



Family Members of the Disappeared Request Collaboration from the Diplomatic Corps to Guarantee Suitability of General Law

The National Campaign Against Enforced Disappearance and the Movement for Our Disappeared in Mexico request that the Diplomatic Corps collaborate with the Mexican Government in order to guarantee the passing of a General Law against Enforced Disappearance and Disappearance at the Hands of Private Citizens in order to prevent, sanction, and eradicate both crimes while also ensuring effective consultation of civil society. The law should also contemplate concrete and effective measures to protect the rights to truth, justice and integral reparation of harm to victims.

Context:

“Information received by the Committee [against Enforced Disappearance] illustrates a context of generalised disappearance in a large part of the [Mexican] territory, many of which could be classified as enforced disappearance”.¹ Enforced Disappearance is a State practice which, since the 1960s, is systemic, complex, and shows careful planning. According to international standards, it is considered an [ongoing and permanent crime](#), and therefore the current administration cannot remove itself from the responsibility for enforced disappearances that took place during previous administrations. This includes those committed during the period known as the “Dirty War” that do not appear in the National Register of Missing and Disappeared Persons (RNPED). Currently, the official register of disappeared persons sits at [28,472](#), according to RNPED; however the real number could be much higher considering that hundreds of families have not made formal complaints for fear of reprisals.²

The Dirty War and Repression of Social Movements

Between 1969 and 1988, during the “Dirty War”, diverse human rights organisations and committees of victim’s family members [registered](#) between 1,200 and 1,800 enforced disappearances for political motives. The sentence issued by the Inter-American Court of Human Rights in the case of Rosendo Radilla Pacheco – an activist disappeared by the military – included declarations by the court on the context in which the disappearance occurred. It [sentenced](#) the Mexican Government to investigate events that occurred during the Dirty War and

¹ [Final observations](#) of the Committee against Enforced Disappearance regarding the report presented by Mexico.

² The RNPED does not include crimes such as kidnapping, human trafficking, regardless of whether the person is still missing or not. It has received many interrogations due to the lack of clarity in its methodology, given that it does not differentiate between enforced disappearance by individuals and other crimes, nor voluntary disappearances or going missing. Nor does it offer information to prove that 90% of persons have been found alive as [claimed](#) by the Sub-Secretary for Human Rights following publication of the Amnesty International [report](#). Estimates regarding the actual number of disappeared persons in Mexico go as high as [300,000](#).

opened a path to restriction of military jurisdiction – a restriction which was guaranteed by the [support](#) of the National Supreme Court (SCJN) for the Inter-American Court's decision.³ During the following period, between 1994 and 2000, additional enforced disappearances [occurred](#), primarily in the context of the public appearance of armed movements: The Zapatista National Liberation Army (EZLN, 1994), and the Popular Revolutionary Army (EPR, 1996).

The War on Drugs

The lack of truth, memory, justice and comprehensive reparation of harm and guarantees of non-repetition guarantees in cases of enforced disappearance committed in past decades permitted that this practice continued as a policy within state structures and has extended to non-organised populations without specific political aims, such as migrants, youth workers, professionals, women, and children. At the same time, it enabled a new phenomenon to develop in Mexico: disappearances committed by private citizens. Although the State, through police or military forces, continues to directly commit enforced disappearances, it also delegates their commission to private citizens and tolerates that these persons disappear people without their consent or acquiescence.

Since 2006, the number of disappeared people on the register has constantly risen, [reaching](#) an annual maximum of 5194 disappearances in 2014. It is important to note that since the beginning of the Peña Nieto administration, 88 human rights defenders [have been](#) the victims of enforced disappearance.

Ayotzinapa, the Turning Point

The disappearance of 43 students from Ayotzinapa clearly [demonstrated](#) the modus operandi of many enforced disappearances in the country: participation of State agents who directly commit the disappearance; use of paramilitary groups; and negation of the State at its different levels of any responsibility, even when the participation of municipal, state and federal police, as well as, the military is public. An example of this is that none of the individuals detained in the case have been formally charged by judicial entities for the crime of enforced disappearance.

The national and international pressure that followed the Ayotzinapa case was confronted by a policy of [closing of spaces](#) for Mexican Civil Society and the rejection of international scrutiny. Nonetheless, from that moment on, it became impossible to ignore the stark reality of disappearances in Mexico.

Concerns Regarding Search and Investigation

Despite the undeniable magnitude of the problem of disappearances, there is a lack of adequate legal framework in order to preventing, eradicating, and sanctioning enforced disappearances and disappearances at the hands of private citizens in Mexico. The definition contained within the federal penal code of the crime of enforced disappearance does not correspond with international human rights standards, and in 8 states the crime of enforces disappearance is not specified in state penal codes.

At the same time:

- There is not an effective participation of victim's family members in the design of search and investigation protocols;
- The measures adopted by the Mexican Government to confront the problem are lacking the adequate human and financial resources to guarantee their effectiveness⁴;

³ The magnitude of the SCJN files were such that UNESCO registered them in its Memory of the World Program, whereas the IACoHR [classified](#) them "as of great significance for the consolidation of human rights in the region".

⁴ For example, the Specialized Unit for the Search of Missing Persons (UEBPD) was created in June 2014, which then became the Specialized Prosecutor's Office for the Search of Missing Persons (FEBPD) in October 2015. In spite of the name change, the resources and capacities of the FEBPD have been seen to

- Lack of proper investigation, together with the delay in the legislative process to create the General Law on this issue have left investigations to family members of the disappeared, who have, with their own resources, searched for clandestine graves in different states. This work has greatly increased the risk that they face;
- There is a tendency to criminalise and stigmatise family members of the disappeared. The State has not guaranteed the physical and psychological security of victim's family members, and during the past 5 years, at least 5 family members have been killed while searching for their loved ones⁵;
- A National Register of victims of enforced disappearance and disappearance at the hands of private citizens which distinguishes and classifies adequately both types of disappearance and calculates real statistics does not currently exist;
- No reliable, autonomous and national institution exists which can carry out forensic investigation, which contemplates a national genetic register which properly treats human mortal remains adequately;
- Authorities tend not to initiate a claim for enforced disappearance, even when the public prosecutor's office has specific suspects and/or evidence of the direct or indirect participation of a State agent;
- There are no effective protocols in the offices of state or federal public prosecutors for them to act immediately as soon as they are aware of a disappearance. There are also no protocols on how to deal with the disappearance of children and adolescents.
- There is a lack of training and sensitivity on the part of State agents on the crimes of enforced disappearance or disappearance at the hands of private citizens.
- There is a lack of sanction against higher ranking officials. It is important not only to investigate those directly responsible, but also anyone who by omission or commission was involved in the crime.
- Coahuila and Nuevo Leon are the only states that have contemplated a declaration of absence, so that victim's rights and legal entity can be guaranteed and preserved.
- Holistic reparation of harm – an issue which the Mexican State has reduced to economic compensation– including: restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition, to an issue of economic compensation.

Expectations from a General Law

Due to the above mentioned context, on diverse occasions, international organisms have recommended that the Mexican State create an adequate legal framework, in accordance with international standards, to deal with the issue of enforced disappearance and disappearance at the hands of private citizens. In the post-Ayotzinapa context, conditions were favourable to the creation of a General Law addressing this issue. One of the main achievements in this process was the publication of a [constitutional reform](#) on 10 July 2015 which gave Congress the ability to expedite a General Law on Enforced Disappearance and other forms of illegal deprivation of liberty. At the same time, throughout 2015, as part of a joint advocacy strategy, a regional consultation process was undertaken which included 6 regional consultations as well as

be progressively deteriorating: a budget of \$40,209,005 in 2014 was reduced to \$14,676,268 in 2015, and for the year 2016, \$28,114,011 was assigned to the FEBPD, which equates to a 34% reduction on the budget that was allocated in 2014. Further budget cuts for 2017 are foreseen at the Attorney General's Office (PGR).

⁵ Nepomuceno Moreno of Movement for Peace, assassinated on 28 November 2011 in Sonora; Sandra Luz, assassinated on 12 May 2014 in Sinaloa; Norma Bruno Román of the Committee for Relatives of the Disappeared of Iguala, assassinated in February 2015 in Guerrero; Cornelia Guevara Guerrero, assassinated on 15 January 2016 in Mexico State; and José de Jesús Jiménez of the Search Brigades for the Disappeared, assassinated in June 2016 in Veracruz during an attack which also left his wife Francisca seriously injured.

numerous meetings with Executive and Legislative authorities at the federal level. The agreed timeline, which established that the General Law should be approved on 6 January 2016, was not followed.

The organisations and victim's family members consider that the State has yet to take real steps to create a proper General Law on this issue. This has forced the victims and human rights organisations to be the ones who push forward a citizen's initiatives: for example the proposal for a General Law to Prevent, Investigate, Sanction and Repair Enforced Disappearance and Disappearance at the Hands of Private Citizens, which was [presented](#) by members of the National Campaign Against Enforced Disappearance in Mexico on 3 September 2015 before the Senate and on 6 September 2015 before the Chamber of Deputies or the Minimum Standards [presented](#) by the Movement for Our Disappeared in Mexico.

The family members of victims of disappearance have repeatedly [expressed](#) their concerns regarding the proposal by the Executive. At this time, different Senate committees are writing a draft which will be put up for a vote by the Senate plenary.

Petitions for the Diplomatic Corps

The National Campaign against Enforced Disappearance and the Movement for Our Disappeared in Mexico – who represent more than 110 civil society organisations and collectives of family members, ask that the Diplomatic Corps:

In the context of the crisis of enforced disappearance and disappearance at the hands of private citizens:

1. Collaborate with Mexican Institutions and Civil Society Organisations to give feedback on their experiences with search and investigation;
2. Include in their human rights reports the reality of the issues of enforced disappearance and disappearance at the hands of private citizens in Mexico, which they can confirm in detail by visiting affected states and participating in meetings and events with family members of the disappeared;
3. Demonstrate their concern for the threats, harassment and attacks suffered by family members of the disappeared and human rights defenders who work on the issue of disappearance;
4. Publicly recognize, and invite the Mexican State to recognise, the work of family members of the disappeared and human rights defenders who work on the issue of disappearance, as well as the UN Committee on Enforced Disappearance and the UN Working Group on Enforced or Involuntary Disappearances.

In the framework of the discussions for the approval of the General Law on Enforced Disappearances and Disappearances at the Hands of Private Citizens:

5. Transmit, during their bilateral dialogue with the Mexican Authorities, the demands of family members insofar as the General Law on Enforced Disappearance and Disappearance at the Hands of Private Citizens, including:
 - a. Ensuring that the proposed law includes the [recommendations](#) of the UN Working Group on Enforced or Involuntary Disappearances following after their visit to Mexico; the [recommendations](#) of the Inter-American Human Rights Commission (IACHR) pursuant to their visit in 2015; the [observations](#) of the UN Committee on Enforced Disappearances in 2015, the [recommendations](#) of the Interdisciplinary Group of Independent Experts (GIEI) on the Ayotzinapa Case in 2016; and the [conclusions](#) of the Forth Civil Society Seminar for the Sixth High Level Human Rights Dialogue EU-Mexico in 2016;

- b. Establish the active participation of family members and civil society organisations that accompany them in processes of search, investigation and identification;
 - c. Create a National Search Program which prioritises search for live persons and responds to an analysis of the context, time and nature of the disappearance; which considered the creation of a [National Search Commission](#) made up of family members of the disappeared and authorities who coordinate all federal and state entities in designing and executing a National Search Plan and a National Plan for Exhumation and Identification of Mortal Remains. Create the necessary mechanisms for reporting obtained results;
 - d. Institute a process of declaration of absence that recognises and guarantees the continuity of the judicial and legal integrity of the victims;
 - e. With participation of civil society, establish a public national register of disappeared persons in order to ensure transparency and proper statistics;
 - f. Create a National Exhumation and Mortal Remains Identification Program which includes protocols for the identification and registry of mass graves, preservation of remains, and identification of bodies and body fragments. Establish an Autonomous Forensic Institute which focuses, although not exclusively, on historic disappearances and includes a DNA bank useful for search parties and case registry;
 - g. Eliminate all references to “non-localised persons”⁶;
 - h. Assign sufficient financial resources for the implementation of the General Law, especially for investigation, search and identification;
 - i. Establish more effective protocols for the investigation and prosecution of those responsible for disappearances which allow the commission of justice and sanction not only of those directly responsible, but of all those, especially high ranking officials, who by act or omission permit that these crimes are committed. At the same time guarantee that all perpetrators, civil and military, be tried within the civil jurisdiction;
 - j. Guarantee that cases that are being investigated by federal authorities are not remitted to the state without the necessary conditions to ensure that exhaustive, independent and impartial search and investigation be carried out, with the aim of clarifying the facts.
6. Follow up the implementation of the General Law after it has is approved through all pertinent activities, without forgetting to involve civil society and family members of the disappeared.

⁶ The international human rights instruments recognize enforced disappearance and disappearance at the hands of private individuals, with the former constituting a human rights violation and the latter a criminal offense. The missing person status does not constitute a human rights violation nor a criminal offense, and therefore should not appear in a General Law of that nature.