

MEXICO

SUBMISSION TO THE UN
COMMITTEE ON ENFORCED
DISAPPEARANCES

8TH SESSION, 2-13 FEBRUARY 2015

AMNESTY
INTERNATIONAL



Amnesty International Publications

First published in 2015 by
Amnesty International Publications
International Secretariat
Peter Benenson House
1 Easton Street
London WC1X 0DW
United Kingdom
www.amnesty.org

© Amnesty International Publications 2015
Index: AMR 41/001/2015
Original Language: English
Printed by Amnesty International, International Secretariat, United Kingdom

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INTRODUCTION

The enforced disappearance of 43 students from the Ayotzinapa teachers' training college in Guerrero state, on 26 September 2014, at the hands of municipal police operating in collusion with organized crime brought to international attention the on-going crisis of disappearances and impunity in Mexico.¹ The Ayotzinapa case is similar to the thousands of cases of disappearances which have taken place across the country since the beginning of the "war on drugs" initiated in 2006 by the previous administration of President Calderón. At the same time, the Ayotzinapa case has been different to the broader pattern, because the government has been compelled to take action in response to national and international pressure. However, the state response continues to be limited and it does not fully comply with international human rights standards. In response to massive demonstrations and public scrutiny, President Enrique Peña Nieto announced on 27 November a series of broader measures which seem not lead to the structural changes that the country needs in order to address the Ayotzinapa case and all cases of abduction and enforced disappearance.²

According to official figures released in October 2014, 22,610 people have disappeared or gone missing since 1 December 2006, and remained disappeared or missing as of October 2014. Almost 50% of these have disappeared between 2012 and 2014, under the current administration³.

However, the authorities have failed to explain, once again, how many of those people have been victims of abduction or enforced disappearance, and how many of them could be missing due to other reasons. No methodological information has been published, which makes it impossible for civil society organizations to scrutinize the figures.

Impunity remains rampant in these cases. According to official information, no one has been successfully prosecuted at the federal level, since 2006, in cases of enforced disappearance.⁴ No information has been provided about prosecutions at the state level.

In 2013 Amnesty International published *Confronting a nightmare. Disappearances in Mexico*, a report which highlights the on-going pattern of enforced disappearances and abductions, as well as the systematic failure of federal and state authorities to conduct effective searches and criminal investigations in order to clarify the fate of victims, ensure justice and provide adequate reparation for relatives.⁵ Amnesty International's research documented 152 people who had disappeared, 85 of whom in circumstances in which there was evidence of direct or indirect involvement of public officials. These were only a sample of

¹ On 7 December 2014 the Federal Attorney General (Procuraduría General de la República, PGR) announced that the remains of one of the 43 students had been identified by independent forensic experts.

² On November 27, President Peña Nieto presented a series of legislative and policy measures, including a constitutional change that would eliminate municipal police forces. The plan will be implemented in stages, starting with the states of Guerrero, Jalisco, Michoacán and Tamaulipas. He also proposed setting up a nationwide emergency number 911, as well as special economic zones in the country's impoverished south.

³ Registro Nacional de Personas desaparecidas o extraviadas [National Registry of disappeared or missing people] Secretaría de Gobernación, Mexico, October 2014.

⁴ State party report, para. 164.

⁵ Available from <http://www.amnesty.org/en/library/info/AMR41/025/2013/en>

cases looked at in a limited number of states. Since then, more cases of enforced disappearances have been received and documented by the organization, including the case of the 43 students from Ayotzinapa.

In view of the current context in Mexico, Amnesty International considers that the key issues related to enforced disappearances that the Mexican government must address are:

- Pervasive impunity in the vast majority of cases, which fails to dissuade perpetrators from committing further disappearances and abductions, and therefore puts more people at risk;
- Lack of effective search mechanisms, protocols and resources which are able to take urgent steps from the moment from the moment that a disappearance or abduction takes place;
- Lack of reparation for the direct and indirect victims of disappearances and abductions, which compounds the suffering of thousands of families across the country;
- Lack of political will from the highest federal and state authorities to deliver these and other important outcomes. The president's announcement on 27 November about the adoption of a series of measures to address the security crisis do not seem to address the root causes, including the alarming levels of impunity.

CRIMINALIZATION OF ENFORCED DISAPPEARANCE (ART. 2 AND 4)

The criminalization of enforced disappearance falls short of international standards both at the federal and state levels.

At the federal level, Article 215-A of the Federal Criminal Code criminalizes enforced disappearance. However, it fails to comply with the definition of enforced disappearance provided by the Convention. Article 215-A of the Federal Criminal Code states, "A public servant who, regardless of whether he has participated in the legal or illegal detention of an individual or various individuals, promotes or ensures their concealment under any form of detention, commits the offence of enforced disappearance."⁶ This article fails to recognize the many ways in which public servants may be involved in enforced disappearances, as per Article 2 of the Convention. Also, it imposes criminal responsibility for enforced disappearances on public servants, but it does not impose criminal responsibility on a perpetrator when the enforced disappearance is "committed by organized groups or private individuals acting on behalf of, or with the support, direct or indirect, consent or acquiescence" of the state. In consequence, prosecutors could claim they have no authority to investigate or prosecute a whole subset of potential enforced disappearance cases recognized under international law.

As the state party report acknowledges, 12 of Mexico's states have failed to incorporate the criminal offence of enforced disappearance in their criminal codes. Many of the remaining 20 states operate laws that fall well short of the standard established in the International

⁶ Artículo 215-A. 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.

Convention and the Inter-American Convention on Forced Disappearance of Persons. In general, they fail to recognize the full range of manners in which public officials may be involved in enforced disappearances and they include limitations on the reasons for which officials may incur in enforced disappearances, among other shortcomings. The failure to ensure that state level legislation is consistent with international standards means that the legislative framework covering instances of enforced disappearance implicating members of municipal and state level police forces, more than 400,000 officials across the country, are largely ineffective.

The CED has recently explained the scope and application of article 2 of the Convention:

“The Committee recommends that the State party should adopt the necessary legislative measures to make enforced disappearance a separate offence in line with the definition in article 2 of the Convention and that the offence should be punishable by appropriate penalties that take into account its extreme seriousness.”⁷

In 2011, the Working Group on Enforced or Involuntary disappearances (WGEID) recommended the establishment of a comprehensive general law to cover both federal and state jurisdictions in order that:

“enforced disappearance should be defined as an autonomous offence; a specific procedure for finding the disappeared person with the assistance of the relatives of victims should be established; a national register of persons who have been the victims of enforced disappearance should be compiled, and relatives, lawyers, human rights defenders and any other person concerned should be guaranteed full access to the register; the declaration of absence following the enforced disappearance should be allowed; full protection and support should be provided to the relatives of disappeared persons and witnesses; the right to full compensation should be guaranteed.”⁸

A draft general law has lingered in Congress for years. On 27 November 2014, as part of a range of announcements, President Peña Nieto promised to ensure that a general law on this issue is passed by Congress. According to press reports, on 15 December the leading Senators of the three biggest parties announced that the legislative process for such a bill had been postponed until February 2015 at the earliest. No reference was made about the importance of discussing the bill publicly and taking into account the views of victims and civil society organizations.

The criminalization of abduction also represents a challenge for victims. The State party report suggests that existing laws such as kidnapping or illegal deprivation of liberty are sufficient to criminalize conducts consistent with enforced disappearance where there is no evidence of involvement of public officials.⁹ However, Amnesty International research found that the crimes of kidnapping and illegal deprivation of liberty require the perpetrators to demand a ransom or specific actions in return for the release of the victim. In the majority of disappearances, as no such demand is made nor is the objective self-evident, state

⁷ Concluding observations on the report submitted by Spain under article 29, paragraph 1, of the Convention", para.10, 12 Dec. 2013 (CED/C/ESP/CO/1).

⁸ Report of the Working Group on Enforced or Involuntary Disappearances on the mission to Mexico (18 to 31 March 2011), A/HRC/19/58/Add.2, p. 86.

⁹ CED/C/MEX/1, para 94 – 100.

authorities often refuse to open a criminal investigation for kidnapping. Instead, relatives can often only file a missing person's report which does not establish any legal responsibility on the prosecutor to order a criminal investigation. In such cases, the burden of proof frequently rests with relatives to gather and provide evidence that the person was abducted by force. Such evidence is rarely available and places an insurmountable burden on relatives, frequently delaying the official investigation and gathering evidence which might subsequently indicate the involvement of public officials in the abduction.

FAILURE TO COMBAT ARBITRARY DETENTIONS AS A WAY TO PREVENT ENFORCED DISAPPEARANCES (ART. 17)

Arbitrary detentions, which are widespread and persistent in Mexico, play a routine part of police and military practice when conducting investigation into serious crimes. However, the measures taken so far to prevent and punish arbitrary detentions have been insufficient. There are two national databases in place, the Detainees' Registration System (Sistema de Registro de Detenidos), managed by the Federal Attorney General's Office (*Procuraduría General de la República, PGR*), and the Administrative Register of Detentions (Registro Administrativo de Detenciones), managed by the National System of Public Security (*Sistema Nacional de Seguridad Pública, SNSP*). However, both databases contain contradictory information and the available data is not consistent with the number of arrests that those institutions recognize. Moreover, access to the database is severely restricted so that relatives and lawyers are not able to confirm arrests.

The failure to accurately record time and location of detentions results in periods of unrecognized detention at the hands of military and police. Detainees are extremely vulnerable to torture and other ill-treatment in these circumstances.¹⁰ The lack of adequate control of police and military detentions exercised by prosecutors and judges means that evidence obtained during this period, such as confessions, is often accepted as evidence and officials responsible for arbitrary detentions are almost never held to account.

Detainees are also vulnerable to enforced disappearances during arbitrary detentions. In some cases, victims of arbitrary detention have been handed over to criminal groups who work in collusion with police and military officers. A case in point is Ayotzinapa, where, according to the Federal Attorney General's main line of investigation, municipal police detained the students on spurious grounds and subsequently handed the detainees to members of a local criminal gang, all this under the orders of Iguala's mayor. Amnesty International has also recorded a persistent pattern of victims of enforced disappearance who were driving relatively expensive cars when they came into contact with police or military officers at checkpoints. Neither the driver nor the car was ever located after the incident.

¹⁰ Amnesty International, "Out of control. Torture and other ill-treatment in Mexico", AMR 41/020/2014, 4 September 2014, <http://www.amnesty.org/en/library/info/AMR41/020/2014/en>

Another way in which arbitrary detentions may lead to enforced disappearances is in those cases in which victims do not survive torture sessions and the perpetrators hid the bodies in order to erase incriminating evidence.

On 27 November 2014, the President announced his intention to scrap all municipal police forces and transfer their functions to the state police forces. It is unclear how this will necessarily result in better policing, given the poor training, monitoring and accountability in most state police forces. This proposal fails to recognize that state and federal forces, both civilian and military, have also been involved in enforced disappearances and other serious human rights violations.

FAILURE TO CARRY OUT PROMPT, EFFECTIVE AND IMPARTIAL INVESTIGATIONS (ART 10-12)

The available protocols to investigate disappearances are inadequate and insufficient. The state party reports that the Deputy Federal Attorney General's Office Specialized in Organized Crime (*Subprocuraduría Especializada en Investigación de Delincuencia Organizada, SEIDO*) conducts federal investigations into possible cases of enforced disappearance. Usually, these are cases where federal agents are allegedly involved. The Protocol applied is the generic "Protocol for action regarding investigations" (*Protocolo de actuaciones relativas a las investigaciones*). This investigation is conducted at the same time as the PGR's Specialized Search Unit for Disappeared People (*Unidad Especializada de Búsqueda de Personas Desaparecidas*) carries out the missing persons investigation (see below). However, this is not a specialized protocol developed in line with international experience in the investigation of enforced disappearances, which should pay particular regard to gathering and evaluating evidence in relation to chain of command responsibility as well as the "authorization, support or acquiescence" by state agents or others committing enforced disappearances. As a result, this investigative protocol is insufficient to ensure a rigorous investigation in line with the Convention. The situation is far worse in many states, where legislation is deficient or inexistent and specialized investigative protocols virtually absent.

The President's announcements of 27 November 2014 included the promise to "strengthen the protocols and procedures" so that "investigations are timely, exhaustive and impartial". Since then, the government has failed to inform how this is going to be achieved or how the authorities will make sure that those responsible to apply protocols will be monitored and brought to account in case of neglect or disobedience.

As the Ayotzinapa case demonstrates, the failure to investigate allegations of serious crimes and human rights violations can put people at risk of enforced disappearance. Since 2013 there had been credible allegations against municipal officials in the city of Iguala, including the former mayor of the city, Jose Luis Abarca. The allegations were made public and presented to state and federal prosecutors. However, no action was taken and the officials, who are now involved in the disappearance of the students, continued in place. The federal government also informed in November 2014 that the alleged perpetrators of these

disappearances were placed under investigation by the PGR at various points in the last few years. In all cases, the investigations were closed due to lack of evidence. The government has failed to inform of any investigation into the conduct of all federal and state officials who did not take adequate action at the time.

The routine failure to investigate many reports of disappearances has prevented the State from correctly identifying many cases of abductions as enforced disappearances committed by “agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State”. As a result, those abductions were attributed to criminal gangs acting alone and without the acquiescence of public officials. This allows the State to place the blame at the door of organized crime, downplaying the fact that many parts of the State, not just local police, are operating in concert with organized crime or commit human rights violations as part of their public security activities.

In a positive development, and after decades of campaigning by victims and human rights organizations, in 2014 the Mexican state abolished the military jurisdiction for human rights violations committed by military personnel against civilians. As a consequence, hundreds of cases have been transferred from the military justice system to the PGR. The full cooperation of the military must now be established, as well as the clear determination of the PGR, to fully and immediately investigate all complaints of human rights violations, including enforced disappearances, committed by military personnel.

WIDESPREAD IMPUNITY (ART 10-12)

The state party report acknowledges the prevailing impunity in cases of enforced disappearance (para. 164). Only six convictions have been achieved at the federal level, all of them between 2005 and 2009, for crimes committed before 2005. This indicator demonstrates that no conviction has been achieved for enforced disappearances committed since 2006, when the number of reports of disappearances and abductions rose significantly. Secondly, the performance of the PGR and the federal justice system has gone down in the last few years, particularly since 2009 when the latest conviction was recorded. Thirdly, the failure of the government to present any information about convictions reached at the state level is a further indicator of the lack of any basic coordination and infrastructure to address enforced disappearances.

None of the cases documented by Amnesty International have been adequately investigated. No one has been brought to justice, either at the federal or state level.

In 2013 four people disappeared in three different incidents after being arrested by Navy Marines in and near Nuevo Laredo, Tamaulipas state. The victims are José de Jesús Martínez Chigo, 17-year-old Diana Laura Hernández Acosta, 17-year-old Raúl David Álvarez Gutiérrez and Armando del Bosque Villarreal. The subsequent investigation by the PGR was slow and avoided gathering evidence to implicate navy personnel. Armando Del Bosque was subsequently found murdered approximately 5 kilometres away from the provisional navy barracks where he was taken. The others remain disappeared. To date, the PGR investigation has only made some progress in the case of Armando del Bosque, and virtually no progress in the other two cases. Nobody has been arrested or charged for these human rights violations.

The historic impunity for more than 700 cases of reported enforced disappearance during Mexico’s “dirty war” (1960s, 70s and 80s) has remained in almost complete impunity. The failure of the Special Prosecutor for Crimes of the Past of the administration of President Fox has been clearly documented. Neither the Calderón administration, nor the government of

Enrique Peña Nieto, has demonstrated any interest in investigating and, if there is sufficient admissible evidence, prosecuting former officials who are still alive. The dispatch of key case files to an obscure administrative office of the PGR resulted in the de facto closure of cases. The result is that some relatives have turned once again to the Inter-American Human Rights system to demand truth, justice and reparation.

In recent years, the Interior Ministry (*Secretaría de Gobernación, SEGOB*) has also been disbursing funds to relatives of victims of human rights violations from the past. However, the manner in which this has been carried out has not been transparent, resulting in discord and confusion.

EFFECTIVE AND URGENT SEARCH FOR VICTIMS OF ENFORCED DISAPPEARANCE (ARTS. 3, 10-12)

In June 2013 the government established the Specialized Search Unit for Disappeared People (*Unidad Especializada de Búsqueda de Personas Desaparecidas*) within the PGR.¹¹ This new agency was supposed to lead searches and investigations into reported abductions and enforced disappearances. It was also supposed to support and coordinate investigations and searches with other state level prosecutors offices and other agencies. In June 2014, the Deputy Federal Attorney General's Office for Human Rights (*Subprocuraduría de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad*) reported that the Search Unit and its predecessor, *Províctima*, had located 380 missing people, 25 per cent of whom were dead. It was reportedly looking for 1,200 people. It is not clear what particular measures are being taken to locate the more than 22,000 people who remain missing according to the government's own data published in October 2014. It is presumed that these cases remain in public prosecutor's offices at the state level but no information has been made available on any particular measures taken by each state to locate the missing or disappeared.

Some relatives of victims who have sought support from the Search Unit have also reported facing the same problems as they encountered with state authorities or other federal agencies, such as unexplained delays, failures to pursue leads and general lack of urgent follow-up on cases. Some relatives have reported a desire to return to other agencies that had dealt with their cases previously.

These difficulties appear related to the lack of resources available to the Search Unit compared to the high volume of casework. Despite this, in September 2014, before the events in Iguala, the media reported that the government was seeking to make a 60 per cent budget cut to the Unit.¹²

The Deputy Federal Attorney General's Office for Human Rights also reported that a new protocol for the search and localization of missing persons was being trialled. However, it has failed to make public what this new protocol consists of or how it improves coordination of federal, state and municipal agencies in the rapid deployment to gather intelligence leading to the locating the victims. This protocol also appears not to take into account the recommendation of the WGEID that all disappearances should be investigated fully including

¹¹ "Acuerdo A/066/13 por el que se crea la Unidad Especializada de Búsqueda de Personas Desaparecidas y se establecen sus facultades", Diario Oficial de la Federación, 21 June 2013, http://www.dof.gob.mx/nota_detalle.php?codigo=5303411&fecha=21/06/2013

¹² "Busca Peña 'empequeñecer' unidad de búsqueda de desaparecidos", Revista Proceso, 15 de septiembre de 2014, <http://www.proceso.com.mx/?p=382176>

all possibilities of involvement of public officials prior to the determination of whether they constitute enforced disappearances. The Ayotzinapa case has revealed once again that the initial response of federal and state authorities was slow and chaotic, with multiple duplications of activities and failure to gather sensitive intelligence that might have led to the early discovery of the whereabouts of the victims.

There are particular vulnerable groups who have been subject to disappearance. They include women, children and migrants. Gender-specific search protocols, such as the Alba Protocol and the AMBER Alert, are in the process of being extended beyond Ciudad Juárez, Chihuahua state, to activate a coordinated response to search for young women and girls reported disappeared.¹³ Nonetheless, there is no clear specialized search or investigation procedure in other cases of vulnerable groups.

On 27 November 2014 the President also promised to “create a national system of search for missing people”. He did not say to what extent this system will be different to the current system that is which is meant to be led by the Search Unit, or why the system will mean an improvement of the current practice.

INEFFECTIVE NATIONAL DATABASE OF POSSIBLE VICTIMS

The National Register of Disappeared or Missing People (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*) established by law and run by the National System of Public Security (*Sistema Nacional de Seguridad Pública, SNSP*) is inadequate for recording cases of disappearance. Access by the public and relatives through its online search engine is extremely limited and the information it contains is inadequate either for identifying a missing person, such as DNA and other relevant data, or for establishing whether the person’s disappearance occurred in circumstances indicating a possible abduction. The authorities have failed to inform how this database is being used. It does not appear to be a useful tool for locating or identifying missing persons. The configuration of the database, which is apparently based on initial investigations at state level and missing persons reports, appears more concerned with a simple registration, rather than as a tool for locating persons who are likely to have been victims of crime.

Mexican media have recently reported that a new Anti-mortem/post-mortem database that the PGR has been developing with the International Committee of the Red Cross (ICRC) will be in operation shortly to assist the identification of missing persons. However, this project has been under development for some years with little public information on how or when it will operate.

In 2013 the National Human Rights Commission (*Comisión Nacional de los Derechos Humanos, CNDH*) reported there were 15,921 unidentified bodies in morgues round the country; that it had received reports of more than 24,000 missing people; and that 2,400 cases of enforced disappearance were under investigation.¹⁴ The CNDH has failed to provide any systematic update on this information or its actions to investigate. There is no updated official data on the number of unidentified bodies in morgues.

¹³ The Alba Protocol establishes immediate search efforts which authorities must implement in cases of abductions or disappearances of girls and women. The AMBER Alert is an international mass-communication program to disseminate widely and promptly information about missing minors.

¹⁴ “CNDH reporta 27 mil desaparecidos en México, cifra cercana a la de Segob”, *Aristegui Noticias*, 5 June 2013, available from <http://aristeguinoticias.com/0506/mexico/cndh-reporta-27-mil-desaparecidos/>

UNSUPPORTED STATISTICAL INFORMATION ON PERSONS REPORTED DISAPPEARED OR MISSING

In 2014, on three separate occasions federal government representatives issued public statements referring to different figures for those persons reported disappeared or missing (no localizadas) whose whereabouts remained unknown. These figures were 8,000 (May), 16,000 (June) and 22,322 (August). This last figure was apparently comprised of some 12,000 unresolved cases dating from the administration of President Calderón (2006-2012) and 10,000 cases during the current administration. The government argued that this figure only represented those people reported missing and did not indicate that the person had been removed against their will or whether public officials were implicated. These figures contrasted with the government data released in 2013 which stated that 26,121 people were reported missing or disappeared during the Calderón administration. The government failed to produce any accompanying documentation on how these figures were calculated or how 14,000 people relating to the Calderón era were located. According to press reports, this was apparently achieved by contacting state level public prosecutor's offices and some relatives to check whether victims had reappeared. The absence of any clear public methodological explanation has prevented verification of government figures or the measures used to revise the earlier list of disappeared and missing raising serious questions about the credibility of the government approach and figures.

Furthermore, the government has not supplied any information regarding those cases which might constitute enforced disappearance on the basis of evidence suggesting direct or indirect involvement of public officials. The only record of this information is that supplied by the government regarding preliminary investigations of enforced disappearance but, as has already been noted, the legal definition of the crime and the reluctance to investigate fully mean that many cases that may constitute enforced disappearance are not investigated as such.

FAILURE TO ADEQUATELY AND RESPECTFULLY ASSIST VICTIMS, INCLUDING RELATIVES (ART. 12 AND 15)

Victims, including relatives, continue to face huge obstacles to receive appropriate attention from police and prosecutors when reporting and following up on missing person's complaints. The initial delay in conducting searches and investigations continues in many jurisdictions. Relatives continue to face discrimination and smear campaigns on the grounds that their relatives must have been involved in crime to have become a victim. In the Ayotzinapa case, some local and federal authorities have suggested that the students are linked to drug cartels, without reference to evidence, or that the students have brought it on themselves. Federal authorities have also accused local NGOs of manipulating the relatives of the disappeared, which the relatives have categorically rejected. Official viewpoints and comments have been widely reproduced in local and national media.

The collection of DNA samples continues to be extremely problematic. Amnesty International

has received reports from around the country of cases in which relatives are pressed into giving DNA samples without clear explanation of their rights or the procedure that will be followed or sufficient guarantees regarding the correct handling and processing of such evidence. As a result, many suspect that the collection of DNA is a strategy for the government to declare their relative dead, without any confidence that the results are reliable and are not motivated by the political determination of local Attorney General's Offices to reduce the levels of disappeared persons. Amnesty International also received reports of DNA samples being lost repeatedly, results not being supplied to family and different agencies seeking new samples without explanation.

In the Ayotzinapa case, Amnesty International received information that the Guerrero State Attorney General's Office failed to adequately explain to relatives the process of DNA collection, resulting in aggressive and contemptuous treatment of relatives. The forensic staff only took DNA samples from one relative of each victim, which is sometimes insufficient to establish a clear match when cross-referencing samples taken from remains. This practice which is apparently common amongst state Attorney General's Offices also raises serious questions about the procedures used, particularly when this is a crucial element of the application of the new anti-mortem/post-mortem database.

Another example of poor procedures was the manner in which the PGR prematurely ruled out matches between remains found and disappeared students on the basis of DNA data gathered by the State Attorney General's Office. The PGR subsequently rectified this position and promised to wait for the results of the independent forensic experts from the Argentine Forensic Anthropology Team (*Equipo Argentino de Antropología Forense, EAAF*) which had carried out their own DNA collection from both relatives and remains.

Federal and state authorities failed to communicate with relatives in a respectful and sensitive manner during the first few weeks after the students disappeared. The authorities repeatedly made official and unofficial statements regarding the investigation, particularly the discovery of graves, without informing relatives first. Only a month after the disappearances, the PGR, under the auspices of an agreement signed with the president, ceased leaks on the investigation and respect the right of the family to be informed ahead of the media.

THE RIGHT TO REPARATION (ART 24)

There are various initiatives by the government to address reparation, including a new mechanism in the Human Rights Unit of the Interior Ministry and the Executive Commission for the Attention of Victims (*Comisión Ejecutiva de Atención a Víctimas, CEAV*). The latter is mandated to provide psychological assistance for victims, legal advice and access to reparation. These are positive measures, however, the mandate and procedures of both executive bodies overlap without clarity, creating confusion for victims.

The CEAV regulatory code and special fund were finally approved and published on 27 November 2014. The delay seriously undermined the capacity of CEAV in developing programmes for attending to victims or accessing adequate resources, including the national register of victims. The CEAV inherited thousands of cases from its predecessor, *Províctima*, but has yet to state publicly how many of those cases belong to relatives of people who have suffered enforced disappearance. The CEAV is also due to establish legal advisers to assist victim in their complaints before the public prosecutors in all jurisdictions. However, the process of establishing this network of lawyers has yet to occur.

DECLARATION OF ABSENCE

Coahuila and Querétaro are two of the first states to pass laws establishing the declaration of absence of victims of disappearance. The law is an essential element to enable spouses and dependents to access benefits and resources linked to the missing relative. At present many relatives are forced to live in extreme hardship as the authorities refuse to recognise the status of the missing person. The absence of the law has also led to pressure on victims to accept that their relatives are dead on the basis they will then be able to access the necessary resources. Further laws of this nature are essential at federal and state level to ensure that relatives of victims of disappearance can legally access those benefits and resources.

RECOMMENDATIONS

Amnesty International recommends the Mexican state to:

Criminalization of enforced disappearances

- Reform 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 in Article 2 of the Convention. In particular, ensure that the definition includes disappearances committed by criminal groups or private individuals acting on behalf of, or with the support, consent, or acquiescence of state officials.
- Recognize the competence of the Committee on Enforced Disappearances to receive and consider communications from or on behalf of victims (Article 31 of CPED) and other states parties (Art. 32).

Failure to prevent enforced disappearances

- Prevent enforced disappearances by combatting arbitrary detentions with an effective and accessible national database of detentions, as well as strong monitoring and accountability of police and military officers who carry out arbitrary detentions.

Prompt, effective and impartial investigations

- Investigate all cases of enforced disappearance or abduction with due diligence, in a prompt, thorough and effective manner, and bring those suspected of criminal responsibility to trial before ordinary civilian courts.
- Ensure the armed forces fully and proactively collaborate with civilian prosecutors and judges in the investigation of all cases of alleged enforced disappearances committed by military personnel.
- In line with international best practice, guarantee reliable and timely exhumation and identification processes of unidentified bodies.
- Establish a national database of unidentified human remains that includes genetic information and other identifying characteristics.
- Develop and implement, in consultation with civil society, effective protocols to carry out investigations, including on issues such as securing and analysing all relevant evidence,

including physical evidence and mobile phone records, and identify and interview possible eyewitnesses.

- Develop and implement accountability mechanisms for all public officials who fail to comply with those protocols.
- Ensure rapid and effective federal and state-level protocols and mechanisms to search for victims of enforced disappearance and abduction, and for people who may have otherwise gone missing, taking steps to ensure coordination between state and federal authorities and among the authorities of different states.
- Substantially improve the National Register of Disappeared or Missing People and include genetic information from victims' relatives and all relevant information from physical and other kinds of evidence, such as eyewitness testimony. The collection and recording of data should follow a standard protocol.
- Compile and regularly publish reliable and substantiated statistical information about cases of people who have been disappeared, abducted or are otherwise unaccounted for, with adequate disaggregation and methodological support.

III-treatment of victims, including relatives of disappeared persons

- Ensure that relatives of disappeared people are treated with respect and sensitivity, in particularly when taking their testimonies and DNA samples and by ensuring they are the first ones to be updated in relation to their cases.

The right to reparation

- Take steps to ensure that families of the disappeared do not lose access to social services and consider the establishment of new initiatives, such as the declaration of absence, to protect families' access to housing, health, and education while their relatives' whereabouts remain unknown.

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