



MEXICO

FOLLOW-UP REPORT FOR THE COMMITTEE ON ENFORCED DISAPPEARANCES

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INTRODUCTION

In February 2015, at its 133rd meeting, the Committee on Enforced Disappearances adopted its concluding observations on the report presented by Mexico under Article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance¹. The Committee requested that Mexico provide information on the application of the recommendations in paragraphs 18, 24 and 41 of the concluding observations² by 13 February 2016 at the latest. On 25 February 2016, Mexico presented the information requested³.

The Committee requested information from Mexico on the recommendations relating to the single register of disappeared persons (paragraph 18), the transnational search and access to justice mechanism (paragraph 24) and the methods of searching for disappeared persons (paragraph 41). Amnesty International wishes to provide information to the Committee on Enforced Disappearances in relation to Mexico's implementation of both of the first two recommendations mentioned (paragraphs 18 and 24 of the concluding observations).

SINGLE REGISTER OF DISAPPEARED PERSONS (PARAGRAPH 18)

In its concluding observations the committee stated that:

18. 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.

This register should, as a minimum:

(a) provide exhaustive and appropriate information on 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 solved; and

(d) contain information based on clear, consistent criteria and be updated on a regular basis. In this context, the State party should take advantage of the fact that the regulations of the Act on the National Register of Missing and Disappeared Persons are still pending implementation 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.

A. Exhaustive and appropriate information on all cases

Amnesty International notes with regret that Mexico has not explained in its report that the National Register of Missing and Disappeared Persons (Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, RNPED) does not contain information on all the cases of disappeared persons in the country. For example, the information on cases under federal jurisdiction⁴ only contains details of reports lodged between 2014 and 2016 and “therefore does not contain information on any investigations initiated by the [Office of the Attorney General] in previous years”⁵.

¹ Committee on Enforced Disappearances, *Concluding observations on the report presented by Mexico under article 20, paragraph 1, of the Convention*, 5 March 2015, CED/C/MEX/CO/1 (*Concluding observations*).

² *Concluding observations*, para. 49.

³ Committee on Enforced Disappearances, *Concluding observations on the report presented by Mexico under article 20, paragraph 1, of the Convention, Addendum. Information received from Mexico on follow-up to the concluding observations*, 3 May 2016, CED/C/MEX/CO/1/Add. 1 (State report).

⁴ Mexico is a federated state with a diverse range of courts which deal with the investigation and the prosecution of crimes. At a national level the Office of the Attorney General is responsible for these proceedings and cases brought before this body are referred to in the National Register of Missing and Disappeared Persons as “federal” cases. In each of the 31 states of the Republic of Mexico and Mexico City, there are regional/district prosecution services and cases brought before these are referred to as “non-federal” cases.

⁵ Executive Secretariat of the National System of Public Security, *Methodological notes on federal cases: Register of missing persons in federal cases*. Accessed 12 June 2016 at <http://secretariadoejecutivo.gob.mx/rnped/nm-fuero federal.php>.

The absence of information on federal cases reported prior to 2014 suggests that the Mexican government is in possession of information about disappeared persons which has been omitted from the Register. The true number of people reported as missing in the country is, therefore, not known.

Amnesty International is concerned that the Register does not contain information indicating how many of those reported as disappeared have been found and whether they were found alive or dead.

Furthermore, the Register does not contain information about disappearances linked to federal cases involving abduction or human trafficking. At state jurisdiction level the Register system does not specify which types of cases are omitted from the register, despite the fact that these relate to disappeared persons⁶. The fact that cases such as these are removed or not included underlines concerns about which authorities are responsible, and using what parameters, for deciding what should be included in the Register, as well as how crimes are classified. Amnesty International believes that as long as the fate or whereabouts of a person is unknown, all such cases should be included in a single register, in this case the Register, regardless of the classification of the offence under which the authorities are conducting the investigation.

In its report to the Committee, Mexico stated that the Register contained information about missing persons disaggregated by sex, age, nationality, ethnicity, distinguishing features, disability and how the report was registered⁷. Mexico also confirmed that for federal cases the names of the disappeared persons are included⁸.

Amnesty International considers that although the inclusion of these categories indicates a first step towards complying with this recommendation, in fact for many of the registered cases the required information is not present. For example, the nationality of the disappeared person does not appear in 1,945 of the cases, and in 2,770 cases the age of the person is missing⁹.

Furthermore, the additional categories mentioned in the state's report (distinguishing features, ethnicity and disability) only appear in the database for non-federal cases, but not in the database for federal cases.

These categories are also not sufficient to allow an analysis of the situation or to form and evaluate public policy. For example, under the category of "distinguishing features" incomplete information is included such as "on the forehead", "on the head", "on the neck", etc. without mentioning any feature in particular. Some entries list "disability" as a distinguishing feature, but then in the section for disability say "none" or "not specified". Furthermore, there is no specification of distinguishing features in 14,076 cases.

In other words categories have been included but incorrectly applied. Therefore the Register still does not contain this information on all the cases of disappeared persons in Mexico.

B. Information to help determine whether a case is one of enforced disappearance or a disappearance that occurred without the involvement of state agents

Mexico does not provide clear information on this aspect of the Committee's recommendation. It states in its report that "the vast majority of cases...are not investigations into enforced disappearances"¹⁰, and that "for the first time, information was published on investigations into disappearances and enforced disappearances"¹¹.

Amnesty International wishes to call the Committee's attention to the fact that the information published about the aforementioned investigations consists of just two spreadsheets, published by the Mexican Attorney General's Office, which contain information from 1 January 2014 to 30 June 2015¹².

The information presented provides overall numbers of people reported missing, people found alive or dead and people for whom the search has been called off. The database separates out cases reported as a crime of enforced disappearance under the Federal

⁶ Executive Secretariat of the National System of Public Security, *Methodological notes on federal cases: Register of missing persons in federal cases*. Accessed 12 June 2016 at <http://secretariadoejecutivo.gob.mx/rnped/nm-fueroefederal.php> and *Methodological notes on non-federal cases: Register of missing persons in non-federal cases*. Accessed 12 June 2016 at <http://secretariadoejecutivo.gob.mx/rnped/nm-fuerocomun.php>

⁷ State report, para. 10

⁸ State report, para. 13

⁹ All instances where the "nationality" category is missing are in the non-federal database. There are 2,554 entries in the non-federal database where the "age" category is marked as "not specified" and 216 in the federal database where it is marked as "not available". The description of the register is based on a review of the databases by Amnesty International. *RNPED federal database and RNPED non-federal database in April 2016*. Accessed 9 June 2016 at <http://secretariadoejecutivo.gob.mx/rnped/datos-abiertos.php>.

¹⁰ State report, para. 8.

¹¹ State report, para. 11.

¹² Review of spreadsheets by Amnesty International. *Database of disappeared persons 2014-June 2015 and Glossary for database of disappeared persons 2014-June 2015*. Accessed 10 June 2016 at <http://www.pgr.gob.mx/Transparencia/Documents/Desaparici%C3%B3n%20de%20Personas/IEDFF.rar>.

Criminal Code¹³. However the database does not contain enough information to allow for a meaningful analysis. For example, the state, month and year of the disappearance are given but without nationality, sex, age or any other useful information. In addition, this information cannot be used in conjunction with that contained in the Register.

As a consequence, the information is of little use in terms of arriving at an understanding of the phenomenon of disappearances in Mexico. For example, the database contains details of at least 820¹⁴ people reported missing, of which 87 have been found (either dead or alive). However, it also shows that there are 208 people for whom the search has been called off, without providing any explanation for this.

The gaps in the information provided, the fact that only federal cases are included, that publication of the information seems to be a one-off and that the information is not integrated into the Register mean that this initiative cannot be considered an advance in the implementation of this section of the Committee's recommendation.

C. Facilitate the generation of statistical data

Mexico has stated that the information is public, that anyone can effectively monitor the addition and deletion of database entries on the website¹⁵, that the methodology has been revised and the database has been cleaned up¹⁶.

Amnesty International's view differs from that of the Mexican government. The way in which the information contained in the Register is added and edited means ongoing monitoring is not possible. The register is updated every month for federal cases and every three months for non-federal cases¹⁷. The methodological notes on the Register website state that "the database only includes those who remained missing at the cut-off date; that is, it gives the total number arrived at if the number of people who have now been found is subtracted from the number of people ever registered as disappeared."¹⁸ Furthermore, when the federal government updates the information, the existing file is deleted, so users have no way of monitoring entries to and removals from the register. It therefore provides an out-of-date view at a given moment and makes it impossible to track the development of the phenomenon over time.

The Register website has a statistics section with information on the state in which the disappearance occurred, the year of the disappearance (although 721 entries appear with the year marked "not specified" and 247 are simply marked "before 2007"), the sex of the victim, the age range at the time of disappearance and the nationality of the victim (either Mexican or foreigner, with 1,945 marked "not specified").

The data is divided into federal and non-federal cases, which makes analysis difficult. For example there is no way to directly access the total number of people registered as disappeared; each register must be accessed separately and then the figures from any given category added together to find out that basic information.

D. Regular updates and use of clear, consistent criteria

In its report to the Committee Mexico confirmed that the Register database was regularly revised and filtered, and that an agreement was reached at the National Conference of State Attorney Generals to commence harmonization of statistical information¹⁹.

Although these types of agreements are welcome as part of the implementation of the Committee's recommendations, they have yet to have any tangible effect and, as explained above, the Register continues to use unclear criteria which are not always used in a consistent manner or for every entry.

Given this, Amnesty International considers that, despite the changes which Mexico has made to the National Register of Missing and Disappeared Persons, no significant progress has been made in implementing the recommendations contained in paragraph 18 of the Committee's concluding observations.

¹³ The database has these marked as "Reported as disappeared under Article 215 A-D of FCC", separated by sex. From the information available it is not possible to determine whether this category is updated in the database based on the findings of the corresponding criminal investigation.

¹⁴ The information lists 820 people reported missing (597 men and 223 women), then lists 106 people "Reported as disappeared under Article 215 A-D of FCC" (95 men and 11 women), in reference to the article of the Federal Criminal Code on enforced disappearance. From the layout of the table it is not possible to determine whether the people reported as potential victims of enforced disappearance are included in the list of 820 people or not, so the most conservative estimate has been used.

¹⁵ State report, para. 7.

¹⁶ State report, para. 11.

¹⁷ Executive Secretariat of the National System of Public Security, *RNPED infographic*. Accessed 12 June 2016 at http://secretariadoejecutivo.gob.mx/docs/pdfs/rnped/Infograf%C3%ADa_RNPED.pdf.

¹⁸ Executive Secretariat of the National System of Public Security, *Methodological notes on non-federal cases: Register of missing persons in non-federal cases*. Accessed 12 June 2016 at <http://secretariadoejecutivo.gob.mx/rnped/nm-fuerocomun.php>

¹⁹ State report, paras 10 and 12.

THE TRANSNATIONAL SEARCH AND ACCESS TO JUSTICE MECHANISM (PARAGRAPH 24)

In its concluding observations the committee stated that:

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

In its report to the Committee Mexico highlighted the establishment of the Criminal Investigation Unit for Migrants (Unidad de Investigación de Delitos para Personas Migrantes) and the Mechanism for Mexican Support Abroad in Search and Investigation Activities (Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación)²⁰, considering that these new resources could help to strengthen and replicate the work of the Forensic Commission²¹ established in 2013²².

As Mexico is a country of enormous significance on Central American migration routes toward the United States of America, Amnesty International welcomed the establishment of the Forensic Commission in 2013 in which it participates, along with the United Nations Office of the High Commissioner for Human Rights in Mexico and the Rapporteurship on the Rights of Migrants of the Inter-American Commission on Human Rights, with observer status.

Amnesty International considers the Forensic Commission to be a particularly appropriate initiative in the fight for access to justice for migrants. In addition, the unique and original nature of this commission, in which expert government teams and independent experts from the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, EAAF) work together, along with the participation of organizations which represent the victims, could serve as an example of good practice for regional collaborative work between the authorities and civil society groups in order to clarify cases of disappeared migrants.

Prior to the establishment of the Forensic Commission, there were serious flaws in the Mexican government's investigation of three cases of mass murders of migrants. In the case of the massacre of 72 migrants in San Fernando, Tamaulipas, the Mexican authorities reportedly handed over human remains without any technical examination to confirm the identity of the victims. In the case of the 47 unmarked graves found in April 2011, also in San Fernando, the authorities cremated the remains, thereby destroying evidence, without taking into account the implications of their actions for criminal proceedings or the cultural or religious practices of the affected families, without consulting or informing the families beforehand and without ensuring adequate identification procedures. In at least five cases, the cremation of remains took place despite the opposition of the families and a request from the Foundation for Justice and a Democratic Constitutional State (Fundación para la Justicia y el Estado Democrático de Derecho), an organization which supports some of the families, that the remains be preserved and adequate scientific procedures carried out in order to ensure identification.

Currently, despite the advances which the Forensic Commission has achieved in various cases under its remit, such as the identification of around 50 disappeared persons in the three massacres within its mandate, Amnesty International has established that the work of the Commission has faced serious obstacles arising from government institutions. Some of these obstacles cannot be included in this report for the reasons of confidentiality and the security of the victims. It is fundamental that the Mexican government

²⁰ State report, para. 16.

²¹ State report, para. 19.

²² A commission dedicated to helping to identify human remains found in unmarked graves in San Fernando, in the state of Tamaulipas and in Cadereyta, in the state of Nuevo León. Addendum: The commission was established in an agreement between the Mexican Attorney General's Office, the Argentine Forensic Anthropology Team, the Salvadoran Committee of Relatives of Killed or Disappeared Migrants, the El Progreso Committee of Relatives of Migrants, the Foundation for Justice and a Democratic Constitutional State, the Saltillo Migrants Organization in Coahuila, the Fray Juan de Larios Diocesan Centre for Human Rights, the Civil Association of Mesoamerican Voices, the Guatemalan National Migration Board, the San Carlos Scalabrinianos Missionary Association in Guatemala, the Victoria Diez Centre for Human Rights and the National Forum for Migration in Honduras. The agreement was published in the *Mexican Official State Gazette* on 4 September 2013, accessed on 16 June 2016 at http://dof.gob.mx/nota_detalle.php?codigo=5312887&fecha=04/09/2013 and its addendum dated 23 October 2014, accessed on 16 June 2016 at http://dof.gob.mx/nota_detalle.php?codigo=5365261&fecha=23/10/2014.

recognize these flaws and take appropriate steps to rectify them, so that these practices are not transferred over to the new mechanisms which they have created.

While it is true, as the Mexican government states, that thanks to the work of the Forensic Commission the procedures for notification and delivery of remains have improved, Amnesty International has information to suggest that in some operational aspects, the work of the Forensic Commission still suffers from serious shortcomings in terms of participation from the government, which cause delays in the identification proceedings.

Some of the serious operational obstacles which prevented prompt identification were caused by the Mexican authorities' refusal to allow the EAAF access to all the information on the cases, including denying the existence of information which was later confirmed to exist and to be in the possession of the Office of the Attorney General.

Amnesty International has received worrying information in relation to the fact that the Forensic Commission still does not have a complete copy of the case file for the massacre of the 72 migrants in San Fernando, nor complete files with information and statements from people who reported a disappearance. This is despite the fact that access to the complete case file would enable analysis of valuable information in order to generate better results, including many more identifications. In cases where the Forensic Commission has had a greater degree of access to the files, they have been able to produce much better results.

Amnesty International also notes with particular concern information received about the fact that some agents from the Attorney General's Office have been part of the Forensic Commission. These included agents who took part in the investigation of the incidents and were in positions of power at the time when serious flaws occurred, including remains not being identified in cases where there would have been sufficient parts to allow for adequate identification. Civil society organizations who are involved voiced their opposition to this and some agents have been removed from the Forensic Commission as a result, but some continue to participate in the investigation of the cases.

Lastly, in its report Mexico states that it ensures the participation of the families of the disappeared, even if they live outside Mexico²³. However, unfortunately the experience of the Forensic Commission does not support this assertion. In various cases, families of disappeared migrants have asked that they be recognized as victims and that their legal representatives be recognized but have not received any response for long periods of time, exceeding any reasonable timescale for a procedure which should in fact be very simple. For example, in the case of the massacre of 49 people in Cadereyta, Nuevo León, the authorities took a year to acknowledge the request submitted by the families for their right to legal representation of their choice. Amnesty International believes that this irregular practice seriously affects access to justice for the victims.

In light of the above, Amnesty International considers that despite the effort on the part of the Mexican government to establish and implement the Forensic Commission, the work of this Commission still faces obstacles caused by flaws which must be overcome in order for Mexico to fully comply with the recommendations set out in paragraph 24 of the concluding observations issued by the Committee.

²³ State report, para. 22.

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