



ALTERNATIVE REPORT FOR THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

127th Session, October 14 to November 8, 2019

Prepared by the Movimiento por Nuestros Desaparecidos en México
(Movement for Our Disappeared in Mexico)

September 10, 2019

Informal translation from the original in Spanish

Introduction

The Movement for Our Disappeared in Mexico (Movimiento por Nuestros Desaparecidos en México, MNDM) presents this report to the United Nations Human Rights Committee (hereafter, the Committee) in advance of the consideration of the sixth periodic report submitted by Mexico under article 40 of the International Covenant on Civil and Political Rights (the Covenant).

The MNDM is a group of families of disappeared people made up of 64 local groups located in 22 states of the Mexican Republic and three Central American groups. Likewise, 40 human rights organizations accompany us.

Our common objective is focused on achieving a prompt and effective implementation of the General Law on Forced Disappearance of Persons, Disappearance Committed by Individuals and the National Search System (hereafter, General Law) that we achieved that was approved in 2017. We have direct dialogue with various officials of the federal government, as well as other national and international actors that help us highlight the importance of this issue and find possible solutions.

This document reflects the main concerns of the MNDM regarding the lack of implementation by the Mexican government of several of the recommendations made by the Committee in its Final Observations of April 7, 2010.¹ It also provides information on access to justice in cases of enforced and private disappearances (paragraph 12) and the impact of the measures taken to locate missing persons (paragraph 15), which were included in the list of issues approved by the Committee at its 111th session.² This report is made up of the following sections:

1. Search for disappeared people
2. Backlog of unidentified human remains
3. Justice and impunity in cases of enforced disappearances and those carried out by individuals
4. Observations on the report provided by the state of Mexico

The recommendations issued by this Committee to the state of Mexico regarding its obligations of prevention, investigation and sanction of disappearances, as well as searching for victims (assuming that they could still be alive), establishing their whereabouts and identifying human remains will be valuable tools to accompany our demands for effective search, justice, truth and integral reparation.

¹ Comité de Derechos Humanos de las Naciones Unidas, Examen de los informes presentados por los Estados partes en virtud del artículo 40 del Pacto (México), CCPR/C/MEX/CO/5, 7 de abril de 2010.

² Comité de Derechos Humanos de las Naciones Unidas, Lista de cuestiones previa a la presentación del sexto informe periódico de México, CCPR/C/MEX/QPR/6, 6 de agosto de 2014.

1. Search for Disappeared People

Official figures indicate that there are "more than 40,000 disappeared or missing people" in Mexico.³ However, there is no clarity or transparency about the methodology used by government institutions to calculate this figure. Given that more than 90 percent of crimes, including serious crimes, are never reported to the authorities, it is very likely that the real magnitude of the disappearance crisis is still unknown.⁴

The search for disappeared people is one of the main social demands of our country. For this, the General Law ordered the creation of a National Search System, which was inaugurated on March 23, 2019. The National Search System is the mechanism that links by law the different bodies that must actively participate in the search for the disappeared and in the investigation of the crime of enforced disappearance.

Although the establishment of the System was an important step, it should be noted that it is still incomplete. The Attorney General of the Republic has not yet participated in it, as required by the General Law. There are currently 24 of the 32 state search commissions. However, from the point of view of the MNDM, only one of them, that of the State of Mexico, appears to have the human, technological and financial resources to operate effectively.⁵ In only six of the 32 states, citizen participation councils have been formed that oversee the operation of the institutions and allow the direct participation of victims, experts and civil society organizations.

In terms of financial resources, the National Search System presents a different picture. The budget of federal expenditures for 2019 allocated 400 million pesos (about 18 million euros) to the search for missing persons. This is 69 million less than what was allocated for 2018, although in 2018 only 1.4% of the available budget was exercised due to bureaucratic obstacles.⁶ For operations of the National Search Commission in 2019, 193,215,472 pesos have been allocated. The remaining funds (207,576,512 pesos) are available to subsidize the establishment and development of the state search commissions. As of June 24, 2019, nine state search commissions have received subsidies of between six and 11 million pesos.⁷ The rest of the fund is awaiting the constitution of the commissions and the designation of their holders.

The consolidation of the National Search System is a crucial step towards achieving inter-institutional coordination and cooperation that can establish the whereabouts of thousands of victims of disappearance, as established by the General Law. One of the pending tools, also ordered by the General Law, is the elaboration of the Homologated Search Protocol, which will require the modification of the Homologated Investigation Protocol so that both are consistent and complementary to each other and generate joint and effective work. The powers of the

³ Discurso del Lic. Alejandro Encinas, Subsecretario de Derechos Humanos, 24 de marzo de 2019, disponible en: <https://bit.ly/30PEXnW> (consultado el 23 de agosto de 2019).

⁴ Según el Instituto Nacional de Estadística, Geografía e Informática (INEGI), los delitos no denunciados en 2017 ascendieron al 93.2 por ciento. Fuente: INEGI, *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública (ENVIPE) 2018*, páginas 29 y 30, disponible en: https://www.inegi.org.mx/contenidos/programas/envipe/2018/doc/envipe2018_presentacion_nacional.pdf (consultado el 4 de septiembre de 2019).

⁵ Según el informe de la Comisión Nacional de Búsqueda del 24 de junio de 2019, hasta esa fecha existían comisiones estatales de búsqueda en los siguientes estados: Baja California, Ciudad de México, Coahuila, Colima, Durango, Estado de México, Guerrero, Hidalgo, Michoacán, Nayarit, Nuevo León, Querétaro, San Luis Potosí, Sinaloa, Tamaulipas, Tlaxcala, Zacatecas, Tabasco, Campeche, Chihuahua, Jalisco, Morelos, Puebla, Veracruz.

⁶ Como referencia puede mencionarse que el gobierno aprobó 4.258 millones de pesos para publicidad oficial en 2019. Fuente: FUNDAR, Centro de Análisis e Investigación: *Análisis del Paquete Económico 2019*, página 14, diciembre de 2018, disponible en: <http://fundar.org.mx/wp-content/uploads/2018/12/Ana%CC%81lisis-del-Paquete-Econo%CC%81mico-2019.pdf> (consultado el 5 de septiembre de 2019).

⁷ Comisión Nacional de Búsqueda, *op. cit.*, 24 de junio de 2019.

search commissions and specialized prosecutors should be clear, emphasizing convergences and mutual support.

Another pending tool, which has not registered progress, is the National Search Program. The government has argued that it is focused on other aspects of the situation and that it does not have the necessary resources to devote to creating this Program. The creation of national search strategies based on the context analysis will determine patterns, clarify the motives and modus operandi of the perpetrators, determine profiles of missing persons and establish the particularities that explain the disappearances in the country. This approach seeks to overcome the casuistic approach and encompasses the design of strategies designed for all cases which present common elements. This will allow the National Search Commission to maximize field search efforts at all levels of government.

Another pending objective is the creation of various databases established in the General Law. Some continue in the design phase; others do not register any apparent progress.

- In April 2018, the National Registry of Missing or Disappeared Persons Data (Registro Nacional de Personas Extraviadas o Desaparecidas, RNPED) ceased to be updated and published, so today there are no official and accurate numbers on disappeared persons in Mexico.
- The National Registry of Common Graves (Registro Nacional de Fosas) has not been created. This is a serious delay in a country that is experiencing a forensic emergency recognized by the authorities themselves.⁸
- The National Forensic Data Bank (Registro Nacional de Datos Forenses) remains pending. This bank should systematize and link the DNAs obtained from the biological samples recovered from the bodies and the genetic information provided by the families of missing persons. Currently, the institutions have serious limitations in terms of their ability to match and cross-reference information for identification.
- The National Registry of Unidentified and Unclaimed Deceased Persons (Registro Nacional de Personas Fallecidas No Identificadas y No Reclamadas) does not record any progress. This registry will be in charge of collecting the forensic data of the bodies or remains of unidentified and unclaimed persons, the place of the finding and the place of burial or final destination, among other relevant data.⁹

According to the General Law, these and other databases should have started operating in January 2019.

One of the pillars of the General Law is the active participation of the families of victims. We recognize that the government takes into account the participation of families, but we believe that there have not been enough efforts to include families that are not part of organized social movements or to facilitate the monitoring and surveillance of the implementation of the General Law, with indicators that transcend the timely creation of institutions and address their work and results (such as search commissions).

⁸ Los detalles sobre este tema se presentan en la sección siguiente.

⁹ *Ibidem*

A concern of families is the limited work on strategies for emergency search and rescue (búsqueda en vida), as indicated by the General Law. On August 30, 2019, the federal authorities reiterated the importance of emergency search and rescue, but this does not necessarily happen at the state and municipal level. Cases of negligence and inadequate responses are still registered for family members who report disappearances. Immediate reaction mechanisms should be improved for new cases of disappearance, including immediate search actions, assuming that the victim is alive, based on contextualization.

RECOMMENDATIONS

We suggest to the Committee the following recommendations for the Mexican State:

- Create the remaining state search commissions and strengthen those already created (including the National Search Commission), with human, financial and technical resources and with leaders selected in a transparent manner, prioritizing the suitability criteria.
- Create in an effective way and with robust methodology the databases that have been defined in the General Law, guaranteeing that all the federal entities provide the necessary information and that the databases work properly. They must link to prosecutors and search commissions and must be public and accessible in real time. These databases include the National Registry of Missing and Unlocated Persons, the National Registry of Common Graves and the National Forensic Data Bank, as well as the National Registry of Unidentified and Unclaimed Deceased Persons.
- Prepare and implement as soon as possible the National Search Program with the material resources and inter-institutional coordination necessary for its execution; with a monitoring and evaluation mechanism that includes victims of disappearance and civil society organizations; and with the periodic publication of reports on the progress in its implementation, including the location of missing persons alive.
- The National Search Commission must prepare the Homologated Search Protocol mandated by the General Law, in order to define the immediate actions for the search commissions and inter-institutional coordination. The Protocol must be constructed from its operators, with the participation of the institutions that must be coordinated with the National Search Commission, such as specialized prosecutors and with the participation of families. The Protocol must be consistent and complementary to the Homologated Investigation Protocol, so that the relevant institutions work efficiently, clearly, smoothly and without bureaucratic obstacles.

2. Backlog of Unidentified Human Remains

According to official figures, there are at least 37,000 unidentified human bodies in Mexico.¹⁰ This figure is a conservative estimate since it only represents the number of bodies deposited in the forensic services of the country to which there is no certainty if the necropsy required by law has been performed. Many others (although with an unspecified figure) have undergone necropsy but remain unidentified. In many cases, the authorities responsible for the protection of the bodies do not know the exact physical location of said bodies, both in the common graves of public cemeteries and in the amphitheatres of the forensic medical services. Likewise, the number of bodies donated to universities and educational centers and their last disposition are unknown.

Additionally, the State owns tens of thousands of unidentified bone remains. In some cases, these remains have been lost due to failures in the chain of custody and due to the lack of bone rooms (osteotecas) and adequate safe places to preserve them.

Third, there are thousands of mass graves scattered throughout the national territory, with an unidentified number of bodies in them. On August 30, 2019, the National Search Commission announced that since 2006 3,024 mass graves have been located. Of them, 4,974 bodies have been exhumed as of August 14, 2019.¹¹ This situation further aggravates the forensic emergency since it presents a much greater complexity for the processes of exhumation, identification and conservation of the corpses. Many groups of relatives of missing persons have gone out to look for our loved ones in possible mass graves in regions that present high security risk due to the presence of criminal gangs and local authorities that have colluded with them.

The ability of the State to process and identify people is exceeded and collapsed. The need for safekeeping and identification of remains exceeds the installed capacity and has caused contamination of evidence that may result in the impossibility of full identification of bodies recovered by families and the authorities themselves.

From the MNDM we are requesting the State to create an Extraordinary Mechanism for Forensic Identification that allows the identity to be returned to the thousands of bodies and bone remains in the country. The Mechanism must be an entity of extraordinary, multidisciplinary nature, with its own legal personality, which enjoys technical, administrative and financial independence, and whose mandate is to identify the bodies or remains of deceased persons without identifying or claiming that, at the date of installation of the Mechanism, are in government custody, or are in any other public, academic, or private facility. It must also have the power to intervene in mass graves to give families certainty about the processing and identification of the recovered remains.

The Mechanism will need international experience and help to achieve the objective since the Mexican State does not have sufficient human, technological, infrastructure and financial capacity to achieve it.

In 2018, the Committee on Enforced Disappearances recommended to the Mexican State:

¹⁰ Información proporcionada por la Comisión Nacional de Búsqueda al MNDM el 7 de agosto de 2019. Una cifra similar (36.708) fue comunicada públicamente el 17 de enero de 2019, disponible en: <https://www.gob.mx/segob/prensa/mensaje-del-comisionado-nacional-roberto-cabrera-alfaro-sobre-las-acciones-realizadas-por-la-comision-nacional-de-busqueda?tab=> (consultado el 5 de septiembre de 2019).

¹¹ "En 13 años, se hallaron 3 mil 24 fosas clandestinas; con AMLO, 522", *Milenio*, 30 de agosto de 2019, disponible en: <https://www.milenio.com/politica/13-anos-hallaron-3-mil-024-fosas-clandestinas-amlo-522> (consultado el 2 de septiembre de 2019).

Strengthen forensic and expert services with the creation of an international mechanism for forensic technical assistance together with the victims, specialized organizations and other relevant entities with the aim of urgently proceeding to the forensic prosecution of the thousands of pending bodies and skeletal remains of identification.

The government has recognized the forensic emergency and the need to create an Extraordinary Mechanism for Forensic Identification.¹² In this context we have established a working group with the government to move forward with this objective.

RECOMMENDATIONS

We suggest to the Committee the following recommendations for the Mexican State:

- Approve a general law that creates the Extraordinary Mechanism for Forensic Identification, which obliges all the relevant federal, state and municipal institutions to collaborate broadly and without obstacles with the Mechanism, guaranteeing ample financing that allows to have human and technological resources sufficient for full identification, with international collaboration to guarantee autonomy and certainty for families.
- Allocate sufficient economic and technical resources, from state sources and from international cooperation, so that the Mechanism can carry out effective work since the beginning of 2020.

¹² "Atender emergencia forense en el país, prioridad del gobierno de México, reafirma Alejandro Encinas", 9 de mayo de 2019, disponible en <https://www.gob.mx/segob/prensa/atender-emergencia-forense-en-el-pais-prioridad-del-gobierno-de-mexico-reafirma-alejandro-encinas> (consultado el 23 de agosto de 2019). "Segunda mesa de trabajo para la implementación del mecanismo extraordinario forense", 16 de agosto de 2019, disponible en <https://www.gob.mx/segob/prensa/segunda-mesa-de-trabajo-para-la-implementacion-del-mecanismo-extraordinario-forense> (consultado el 23 de agosto de 2019).

3. Justice and Impunity in Cases of Forced disappearances by Individuals

There is a chasm between the number of disappeared people and the number of people tried and sanctioned for these crimes. Through a recent request for access to information, we learned that the State found, as of August 31, 2018, 8 firm convictions, 17 acquittal sentences and 18 sentences in the appeal process, in the federal jurisdiction, for the crime of enforced disappearance, in the period between October 1, 2013 and August 27, 2018.¹³ No more complete or updated figures have been published.

There are currently 22 specialized prosecutors of the 33 that should exist, many of them with a very limited budget.¹⁴ According to the Office of the Special Prosecutor for Human Rights of the Office of the Attorney General of the Republic, there are agents of the public prosecutor's office that have more than 80 cases under their supervision and the number of experts available for this type of proceedings is also reduced.¹⁵

On the occasion of the transition from the old to the new Office of the Attorney General (Fiscalía General de la República), from the MNDM we have requested the opening of an inclusive dialogue with the Attorney General, which has not been granted until today. One of the themes for this dialogue is the participation of civil society and victims' organizations in the appointment of future prosecutors specialized in human rights.

Given the limitations of the prosecution service, it is crucial for us to be able to access all possible international avenues to seek justice for our missing and disappeared relatives. This Committee has received an individual Mexican case of enforced disappearance and has issued a decision in favor of the victims. However, Mexico has not yet recognized the competence of the Committee on Enforced Disappearances to receive individual cases. On August 30, President López Obrador instructed to recognize that competence by following repeated previous promises.¹⁶ Since then the competent authorities have not informed of any steps to implement this recognition. The President also accepted the request of the Committee to visit Mexico, which officials said would take place before the end of 2020.

RECOMMENDATIONS

We suggest to the Committee the following recommendations for the Mexican State:

- Create the 11 pending specialized prosecutors' offices and strengthen the 22 prosecutors' offices, focused on enforced disappearances, already created by assigning them sufficient ministerial and police personnel, as well as sufficient technological and financial resources to act effectively and autonomously.
- Ensure effective coordination between the federal Office of the Specialized Prosecutor in Enforced Disappearances and the National Search Commission, including reforms to the Homologated Investigation Protocol so that it is consistent and linked to the future

¹³ Consejo de la Judicatura Federal, Oficio CDHIGAI/1184/2018.

¹⁴ Por ejemplo, la Fiscalía Especializada a nivel federal recibió 18 millones de pesos para 2019 (830.000 euros).

¹⁵ Reunión entre representantes de la Fiscalía Especializada en Derechos Humanos y representantes del Movimiento Por Nuestros Desaparecidos en México, 24 de junio de 2019.

¹⁶ Animal Político, "Las siete acciones de búsqueda de desaparecidos propuestas por AMLO", 30 de agosto de 2019, disponible en: <https://www.animalpolitico.com/2019/08/acciones-busqueda-desaparecidos-propuesta-amlo/> (consultado el 5 de septiembre de 2019).

Homologated Search Protocol, with the effective participation of victims and organizations of civil society.

- Comply with the presidential instruction of August 30, 2019 and recognize the competence of the Committee on Enforced Disappearances to receive individual cases, as well as take the necessary measures to enable the Committee to visit Mexico before the end of 2020.

4. Comments on the Sixth Periodic Report

Mexico was due to submit the sixth periodic report in 2015, which was presented on February 20, 2018. The paragraphs referring to disappearances of persons and our observations on them are mentioned below.

Paragraph 83:

As we mentioned on page 4, the RNPED stopped updating and became unavailable in April 2018. Since then it is impossible to estimate how many people have filed a complaint or report for victims of disappearance.

The State reports that “the Investigation Unit for Crimes against Migrants, and the Mexican Foreign Support Mechanism for Search and Investigation” has been created, which is correct. The State should also have reported that its resources and results are still scarce and that it does not operate autonomously but requires constant monitoring by the victims and their legal representatives to make progress in the cases.

The State reports “continuous work on installation and training for the use of the Ante Mortem / Post Mortem Database (AM / PM)”. However, the implementation of that database remains very limited. In many states it has not yet been installed. In others it is only partially used, with deficiencies in its operation due to lack of trained personnel and approved protocols on how to enter and manage information.

The State reports the "creation of the Special Prosecutor's Office for the Search of Missing Persons." As of today, the Prosecutor's Office has not filed a criminal charge against any alleged person responsible for the crime of enforced disappearance, therefore its effectiveness remains null.

The State reports on the “approval of the Homologated Protocol for the Investigation of the Crime of Enforced Disappearance”. However, families were not properly consulted in the approval process, which is contrary to the principles of the General Law. The protocol contains serious deficiencies.

Paragraphs 84 and 110:

In general terms, the State makes a correct summary of some of the contents of the General Law. However, it does not provide information on its effective implementation.

Paragraph 111:

In addition to what has been stated above about the Special Prosecutor's Office, the authorities have not yet published the National Registry of Common Graves and have not created the DNA database.

Paragraph 112:

As mentioned earlier, the RNPED continues without being put into operation.

Paragraph 113:

Ibid.

Paragraph 114:

See the aforementioned about AM / PM Database.

Paragraph 115:

Ibid.

Paragraph 116:

See the aforementioned about the Homologated Investigation Protocol. The Homologated Search Protocol has not yet been developed.