

Executive Summary of the Follow-Up Report on the Implementation by Mexico of the Recommendations issued by the Committee on Enforced Disappearances in February 2015

by



Fundación para la Justicia y el Estado Democrático de Derecho, A.C.

TRIAL (*Track Impunity Always*)

Casa del Migrante de Saltillo, Coahuila

Centro Diocesano para los Derechos Humanos Fray Juan de Larios, A.C.

Fuerzas Unidas por Nuestros Desaparecidos (as) en Coahuila (FUUNDEC)

Comité de Familiares de Migrantes Fallecidos y Desaparecidos - El Salvador (COFAMIDE)

Comité de Familiares de Migrantes de El Progreso (COFAMIPRO)

FEBRUARY 2016

I. Background

1. On 13 February 2015 the Committee on Enforced Disappearances (hereinafter, “the Committee”) adopted its concluding observations on the report submitted by Mexico under Art. 29, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter, “the Convention”).
2. Pursuant to its rules of procedure, the Committee requested Mexico to provide, by 13 February 2016 at the latest, relevant information on the implementation of the recommendations as contained in paragraphs 18, 24 and 41.
3. The *Fundación para la Justicia y el Estado democrático de derecho*, TRIAL (Track Impunity Always) and a coalition of five civil society associations from Mexico, Honduras, and El Salvador submit a follow-up report to the Committee to illustrate the limited implementation of the above mentioned recommendations, the remaining obstacles and pitfalls, and to inform on the worsening of the situation concerning a number of issues since February 2015. The follow-up report is submitted in its integral version in Spanish and, with the aim of facilitating the work of the members of the Committee, in this summarized English version.
4. It is noteworthy that, after the adoption of the Committee’s concluding observations, also the United Nations Working Group on Enforced or Involuntary Disappearances (hereinafter, “WGEID”), issued a follow-up report on its previous mission to Mexico. The recommendations contained in such report are almost identical to those formulated by the Committee in February 2015. However, despite these unanimous and repeated calls from international human rights mechanisms, Mexico remains at odds with its international obligations and disregards most of the mentioned recommendations.

II. The Lack of A Unified National Register of Persons Subjected to Enforced Disappearance

Para. 18 of the Concluding Observations of February 2015

The State party should take the steps necessary to **establish a single nationwide register of disappeared persons** which generates accurate statistics that can be used to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this abhorrent crime. The register should, as a minimum: (a) provide exhaustive and detailed information about all cases of disappeared persons, including information about the sex, age and nationality of the disappeared persons and the place and date of their disappearance; (b) include information that can be used to determine whether the case in question is one of enforced disappearance or a disappearance that occurred without any involvement of State agents; (c) facilitate the generation of statistical data on cases of enforced disappearances, including cases that have been clarified; and (d) contain information based on clear, consistent criteria and be updated on a regular basis. In this context, the State party should use the fact that the regulations implementing the Act on the National Register of Missing and Disappeared Persons are still pending adoption as an opportunity to ensure that the aforementioned criteria are met. It should also adopt the necessary measures to guarantee that the authorities responsible for entering the relevant data do so in a consistent and exhaustive manner, immediately after being informed of a disappearance.

5. Notwithstanding the recommendations issued, among others, by the Committee, at the time of

writing **Mexico has not yet established a unified register of persons subjected to enforced disappearance.** While it is true that in January 2016 the government circulated updated statistics on the total number of persons reported disappeared in Mexico, to the knowledge of the associations subscribing this follow-up report, there is not yet a unified national register accessible to the general public, relatives of disappeared persons, and civil society organisations working with relatives of disappeared persons in Mexico and in the neighbouring countries.

6. The data circulated by the government generically refer to persons registered as “missing” throughout the country. As a matter of fact, **it remains unclear how many of these people are actually victims of enforced disappearance.** Disturbingly, Mexican authorities continue using the Spanish phrases “*no localizados*” or “*personas extraviadas*” (roughly “missing” or “lost persons”), hence failing to clearly identify where there is a crime at stake and *de facto* diluting the responsibility of the State. Moreover, it must be pointed out that both expressions are at odds with international law. This practice has been criticized by the WGEID since 2011.¹ Nevertheless, the State seems to disregard the corresponding recommendations.²
7. While acknowledging the gravity of the situation and its widespread nature and the existence of an almost absolute impunity, the government alleges that most of the registered disappearances are attributable to non-State actors and, in particular, to organized criminal groups and drug cartels. It is unclear how the State can affirm this, especially when it also recognizes that investigations carried out so far are plagued by gaps and have not been effective.
8. All in all, the **lack of a unified register of persons subjected to enforced disappearance jeopardises the chances to conduct a thorough analysis at the national level on the phenomenon of enforced disappearance and to adopt effective measures aiming at preventing and eradicating this heinous crime.** It must be also pointed out that, to the knowledge of the associations subscribing this follow-up report, there is neither a unified register of disappeared persons whose fate and whereabouts has been clarified. The lack of such data makes it almost impossible to assess the effectiveness of the actions taken by Mexico in terms of investigation and search of victims of enforced disappearance.

For more details, please refer to paras. 4-10 of the integral version of the follow-up report

III. The Establishment of an Investigation Unit on Crimes against Migrants and the External Support Mechanism for Search and Investigation

Para. 24 of the Concluding Observations of February 2015

In conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee: (a) that searches are conducted for disappeared migrants and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the relatives of the disappeared persons, irrespective of where they reside, have the opportunity to

¹ Working Group on Enforced or Involuntary Disappearances (WGEID), *Report on the Mission to Mexico*, doc. A/HRC/19/58/Add.2 of 20 December 2011, para. 18.

² *Ibid.*, para. 80.

obtain information and take part in the investigations and the search for the disappeared persons.

9. On 16 December 2015, the Office of the Attorney General of the Republic adopted an agreement establishing an **Investigation Unit on Crimes against Migrants and an External Support Mechanism for Search and Investigation**.
10. The adoption of this agreement represents a significant step forward, as it takes into account certain features of gross human rights violations committed in the context of migration, such as the transnational scope of the phenomenon and the need to set up an enhanced investigative network. However, **it remains to be seen how this Unit will work in practice and the associations subscribing this follow-up report remain concerned about certain pitfalls of the agreement** that may jeopardise the effectiveness of the newly established mechanism.
11. In fact, despite the call from civil society organisations, the final version of the agreement does not contain certain measures which are considered crucial to ensure the effective functioning of the Unit. The associations that subscribe this follow-up report are persuaded that the Unit should rely on an **interdisciplinary group of experts that conduct a thorough analysis of the overall context of the crimes committed against migrants**, which would allow determining the *modus operandi* of the perpetrators, as well as the existence of certain criminal patterns, hence boosting the results of the investigation and the search of disappeared migrants. It is also important that civil society organisations and, in particular, **associations of relatives of disappeared persons, can directly interact and cooperate with the Unit**, thus providing information and fulfilling their right to know the truth on the progress and results of investigations.
12. Civil society associations repeatedly pointed out that the Unit should set up and manage **two registers** (one concerning migrant persons deprived of their liberty on the Mexican soil and another one concerning migrant persons under custody in Mexico for any other reason) which would facilitate the establishment of the fate and whereabouts of disappeared migrants. At the time of writing, such registers do not exist and it is unclear whether the Unit foresees their creation. Similarly, it is currently unpredictable whether the Unit is planning, as requested several times by civil society organisations, to **establish contacts with the already existing Forensic Databases in Honduras, El Salvador, Guatemala and certain states of Mexico**. This would facilitate the process of identification of mortal remains and would be in line with the obligation established pursuant to Art. 15 of the Convention in the sense that States must cooperate with each other and afford one another the greatest measure of mutual assistance with a view to assisting victims of enforced disappearance, and in searching for, locating and, in the event of death, in exhuming and identifying them and returning their remains.
13. In the meantime, **relatives of migrant persons disappeared in Mexico who reside abroad continue experiencing serious and often insurmountable obstacles in their access to archives and to case files, and in obtaining information on the status of investigations in Mexico**. On the one hand, many cannot travel to Mexico because of the impossibility to obtain a visa or due to financial restraints. On the other, **those who try to appoint a legal representative in Mexico face several hindrances and considerable delays that, in the end, jeopardise the overall process of search and investigation on the fate and whereabouts of their loved ones, as well as the chances to identify those responsible for the crimes concerned, prosecute and sanction them**.

For more details, please refer to paras. 11-18 of the integral version of the follow-up report

IV. The Pitfalls in the Search of Disappeared Persons and, in case of Death, in the Localisation, Exhumation, Identification, Respect and Return of Their Mortal Remains

Para. 41 the Concluding Observations of February 2015

In the light of Art. 24, para. 3, of the Convention, the State party should **redouble its efforts to search for, locate and release disappeared persons and, in the event of death, locate, respect and return their remains**. In particular, it should: (a) Guarantee in practice that when news of a person's disappearance is received **the search is initiated ex officio without delay in order to increase the chances of finding the person alive**; (b) Ensure that the search is conducted by the **competent authorities with the involvement of the relatives of the person concerned**; (c) **Strengthen the ante-mortem/post-mortem database**, ensure that it is fully operational in all states as quickly as possible and guarantee that it contains the relevant information on all cases of disappeared persons, without exception, in strict conformity with the relevant protocols; (d) Strengthen the **genetic database of the Office of the Attorney General of the Republic to ensure that it contains information on all the persons that have disappeared in the State party**; (e) Guarantee effective **coordination, cooperation and cross-referencing between the agencies responsible for searching for disappeared persons and for identifying their remains in the event of death, and ensure that they have the necessary economic, technical and human resources**.

14. **Investigations on cases of alleged enforced disappearance remain highly ineffective and plagued by lulls**. In many cases, the **authorities in charge do not conduct field visits or a thorough examination of the potential crime scene and evidences are not preserved in an adequate manner**. Furthermore, there seems to be a **lack of effective cooperation among different State agencies that do not exchange information among them, thus hampering the overall outcome of the investigation**. Moreover, when the crime scene is indeed examined and **evidences are collected, there is an endemic delay in the analysis of such elements that results in the lack of a clear investigative hypothesis**. The authorities in charge of the investigation tend to limit the scope of their analysis, without exploring the potential connections between different cases. In general, the authorities in charge of searching disappeared persons and conducting investigations **do not have enough financial and human resources to effectively carry out their work**.
15. When migrants coming from neighbouring countries are subjected to enforced disappearance in Mexico and the **criminal investigation would require that the States concerned afford one another the greatest measure of mutual legal assistance, including the supply of all evidence at their disposal** (Art. 14, para. 1, of the Convention), there **remain practical obstacles and delays that frustrate the effectiveness of the process**.
16. Over the past years the Forensic Commission created in August 2013 on the basis of an agreement among the Office of the Attorney General of Mexico, civil society organisations, and the Argentine Forensic Anthropologic Team (EAAF) and mandated to identify the mortal remains found in the mass graves concerning three major massacres (known as "the massacre of 72 migrants in Tamaulipas", "the 49 common graves of San Fernando", and "the 49 trunks of Cadereyta") has made significant progresses.
17. However, at present the Forensic Commission is facing a **number of bureaucratic and**

administrative obstacles. In particular, Mexican authorities are not **sharing the copies of the files of the criminal investigations concerning the mentioned events and are hindering the access to relevant documentation that could prove essential for the identification of mortal remains.** Moreover, despite the request that the mandate of the Forensic Commission is enlarged to encompass also other cases that may be related to the previous three or, anyway, that may concern migrant persons victims of gross human rights violations in Mexico, including enforced disappearances, this has not been the case so far.

18. Overall, **Mexico has not set up a unified data base and map of common graves and clandestine sites of burial,** thus making it impossible to develop a national strategy and to have a clear understanding of criminal patterns and of the real scope of the phenomenon. Further, in those cases where **State authorities are in charge of the process of exhumation and identification of mortal remains, grave mistakes have been registered,** often causing re-victimisation among the relatives of the disappeared, violating their right to know the truth and, ultimately, also hampering the corresponding criminal investigations. The **ante-mortem/post-mortem database is not yet operating in all states.**
19. When migrant persons are concerned, relatives living abroad face exceptional difficulties: in some cases, they have been **requested to travel to Mexico to collect the mortal remains of their loved ones and to pay for the journey and the burial expenses, which they often cannot afford.** This has **exposed several families to re-victimisation,** and most of them contracted debts in order to find the money to recover the mortal remains of their loved ones.

For more details, please refer to paras. 19-31 of the integral version of the follow-up report

V. Other Matters of Particular Concern

20. Besides the subjects on which the Committee expressly requested Mexico to provide follow-up information, there are other matters that the associations subscribing the present follow-up report would like to bring to the attention of the Committee, in particular with regard to the **serious obstacles faced by relatives of disappeared persons in the fulfilment of the right to receive assistance, support and compensation;** and the **lack of implementation of the interim measures ordered by the Committee pursuant to Art. 30, para. 3, of the Convention, on 13 October 2015 and extended on 18 January 2016.**
21. Pursuant to the General Law on Victims of 2013, an Executive Commission of Support to Victims (*Comisión Ejecutiva de Atención a Víctimas*, hereinafter “CEAV”) has been established and mandated to set up a unified register of victims and provide them measures of assistance, support and reparation. **Relatives of migrants disappeared in Mexico are facing huge obstacles in fulfilling their rights pursuant to the General Law on Victims.** In particular, **the CEAV is imposing on them a number of bureaucratic requirements that, living abroad, they are unable to satisfy. Further, the CEAV hinders the families’ right to appoint a legal representative in Mexico, de facto leaving them without any access to justice and redress.** Moreover, although a number of relatives of migrant persons disappeared in Mexico had already been recognized as victims by the predecessor (*Províctima*) of the CEAV, **the latter alleges that the files of Províctima cannot be found and families must undergo anew the whole process of recognition and registration as victims, with**

all the related difficulties.

22. In the last year, the Committee has increasingly been called to act pursuant to Art. 30 of the Convention, including in many cases concerning Mexico. In the context of this urgent procedure, on 13 October 2015, the Committee ordered the adoption of interim measures pursuant to Art. 30, para. 3, concerning nine cases of persons proceeding from Guatemala and allegedly subjected to enforced disappearance in Mexico. The interim measures aim at locating and protecting the persons concerned and, taking into account the peculiarities of the cases at stake, the Committee ordered Mexico to undertake all necessary measures to preserve the common graves that have been located and where the remains of the nine disappeared persons could be found; and to exhume and identify the mortal remains contained in the common graves respecting the applicable international legal and scientific standards on the matter and ensuring the participation of independent experts and representatives of the families concerned.
23. On 18 January 2016, considering that the actions undertaken so far by Mexico are not sufficient, the Committee renewed the interim measures and indicated in detail other actions to be undertaken. However, at the time of writing, the associations subscribing the follow-up report are **unaware of any meaningful demarche undertaken by the Mexican State to enforce the measures indicated by the Committee and, in particular, the families of the victims concerned have not been contacted by authorities, thus remaining marginalised and seeing their access to truth and justice seriously undermined.** Although the follow-up report concerns the status of implementation of the recommendations contained in the Committee's concluding observations pursuant to Art. 29 of the Convention, the associations subscribing the follow-up report consider that the lack of enforcement of measures indicated in the context of the urgent procedure is **indicative of an overall official attitude of disregard and indifference vis-à-vis the suffering of victims and the recommendations issued by international human rights mechanisms.**

For more details, please refer to paras. 32-43 of the integral version of the follow-up report

VI. Conclusions and Recommendations

24. All in all, Mexico has done little to implement the Committee's recommendations as contained in paragraphs 18, 24 and 41 of the February 2015 concluding observations. Furthermore, at the time of writing, many more recommendations contained in the concluding observations remain unimplemented, including those concerning the adoption of a general law on enforced disappearance, the amendment of the criminal codes at all levels to ensure that the definition of the crime is not at odds with international standards, and the carrying out *ex officio* of prompt, thorough, impartial and independent investigations that lead to the identification of those responsible for the crimes, their prosecution and sanction.
25. As already mentioned, this situation amounts to an almost total disregard of recommendations issued by international human rights mechanisms, including the Committee, and it is the source of deep concern for the associations subscribing this follow-up report, that respectfully call on the Committee

to:

- Pursuant to Art. 54, paras. 2 and 3, of its rules of procedure, **designate one or more Rapporteurs to regularly** follow-up with Mexico on its implementation of the concluding observations and who are entitled to periodically assess the status of enforcement. Taking into account the particular gravity of the crime, they should request Mexico to submit **an additional follow-up report by February 2017**.
- Pursuant to Art. 33, para. 1, of the Convention, issue another request to **Mexico to accept a visit of one or more of the members** of the Committee.
- Strongly encourage once more Mexico to **recognise the Committee's competence to receive and consider individual and inter-State communications under Arts. 31 and 32** of the Convention.
- Call on Mexico to **enforce without delay the request of interim measures pursuant to Art. 30, para. 3, of the Convention issued on 13 October 2015 and extended on 18 January 2016, and to regularly inform the Committee, the relatives of the disappeared persons concerned and the association that supports them in Mexico**.
- In the light of the gravity of the situation in the country and considering that enforced disappearance is being practised on a widespread basis in the Mexican territory, pursuant to Art. 34 of the Convention, **seek from Mexico all relevant information on the situation and urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations**.
- Recommend to Mexico to:
 - a) Implement **without any further delay the recommendations issued by different international human rights mechanisms**. In particular those adopted by the Committee in February 2015 and those issued by the WGEID in 2011 and reiterated in 2015.
 - b) Adopt without delay the necessary measures to establish a **unified national register of persons subjected to enforced disappearance**, avoiding the use of notions that are at odds with international law that unduly dilute the responsibility of the State, such as "*personas no localizadas*" or "*personas extraviadas*".
 - c) Ensure that the recently established **Investigation Unit on Crimes against Migrants relies on an interdisciplinary office in charge of analysing and investigating the overall context** in which these crimes are perpetrated; sets up and **manages two registries** (one on migrant persons deprived of their liberty and another one on migrant persons under custody for other reasons); **establishes a channel of communication and cooperates with the already existing Forensic Databases in El Salvador, Honduras, and in some states in Mexico**; and **works in close cooperation with civil society and associations of relatives of disappeared persons in other countries**.

- d) Establish a **National Commission for Searching Disappeared Persons**, different from the authorities in charge of the criminal investigation and with an interdisciplinary composition, ensuring that **relatives of disappeared persons, representatives of civil society and independent experts can take part to the work of the Commission**, in particular with a view to design a **national plan of search**.
- e) Ensure that authorities in charge of **forensic examinations work independently and count on adequate financial and human resources**.
- f) **Ensure that investigations on enforced disappearances are assigned to a Specialised Prosecutor's Office** that conducts an assessment of the overall context and counts on the adequate financial and human resources.
- g) Guarantee that the **Forensic Commission obtains all the necessary support from Mexican authorities, including access to criminal files and documents concerning ongoing investigations on cases that fall within its mandate or anyway connected with its mandate**. Instances of interference with the work of the Forensic Commission or threats and harassment must be prevented and, when they occur, they must be submitted to a prompt, impartial, independent and thorough investigation and those responsible must be prosecuted and sanctioned.
- h) Consider the possibility to **enlarge the mandate of the Forensic Commission also to other cases involving migrants victims of enforced disappearance or other gross violations of human rights beyond the three already encompassed**.
- i) Ensure that in all cases where operations of **exhumations and identifications of mortal remains take place, they are performed in accordance with international legal and scientific standards across the Mexican territory**.
- j) Ensure that the **CEAV fully enforces its mandate and all obstacles currently hampering the fulfilment of the victims' right to compensation and integral reparation in cases involving migrant persons are removed without delay**. In particular, relatives of migrant persons disappeared in Mexico must be entitled to choose and avail themselves of legal representatives in Mexico and all bureaucratic hindrance to the process of registering a person as "victim" and opening the corresponding files is eliminated. Moreover, the registers of victims managed by the authority that preceded the CEAV (Províctima) must be recovered and used as a valid basis of the recognition of the status of victim to relatives of migrant persons. In case this is not feasible, a simplified procedure to register anew as victims relatives of disappeared migrant persons must be established.
- k) **Identify the public servants that, violating the General Law on Victims, denied assistance and support to victims**, conduct a prompt, thorough, impartial and independent investigation and, where necessary, prosecute and sanction them.
- l) Ensure that, pursuant to the General Law on Victims, **the CEAV reimburses the expenses assumed by relatives of victims or their legal representatives in relation to the démarches to search the**

disappeared and to actively participate in the investigation or to attend operations of exhumation and identification or to bring the mortal remains of their loved ones back to their countries of origin, without imposing on them bureaucratic requirements that are impossible to meet, in particular for people leaving in countries other than Mexico.

- m) **Adopt without delay a general law that regulates all aspects of enforced disappearance covered by the Convention**, ensuring that **relatives of victims and civil society organisations are effectively involved in the drafting process, in the discussion, and in the adoption of the said law.**