> (iii) Failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution[.][315]

As this subsection contains three subparts, each subpart will be addressed separately below.

a. Knowledge or Conscious Disregard of Information

Under subpart 1.(b)(i), State Parties must hold criminally responsible superiors who "[k]new, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance."[316] Here, although some reports have described Abarca as being the mastermind behind the Iguala Mass Kidnapping,[317] it is unclear whether either Abarca or Pineda Villa knew or consciously disregarded information that "clearly indicated" that the police forces under their authority were going to commit an enforced disappearance, as required by this subpart of Article Six.[318] It is certainly reasonable to infer that the relationship both had with local police and drug gangs, coupled with their orders to local police, put them on notice that the students would be handled in a violent manner. But there is no indication that

315. Convention, *supra* note 14, art. 6.1.(a)–(b).
316. *Id.* art. 6.1.(a)(i).
317. Laccino, supra note 6.
318. *See* Convention, *supra* note 14, art. 6.1.(a)(i).

they either knew or disregarded information that indicated an enforced disappearance took place or would take place. As a result, this subpart cannot be used to trigger Mexico's responsibility to prosecute Abarca or Pineda Villa for the crime of enforced disappearance.

b. Exercise of Effective Responsibility and Control

Subpart 1.(b)(ii) indicates that States Parties have a duty to prosecute superiors who "[e]xercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance."[319] Of critical importance in this subpart is the fact that it encompasses "*activities which were concerned with the crime* of enforced disappearance."[320] Under this broad language, Abarca and Pineda Villa clearly had control over activities that concerned the enforced disappearance committed by the police and the Guerreros Unidos. Specifically, as discussed above, Abarca and Pineda Villa ordered the police to either stop the students or teach them a lesson.[321] When they heard these orders, the police attacked the students.[322] Although it is unclear whether the police would have ultimately acted without the orders by Abarca and Pineda Villa, the orders put into motion the events that ultimately led to the students' disappearance. As this subpart of the Convention merely requires that superiors have "responsibility for and control over activities which were concerned" with the disappearance,[323] by ordering that the students be stopped or taught a lesson, Abarca and Pineda Villa's actions fall under this subpart. Accordingly, this subpart can be used to trigger the responsibility of the Mexican government to prosecute the couple for enforced disappearance.

c. Failure to Take All Necessary and Reasonable Preventative Measures

Finally, subpart 1.(b)(iii) mandates that States Parties hold criminally responsible those superiors who "[f]ailed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution."[324]

As discussed above, it is unclear whether Abarca or Pineda Villa knew that their orders would lead to an enforced disappearance. But it is reasonable to conclude that, based on the nature of their orders, Abarca's alleged bribery of local police, and Pineda Villa's familial relationship to members of the Guerreros Unidos, the two knew that their orders would cause some form of violence. Had they truly wanted to stop the students

319. *Id.* art. 6.1.(b)(ii).
320. *Id.*
321. *See supra* Part V.b.2.
322. *Missing Mexico students: Iguala mayor 'ordered attack'*, *supra* note 3.
323. Convention, *supra* note 14, art. 6.1.(b)(ii).
324. *Id.* art. 6.1.(b)(iii).

from protesting without the police using violence, they could clarify their instructions to the Iguala police. But they did not. Thus, they failed to take reasonable measures to prevent the enforced disappearance under the first provision of subpart 1.(b)(iii).[325]

Further, as discussed above, following the events of the Iguala Mass Kidnapping, Abarca denied any knowledge of the attack on the students, and he and his wife later fled to Mexico City.[326] These actions fall under the second provision of subpart 1.(b)(iii), which triggers State Party prosecutorial responsibility for superiors who fail "to submit the matter to the competent authorities for investigation and prosecution."[327] Thus, under both provisions of subpart 1.(b)(iii) of Article Six, Abarca and Pineda Villa's actions triggered a duty on the part of the Mexican government to prosecute them for the crime of enforced disappearance.

In sum, Abarca and Pineda Villa's actions created a duty on the part of Mexico's government to prosecute them for the crime of enforced disappearance based on the language in subsection 1.(a) and subparts 1.(b)(ii)–(iii) of subsection1.(b) in Article Six of the Convention. As addressed above, however, Mexico's federal government has yet to charge either with the crime of enforced disappearance, and such a charge is unlikely to come against Abarca.[328] This failure to prosecute on the part of Mexico's government violates its Article Six obligations under the Convention.

C. Violations of Article Twenty-Three

As discussed above in Part II.C.3, under Article Twenty-Three of the Convention:

> 1. Each State Party shall ensure that the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the custody or treatment of any person deprived of liberty includes the necessary education and information regarding the relevant provisions of this Convention, in order to:
>
> (a) Prevent the involvement of such officials in enforced disappearances;
>
> (b) Emphasize the importance of prevention and investigations in relation to enforced disappearances;
>
> (c) Ensure that the urgent need to resolve cases of enforced disappearance is recognized.
>
> 2. Each State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished.

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325. *See id.*
326. *See supra* Part I.V.D.
327. Convention, *supra* note 14, art. 6.1.(b)(iii).
328. *See supra* Part IV.D.

> 3. Each State Party shall take the necessary measures to ensure that the persons referred to in paragraph 1 of this article who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.[329]

Although this Article contains a number of different provisions, of importance here are subsection 1.(a) and subsection 3.[330]

1. Subsection 1.(a) of Article Twenty-Three

Subsection 1.(a) of Article Twenty-Three provides that States Parties must provide training for public officials to "[p]revent the involvement of such officials in enforced disappearances."[331] As discussed above in Part III.B.4, Mexico's State Party Report addresses a number of different trainings used by the government to adhere to its obligations under Article Twenty-Three, but does not go into great detail about these trainings.[332] Regardless of how comprehensive these trainings are, they were manifestly insufficient to prevent the Iguala Mass Kidnapping. As discussed above, the Iguala Mass Kidnapping was an enforced disappearance that Abarca, Pineda Villa, local police forces, and other officials were involved in.[333] This involvement falls under the language in subsec-

329. Convention, *supra* note 14, art. 23.1–3.

330. Although subsections 1.(b) and 1.(c) of article twenty-three contain important provisions about what trainings should cover, they are tailored to make sure that officials recognize the importance of preventing, investigating, and resolving enforced disappearances. *See id.* art. 23.1.(b)–(c). While making public officials realize the significance of enforced disappearances through proper training is an important goal, the focus of this paper is the *actions* of public officials, not whether they *recognize* the importance of the issue. Certainly, any Mexican public official would likely state that he or she recognizes the importance of the issue of enforced disappearances if asked. Even Abarca himself stated on the day of the Iguala Mass Kidnapping that he was "very sorry" to hear about the tragedy. *See* Wilkinson, *supra* note 256. (internal quotation marks omitted). For that reason, subsections 1.(b) and 1.(c) of article twenty-three are not included in the discussion in this section of the article. Subsection 2. of article twenty-three will also be omitted from this discussion. Under that subsection, "[e]ach State Party shall ensure that orders or instructions prescribing, authorizing or encouraging enforced disappearance are prohibited. Each State Party shall guarantee that a person who refuses to obey such an order will not be punished." Convention, *supra* note 14, art. 23.2. Regrettably, the section of Mexico's Federal Criminal Code that addresses enforced disappearances does not discuss the ordering of enforced disappearances by public officials. *See* CPF [Federal Criminal Code], *as amended*, arts. 215-A–D, DO, 14 de Julio de 2014 (Mex.). The State Party Report similarly did not address what trainings are being done to prevent officials from ordering disappearances. *See* State Party Report, *supra* note 61, ¶¶ 226–44. But as it is unclear whether Abarca, Pineda Villa, or local police forces expressly ordered that the forty-three students be disappeared, the actions by these officials may not have violated subsection 2. of article twenty-three. Accordingly, subsection 2. of article twenty-three will not be included in this discussion.

331. Convention, *supra* note 14, art. 23.1.(a).

332. *See supra* Part III.B.4.

333. *See supra* Part V.A (concluding that the actions of Abarca, Pineda Villa, local police forces, and the Guerreros Unidos constituted an "enforced disappearance" within the definition used by the Convention).

tion 1.(a) of Article Twenty-Three of the Convention, and any training that these officials may have had prior to this tragedy completely failed to prevent it from happening.[334] The lack of proper training is a violation of subsection 1.(a) of Article Twenty-Three.

2. Subsection 3. of Article Twenty-Three

Under subsection 3. of Article Twenty-Three:

> Each State Party shall take the necessary measures to ensure that [government officials] who have reason to believe that an enforced disappearance has occurred or is planned report the matter to their superiors and, where necessary, to the appropriate authorities or bodies vested with powers of review or remedy.[335]

With regard to the Iguala Mass Kidnapping, there is no question that, at both the state and federal level, the government failed to take adequate measures to ensure that those who believe an enforced disappearance has taken place or will take place report that information to the proper authorities as prescribed by subsection 3 of Article Twenty-Three of the Convention.[336] Despite a multitude of government officials' involvement in the attack on and disappearance of the forty-three college students, weeks passed after the initial attack before so much as a hint of the students' whereabouts became known.[337] Cocula police certainly had reason to believe that the students would disappear when they handed them over to the Guerreros Unidos. Undoubtedly, Iguala police were also put on notice of what would happen to the students once they handed the students over to Cocula police. Nor is there any doubt that Abarca and Pineda Villa had knowledge that an enforced disappearance could take place after their orders to the Iguala police to stop the protesting students. Yet no report indicates that any of these government officials voluntarily came forward to report this information to proper authorities immediately following the attack as required by subsection 3 of Article Twenty-Three of the convention.[338] This failure to report the Iguala Mass Kidnapping reflects a violation of Article Twenty-Three not only by those officials involved, but also by the parent government entities in their failure to adequately train government officials in the importance of reporting enforced disappearances.

In grand sum, the events of the Iguala Mass Kidnapping unequivocally constituted violations of Articles One, Six, and Twenty-Three of the Convention. These violations are particularly unfortunate given how soon they came after Mexico's State Party Report, which glowed with optimism regarding Mexico's stated adherence to the Convention.

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334. *See* Convention, *supra* note 14, art. 23.1.(a).
335. *Id.* art. 23.3.
336. *See id.*
337. *See* Archibold, *supra* note 9.
338. *See* Convention, *supra* note 14, art. 23.3.

VI. RECOMMENDATIONS FOR THE GOVERNMENT OF MEXICO

In the wake of the Iguala Mass Kidnapping, there are three concrete steps that Mexico's government can take now to appropriately handle the situation and ensure that similar kidnappings do not occur again. These recommendations are far from comprehensive or exhaustive,[339] but they are a good starting place for Mexico's federal and state governments in taking constructive steps to address this tragedy and show the international community that Mexico is prepared to take the crime of enforced disappearance seriously.

A. PROSECUTE ABARCA AND PINEDA VILLA FOR THE CRIME OF ENFORCED DISAPPEARANCE UNDER ARTICLE 215-A OF THE FEDERAL CRIMINAL CODE

Although Article 215-A of the federal criminal code is far from perfect,[340] prosecuting both Abarca and Pineda Villa under this portion of the criminal code would send a strong message to the international community that Mexico's federal government does not tolerate government officials engaging in enforced disappearances. As discussed above in Part III.A.1, under this Article of Mexico's federal criminal code, "[a] public servant who—regardless of whether (s)he has participated in the legal or illegal detention of an individual or various individuals—helps to secure their secret detention or deliberately conceals information about it, commits the offen[s]e of an enforced disappearance."[341] Although Abarca and Pineda Villa clearly committed an enforced disappearance under the definition of the crime used in the *Convention*,[342] a separate inquiry is necessary to determine whether their actions constituted an enforced disappearance under the definition in Article 215-A.

339. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 11–13; Working Group Report, *supra* note 73, ¶¶ 79–113, for two comprehensive lists of recommendations for Mexico's federal and state governments to address the ongoing problem of enforced disappearances. Given that the focus of this paper is on Mexico's violations of articles one, six, and twenty-three, the recommendations discussed in this section generally address remedying the violations of those articles.

340. *See supra* Part III.A.1 (discussing the inadequacies of Mexico's legislative framework with regard to the crime of enforced disappearance, as pointed out by the Working Group Report and Human Rights Watch's 2013 report). The federal criminal code unfortunately does not address the possibility of non-state actors conducting an enforced disappearance with the support of government officials. *Id.* For that reason, prosecution of the members of the Guerreros Unidos, who allegedly were involved in the Iguala Mass Kidnapping, will not be addressed in this article.

341. MEXICO'S DISAPPEARED, *supra* note 85, at 131 (citing CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.)). The author is once again indebted to Human Rights Watch for their English translation of this portion of the Federal Criminal Code. This translation will be used in the analysis in this section.

342. *See supra* Part V.A.

1. Public Servant

The first part of Article 215-A requires that the person who is prosecuted be a public servant.[343] There is no question that Abarca, as mayor of Iguala, was a public servant at the time of the Iguala Mass Kidnapping. Additionally, at the time of the kidnapping, Pineda Villa was reportedly the head of a local government agency office, making her a public servant as well.[344] Both were therefore public servants within the meaning of Article 215-A at the time of the Iguala Mass Kidnapping, thus satisfying the statute's first requirement.

2. Participation in the Detention

Under the second part of Article 215-A, public servants need not participate "in the legal or illegal detention of an individual or various individuals."[345] This portion of the Article, then, quite properly allocates broad liability outside of just those individuals who actually facilitated the disappearance itself. In the case of the Iguala Mass Kidnapping, there is no indication that Abarca or Pineda Villa directly effectuated the students' disappearance. Under the broad language of Article 215-A, however, such direct participation is not necessary, and would not be fatal to their prosecution under this section of the Federal Criminal Code.

3. Helping to Secure Detention or Deliberately Concealing Information About It

The third and final portion of Article 215-A requires that the public servants "help[ ] to secure [the] secret detention or deliberately conceal[ ] information about it."[346] Here, both Abarca and Pineda Villa helped to secure the detention of the students and also concealed information about the detention.

With regard to helping to secure the detention, reports of the Iguala Mass Kidnapping indicate that both Abarca and Pineda Villa gave orders that the protesting students be stopped.[347] Those orders set into motion a chain of events that ultimately led to the disappearance of forty-three students.[348] Although it is unclear whether Abarca and Pineda Villa knew what the students' ultimate fate would be, or even intended their disappearance, such knowledge or intent is unnecessary under Article 215-A, which merely requires that the public servants *help* secure the secret detention.[349] Thus, under a liberal construction of this portion of

343. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 131 (citing CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.)).
344. Daly, *supra* note 218.
345. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 131 (citing CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.)).
346. *Id.*
347. *See supra* Part IV.A.
348. *See supra* Parts IV.B–C.
349. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 131 (citing CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.)).

Article 215-A, Abarca and Pineda Villa both helped to secure the detention of the forty-three students in the Iguala Mass Kidnapping.[350]

Abarca and Pineda Villa's actions also satisfy the third portion of Article 215-A's alternative requirement that the public servants "deliberately conceal[ ] information about" the disappearance.[351] Of relevance here, although Abarca arguably had at least some information that could lead to the discovery of the students, he denied any such knowledge immediately after the event.[352] Moreover, Abarca and Pineda Villa fled Iguala after the kidnapping and prevented authorities from obtaining any information they might have had that could have led to the discovery of the students. Simply put, Abarca and Pineda Villa's actions meet either of the two alternative requirements in the third portion of Article 215-A of the Federal Criminal Code.

In sum, through a liberal yet necessary reading of Article 215-A, Mexican federal authorities have a basis upon which to prosecute both Abarca and Pineda Villa for the crime of enforced disappearance. To show the international community that they are prepared to take the widespread occurrence of enforced disappearances seriously, Mexican federal authorities should charge Abarca and Pineda Villa with the crime enforced disappearance under this section of the Federal Criminal Code. Given the rarity of such prosecutions in Mexico, however, charges against the two remain unlikely.[353] Moreover, the recent kidnapping charge brought against Abarca by federal authorities lessens any chance of a subsequent prosecution against him for the crime of enforced disappearance.[354]

B. Bring Federal and State Legislative Definitions of "Enforced Disappearance" into Alignment with the Convention[355]

As discussed above, Mexico should prosecute both Abarca and Pineda Villa with the crime of enforced disappearance under the Federal Crimi-

350. It is also no coincidence that Pineda Villa has close family connections to the Guerreros Unidos, the gang that ultimately killed the students and hid their remains. Given her ties to this drug gang, she also likely helped secure the detention of the students through any communications that she may have had with the Guerreros Unidos.

351. *See* Mexico's Disappeared, *supra* note 85, at 131 (citing CPF [Federal Criminal Code], *as amended*, art. 215-A, DO, 25 de Enero de 2013 (Mex.)).

352. *See supra* Part IV.D.

353. *See supra* Part III.A.2.b.iii (discussing why prosecutions for the crime of enforced disappearance are rare in Mexico).

354. *See supra* Part IV.D (addressing why Abarca is unlikely to be charged with the crime of enforced disappearance in the wake of the federal kidnapping charge against him).

355. The idea for this recommendation comes from Human Rights Watch's February 2013 report on disappearances in Mexico. *See* Mexico's Disappeared, *supra* note 85, at 12 (recommending that state and federal legislators "[a]mend or insert the definition of enforced disappearance in federal and state criminal codes to ensure that it is consistent across jurisdictions and includes all conduct included in the definitions established by the International Convention for the Protection of All Persons from Enforced Disappearance" and other international conventions).

nal Code. Such charges, however, would require a liberal interpretation of Article 215-A of the Federal Criminal Code that might give federal authorities reason for pause.[356] To counter that concern, the definition of "enforced disappearance" under the Federal Criminal Code should be changed to align with the definition in the Convention.[357] As addressed above, Abarca and Pineda Villa committed an "enforced disappearance" under the Convention's definition.[358] Accordingly, bringing a case against the two under that definition would be much easier than under the definition used in Article 215-A of the Federal Criminal Code.[359]

All thirty-two federal entities in Mexico should also adopt the Convention's definition of "enforced disappearance" in their respective criminal codes.[360] At the time of Mexico's State Party Report, only nineteen federal entities had made enforced disappearance a crime.[361] But the definitions used by these nineteen federal entities vary, making compliance with the Convention difficult.[362] If all thirty-two federal entities were to include the crime of enforced disappearance in their criminal codes using the Convention's definition, it would create uniformity across Mexico and put public officials at all levels of government on notice that both national and local governments take this crime seriously.[363]

Recommending that all levels of Mexico's government adopt the definition of "enforced disappearance" from the Convention may sound like a tall order. But with how rare prosecutions for enforced disappearances in Mexico are, it is not as though such a legislative change would necessitate a restructuring of other legal or administrative frameworks in the country.[364] To the contrary, if the remaining thirteen federal entities adopt the Convention's definition and those jurisdictions that have already criminalized enforced disappearance change a few words, Mexico could easily bring its codified laws into alignment with the Convention's mandates. Moreover, Mexico's size provides no excuse for foregoing action. As a reference point, the Philippines, a country with a population very close to that of Mexico,[365] passed historic legislation in 2012 that criminalized enforced disappearance by using the definition in the

356. *See supra* Part VI.A.
357. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 12.
358. *See supra* Part V.A.
359. *Compare supra* Part V.A. (concluding that Abarca and Pineda Villa committed an enforced disappearance within the definition used in the Convention), *with supra* Part VI.A (discussing how prosecuting Abarca and Pineda Villa under section 215-A of the Federal Criminal Code would require liberal statutory interpretation).
360. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 12.
361. *See supra* Part III.A.1.
362. *Id.*
363. *See* MEXICO'S DISAPPEARED, *supra* note 85, at 12.
364. *See supra* Part III.A.2.b.iii.
365. *Compare Philippines Population (LIVE)*, WORLDOMETERS, http://www.worldometers.info/world-population/philippines-population/ (last visited Mar. 21, 2015) (estimating the population of the Philippines to be 101,342,697 as of March 21, 2015), *with Mexico Population (LIVE)*, WORLDOMETERS, http://www.worldometers.info/world-population/mexico-population/ (last visited Mar. 21, 2015) (estimating the population of Mexico to be 124,867,808 as of March 21, 2015).

Convention.[366]

Mexico now has the opportunity to demonstrate to the international community that it is prepared to take enforced disappearances seriously. Uniformly defining the crime of enforced disappearance in alignment with the definition in the Convention is a critical step toward this goal.

C. Implement National Comprehensive Trainings on Preventing Enforced Disappearances

A third and final recommendation for Mexico in the wake of the Iguala Mass Kidnapping is to create comprehensive national trainings for all public officials to prevent enforced disappearances. As discussed above in Part II.C.3, Article Twenty-Three of the Convention imposes training requirements on States Parties with regard to preventing enforced disappearances.[367] This Article has been described as "establish[ing] an obligation to educate state officials on the content of [the] convention."[368] Although Mexico's State Party Report discusses the trainings provided to government officials to meet the obligations of Article Twenty-Three, it does not address them in detail.[369] Regardless of how comprehensive the trainings may have been, they were ultimately insufficient to prevent the Iguala Mass Kidnapping.

Mexico needs to create a national training program to educate government officials of all levels on preventing and investigating enforced disappearances to meet its Article Twenty-Three obligations. As one author pointed out, however, "[t]he text of the [Convention] neither further specifies the nature of such training, nor the frequency with which it must be provided."[370] This author opined that "[t]he purpose of such programmes must strive to prevent [State Officials'] involvement in enforced disappearances. Also, the programmes must aim to raise awareness about the importance of prevention and investigation."[371] Specifically:

> As to the content of such training, the case law provides a foundation for including not only the provisions of the [Convention] but also updates on the output of the [Committee on Enforced Disappearances]. Additionally . . . it is important that not only the norms in the [Convention] are addressed in the training but also, for instance, the way in which authorities must deal with complaints of enforced disappearances and the dangers accompanying such complaints.[372]

366. *See Philippines passes landmark law criminalizing enforced disappearances*, OHCHR (Jan. 24, 2013), http://www.ohchr.org/EN/NewsEvents/Pages/Philippinespassescriminalizingenforceddisappearances.aspx ("Although the Philippines has not yet ratified the International Convention for the Protection of All Persons from Enforced Disappearances, the new law adopts the Convention's definition of enforced or involuntary disappearances in its entirety.").
367. *See* Convention, *supra* note 14, art. 23.1.(a).
368. VERMEULEN, *supra* note 42, at 467 (citing Convention, *supra* note 14, art. 23).
369. *See* State Party Report, *supra* note 61, ¶¶ 226–44.
370. VERMEULEN, *supra* note 42, at 467.
371. *Id.*
372. *Id.*

In addition to this commentator's recommendations, such trainings should also specifically address the statutory penalties for participating in an enforced disappearance. Doing so would create increased disincentives for Mexican officials to engage in such heinous crimes.

In brief, Mexico can take important first steps in addressing the Iguala Mass Kidnappings and preventing similar events in the future by: (1) prosecuting Abarca and Pineda Villa under article 215-A of the Federal Criminal Code; (2) creating uniformity in all Mexican criminal codes with regard the crime of enforced disappearance; and (3) implementing national trainings on preventing and investigating enforced disappearances. These steps are critical for the country to show its commitment to meeting its obligations under the Convention.

VII. CONCLUSION

Mexico's State Party Report portrays a favorable image of Mexico's compliance with the Convention and appreciation of the gravity of enforced disappearances. As pleasant as it may be to read the State Party Report, though, words on paper mean nothing if Mexico does not comply in practice. Any hint that Mexico was complying with the Convention prior to September 2014 was completely shattered by the Iguala Mass Kidnapping. This event is the most recent and horrific demonstration of Mexico's continued failure to adhere to its international human rights obligations.

Although the forty-three students who disappeared during the Iguala Mass Kidnapping will never return,[373] there are concrete steps that Mexico's government can take right now to indicate its willingness to meet to its obligations under the Convention. Specifically, by prosecuting Abarca and Pineda Villa under the Federal Criminal Code, changing state and federal legislative definitions of "enforced disappearance" to align with the definition in the Convention, and implementing a national training program for all government officials, Mexico can demonstrate its readiness to address the mandates of the Convention.

Now is the time for Mexico's government to show that it is prepared to act in accordance with international human rights standards. But if the disappearance and subsequent death of forty-three students on the orders of the mayor of a Mexican city is not sufficient to rattle Mexico's government awake, it is hard to imagine what will be.

373. *See* Peralta, *supra* note 11.

Updates