

EXECUTIVE SUMMARY
of the
FOLLOW-UP REPORT ON
THE IMPLEMENTATION BY MEXICO
OF THE RECOMMENDATIONS ISSUED BY THE COMMITTEE AGAINST TORTURE

(CAT/C/MEX/CO/5-6)

NOVEMBER 2013

I. Background

1. On 23 November 2012 the Committee against Torture (CAT) adopted its concluding observations on the combined 5th and 6th periodic reports submitted by Mexico. The CAT requested Mexico to provide, within one year (i.e. 24 November 2013), relevant information on the implementation of its recommendations to, among others, ensure or strengthen fundamental **legal safeguards for persons held in custody**; conduct **prompt, impartial, effective investigations and prosecute** persons suspected of committing acts of torture or ill-treatment and punishing those found guilty of doing so; and to **protect human rights defenders** and journalists.
2. The *Fundación para la Justicia y el Estado Democrático de Derecho, A.C.*; TRIAL (Track Impunity Always); Casa del Migrante, Saltillo, Coahuila; Centro Diocesano para los Derechos Humanos Fray Juan de Larios, A.C.; Fuerzas Unidas por Nuestros Desaparecidos (as) en Coahuila (FUUNDEC); Comité de Familiares de Migrantes Fallecidos y Desaparecidos - El Salvador (COFAMIDE); Comité de Familiares de Migrantes de El Progreso (COFAMIPRO); Centro de Derechos Humanos Victoria Diez, A.C.; and Mesa Nacional para las Migraciones en Guatemala (MENAMIG) submit to the CAT written information for the follow-up on the subjects concerned, in order to assess whether the recommendations have been implemented, and to highlight the remaining obstacles. Moreover, reference is made to other issues of concern that disclose the existence of practices and situations which are not in accordance with the obligations set forth by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
3. In general, it is the view of the subscribing organizations that since November 2012 there has not been a significant progress with regard to the fulfilment of the international obligations of Mexico pursuant to the Convention and, in particular, the recommendations issued by the CAT have not been duly implemented. The situation remains especially grave with regard to victims of enforced disappearance and their relatives, all the more when they are migrants.

II. The Provision of Legal Safeguards for Persons Held in Custody

4. Mexico has not yet established a unified official register of persons deprived of their liberty. This, coupled with the significant difficulties experienced by the families willing to have access to information related to detainees, jeopardizes the prevention of enforced disappearance. Special attention must be paid to migrant-holding centres (*estaciones migratorias*), where persons are not ensured their right to medical and legal assistance and to inform their families of origin about their apprehension. This must be seen in the light of the fact that detention of migrants in these centres exceeding 36 hours is contrary to the Mexican Constitution and must be considered arbitrary. Moreover, persons held in migrant-holding centres are seldom informed about their right to obtain a humanitarian visa in case they are victims or witnesses of a crime. For the families of persons held in migrant-holding centres, given the fact that they often live abroad, locating where their loved ones may be held, having access to information and maintaining regular contacts with them is extremely difficult and authorities are often indifferent in face of their acute anxiety. An especially grave situation, illustrative of the mentioned circumstances, is reported in the migrant-holding centre in the city of Saltillo, Coahuila. Finally, migrant-holding centres do not count with effective mechanisms to identify victims of trafficking that may be held there and to provide them with the necessary protection and assistance.

Please refer to paras. 3-22 of the integral follow-up report for details

Recommendations

Establish without delay a **unified register of persons deprived of their liberty** and guarantee that it is **up-to-date and it contains basic information** on detainees, i.e.: the identity of the person deprived of liberty; the date, time and place where the person was deprived of liberty; the authority that ordered the deprivation of liberty and the grounds for the deprivation of liberty; the authority responsible for supervising the deprivation of liberty; the place of deprivation of liberty, the date and time of admission to the place of deprivation of liberty and the authority responsible for the place of deprivation of liberty; elements relating to the state of health of the person deprived of liberty; in the event of death during the deprivation of liberty, the circumstances and cause of death and the destination of the remains; and the date and time of release or transfer to another place of detention, the destination and the authority responsible for the transfer. Mexico must guarantee **access to this information to any person with a legitimate interest, such as relatives of the person deprived of liberty**, their representatives, their counsel, or human rights organizations.

With regard to **migrant-holding centres** (*estaciones migratorias*):

- a) Ensure that all persons held in these centres are **treated fairly and have genuine access to medical and legal assistance**, as well as **access to means to inform their families of origin about their detention**.
- b) Ensure that all persons held in migrant-holding centres are **informed without delay about their right to obtain a humanitarian visa for being victims or witnesses of a crime**, and guarantee that those who obtain such visa obtain also **effective measures of assistance and protection**.
- c) Establish **effective mechanisms to identify victims of trafficking and other crimes** held in migrant-holding centres and ensure that they are granted **measures of assistance and protection**.

- d) Establish effective mechanisms to **facilitate the search and localization of persons held in migrant-holding centres for their families of origin, and to ensure that they can maintain a regular communication with their loved ones.**

In general, ensure that **limitations to the deprivation of liberty of migrants established by the Mexican Constitution** are duly respected and that **alternatives to their detention are considered and put in place without delay.**

III. The Lack of Prompt, Impartial and Effective Investigation, and of Prosecution and Sanction of Persons Responsible for Enforced Disappearance

5. Despite reiterated recommendations issued by international human rights mechanisms, including the CAT, there do not seem to be meaningful progresses in the investigation of cases of enforced disappearance, in the identification of those responsible and in their prosecution and sanction. One of the main problems reported is the lack of a unified register or database of disappeared persons. This makes almost impossible to determine the exact number of victims of this crime and, as a consequence, to articulate an effective search and investigation. This is particularly true when it comes to migrants subjected to disappearance, because in this case Mexico and the authorities of the neighbouring countries do not count with any precise data, while all efforts are left to associations of the civil society. Furthermore, Mexico does not count with an effective mechanism of search of disappeared persons. Although some measures have been undertaken, such as the establishment of a Specialized Unit for Searching Disappeared Persons within the Office of the Attorney General of Mexico (*Procuraduría General de la República - PGR*) and of an agreement among the International Committee of the Red Cross (ICRC), the PGR and other authorities of the region for the search and investigation of cases of enforced disappearance, no significant results have been accomplished so far. In particular, it must be stressed that the mechanisms of search do not seem to address the phenomenon in a systematic manner, rather focusing on isolated cases, and they do not duly encompass the transnational dimension of enforced disappearance of migrants. The Specialized Unit for Searching Disappeared Persons does not count with the necessary human and financial resources. Civil society organizations and associations of victims underscore with concern that the search of disappeared persons is so far not designed to find persons alive, but rather to locate mortal remains, while an effective “urgent action” would require a significant paradigm shift. Moreover, civil society organizations and associations of victims have not been duly involved, both by the PGR and the ICRC, in the design of searching strategies. This has not only fostered their feelings of exclusion and marginalization, but has resulted in undermining the lack of confidence towards authorities. Relatives of disappeared people, and in particular of migrants, face significant obstacles in accessing justice. Often they are not recognized as victims and, especially when they reside abroad, they cannot count on legal representatives before Mexican authorities. With regard to disappeared migrants, families are frequently not aware about which are the competent authorities to be addressed and before which a complaint must be filed. Ministries of

Foreign Affairs and consular authorities have not set up an effective system of communication and do not assist relatives in an effective manner. The number of investigations launched on cases of enforced disappearance is consistently lower than the number of reported cases, and the situation is even worst when it comes to the carrying out of proceedings and the sentencing of those responsible for enforced disappearance and torture. Furthermore, cases where persons have been subjected to torture and ill-treatment to extract their confession remain frequent and covered by broad impunity. With regard to programmes of exhumation, identification and return to families of mortal remains found in clandestine and common graves, the establishment of a Forensic Commission in 2013 is a significant progress. This Commission, based on an agreement among PGR, civil society associations and the Argentine Forensic Anthropologic Team (EAAF) will be in charge of identifying the mortal remains found in three common graves (San Fernando, Tamaulipas and Cadereyta, Nuevo León). Despite this positive development, exhumations of mortal remains found in common graves remain plagued by irregularities and mistakes. Cases of erroneous identifications have been registered, as well as instances where the remains were cremated without the consent of the family. These incidents, coupled with the lack of credible information from authorities, have inflicted deep suffering and frustration to the families of the victims. The latter, in particular when residing abroad, have been further marginalized and harmed by the fact that their status as victims has not been duly recognized in the processes before Mexican authorities which, moreover, seem to lack a scheme of effective cooperation on these matters.

Please refer to paras. 23-118 of the integral follow-up report for details

Recommendations

Establish a **national register of persons victims of enforced disappearance**, ensuring that relatives, counsels, human rights defenders and any other person who has a legitimate interest has access to this register.

Ensure that in the mentioned register the phenomenon of **enforced disappearance of migrants is duly documented and its transnational dimension is fully taken into account**, establishing the necessary measures and guarantees to collect information and make it accessible in the different States in the region.

Ensure the **effective functioning of the Specialized Unit for Searching Disappeared Persons** within the PGR, guaranteeing the **adoption of adequate protocols for the urgent search, aiming at finding disappeared persons alive, and with a systematic approach** that does not focus only on isolated instances. Guarantee that the Specialized Unit receives **adequate human and financial resources** and counts with a section specifically dedicated to migrants.

Ensure that before the adoption and publication of any protocol related to databases of disappeared persons, their search or identification, **organizations of civil society are consulted and involved in the process** so that their main needs and expectations are duly taken into account.

Ensure that the **mechanism for searching disappeared persons is conceived with a transnational scope**, so that especially the phenomenon of enforced disappearance of migrants can be adequately addressed.

Ensure that, both with regard to the Specialized Unit for Searching Disappeared Persons and the cooperation agreement among ICRC, PGR and State authorities in the region for searching disappeared persons, the **full**

participation of civil society organizations and associations of victims in the design of the strategies concerned, their implementation, evaluation and in the decision-making process is guaranteed.

Following the example of the *Subprocuraduría de Control Regional, Procedimientos Penales y Amparo* of the PGR, ensure that relatives of disappeared persons are **allowed to file their complaints and obtain the launch of a prompt investigation notwithstanding the competence of the authority before which the complaint is actually filed.** The latter must undertake all the necessary urgent measures and may subsequently transfer the case to another competent authority.

Facilitate access to justice for relatives of disappeared persons, in particular in the case of migrants, with mechanisms that can be activated from the country of origin of the migrant person. Ensure that the latter are **recognized the status as victims and *locus standi* before Mexican authorities, as well as access to effective legal representation.**

Establish a **mechanism of regular and effective communication among the domestic and regional authorities in charge of investigating cases of enforced disappearance**, in particular prosecutors and judges. Ensure that the competent authorities, including Ministries of Foreign Affairs and consular authorities, **provide the information requested by relatives of disappeared people, their representatives and any other person with a legitimate interest.**

Establish, **together with the other States in the region, programmes to provide precise information about all available remedies against gross human rights violations and the authorities in charge of receiving the corresponding complaints.** Establish effective mechanisms of communication and follow-up with regard to the investigative process.

Ensure that **confessions obtained through torture or ill-treatment are not used as evidence in any proceedings whatsoever**, and ensure the **prompt, independent, impartial and thorough investigation** of cases of torture and ill-treatment, as well as the **judgment and sanction of those responsible.**

Ensure the **necessary human and financial resources, as well as the required conditions for the effective functioning of the Forensic Commission** established pursuant to the agreement among PGR, EAAF and civil society associations.

Adopt all necessary measures to **prevent the cremation of the mortal remains that may pertain to disappeared persons, before their identification is ensured and conducted in accordance with international standards and in case the family has not freely expressed its agreement.**

Ensure that **families of disappeared migrant persons are recognized the status of victims in the proceedings before Mexican authorities** and guarantee their access to the information concerning the search, investigation and, in the case of death, identification of the mortal remains of their loved ones.

Establish **effective mechanisms with a transnational scope to guarantee the exchange of information on the identification of mortal remains of disappeared migrant persons**, and adopt all measures to ensure that **mortal remains are respected and transferred to the respective countries of origin** of the persons concerned, taking into account their customs and beliefs.

Establish, together with **relatives of disappeared people and civil society organizations**, a **Programme of Integral Support – that includes medical, psychological and economic assistance – to relatives of disappeared persons.** Such Programme must be set up in **coordination with countries in Central America**, so that families whose loved ones disappeared in Mexico are included.

IV. The Failure to Protect Relatives of Disappeared People, their Associations and Witnesses from Threats and Harassment

6. Despite the promulgation of the Human Rights Defenders and Journalists Protection Act, and the establishment of the corresponding protective mechanism, instances of harassment, threats, and gross violations committed against relatives of disappeared persons, their relatives and their representative associations remain frequent. Moreover, in the great majority of cases where these persons have been subjected to gross human rights violations, including arbitrary executions, torture and enforced disappearance, those responsible for the crimes concerned have not been judged and sanctioned, thus fostering an overall climate of impunity.

Please refer to para. 119 of the integral follow-up report for details

Recommendations

Adopt without delay all necessary measures to **ensure adequate protection to relatives of disappeared persons, their representatives and counsels.**

Conduct prompt, thorough, impartial, independent and effective investigations into any and all acts of intimidation or violence directed at **human rights defenders and, in particular, relatives of disappeared persons and their representatives and counsels**, and **prosecute those responsible and punish them in a manner that is commensurate with the gravity of their acts**

V. Other Matters of Concern

7. Besides the issues of concern on which the CAT expressly requested Mexico to provide follow-up information, there are other matters that the organizations subscribing the follow-up report would like to bring to the attention of the CAT.

VI. The Failure to Codify Enforced Disappearance as an Autonomous Offence and to Adopt a General Law on Enforced Disappearance

8. Art. 215-A of the Federal Criminal Code contains a definition of enforced disappearance that is not in line with international standards, thus hampering the prevention, investigation and prosecution of the crime. Despite the order to amend such provision issued by the Inter-American Court of Human Rights, Mexico has failed to do so. Moreover, enforced disappearance is not codified as an autonomous offence in all the criminal codes of the different States; and, even where a definition exists it is often not in line with international law either. In particular, the definitions included in the Federal Criminal Code and in some of the States' Criminal Codes fail to include the possibility that enforced disappearances are committed by persons or groups of persons acting on behalf of, with the support, consent or acquiescence of the State. Enforced disappearance is not codified as a crime in the military criminal

code. Further, Mexico has not codified crimes against humanity at any level. Finally, Mexico lacks a general law on enforced disappearance.

Please refer to paras. 122-131 of the integral follow-up report for details

Recommendations

Mexico shall **amend without further delay Art. 215-A of the Federal Criminal Code** to bring it in line with international standards. Enforced disappearance shall be **codified as an autonomous offence in the criminal code of all the States of Mexico** and those existing definitions that do not meet international standards shall be amended accordingly. Criminal legislation at all levels shall define enforced disappearance as a **continuous offence** and shall ensure that the statute of limitations for criminal proceedings in cases of enforced disappearance take into account the continuous nature of the offence and hence commence to run from when the fate or whereabouts of the victim are established with certainty and made known to their relatives. Criminal codes at all levels shall explicitly define that **a person who acted pursuant to an order to commit enforced disappearance shall not be relieved of criminal responsibility** and that those who refuse to obey such an order will not be punished. Mexico shall amend the military criminal code, including the offence of enforced disappearance. Mexico shall **codify at all levels crimes against humanity**, including enforced disappearance when committed as a part of a widespread or systematic attack against any civilian population. Finally, Mexico shall **adopt a general law on enforced disappearances** that creates a specific search procedure for the disappeared person with the participation of the family members of victims; and establish a national registry of forcibly disappeared persons with the guarantee that relatives, lacquers, human rights defenders and any other interested person shall have full access to the registry. The law shall allow for the **declaration of absence as a result of enforced disappearance**; and it shall be a legal tool for the full support and protection of relatives of the disappeared as well as witnesses and also for the right to integral reparation.

VII. The Failure to Provide Adequate Compensation and Integral Reparation to Victims of Enforced Disappearance

9. On 9 January 2013 the General Law on Victims was enacted. This represents a significant step forward. The law contains a comprehensive notion of “victim” and it sets forth an articulated set of judicial, administrative and socio-economic measures to guarantee integral reparation. Nevertheless, the implementation of this new piece of legislation is still inadequate. Furthermore, to the knowledge of the associations subscribing the follow-up report, at present Mexico does not count on a specific programme aimed at granting integral reparation to migrants who are victims of gross human rights violations and their families. This gap is the source of deep concern, given the scope and the specificities of the phenomenon, which requires to be promptly and adequately addressed.

Please refer to paras. 132-134 of the integral follow-up report for details

Recommendations

Ensure that the **2013 General Law on Victims is fully implemented without delay and that the necessary financial and human resources are secured** for this purpose.

Adopt a **specific protocol to ensure integral reparation to migrants who are victims of gross human**

rights violations and their families. Full participation of migrants victims of gross human rights violations, their relatives and their representative organizations must be guaranteed in every stage of the reparation process, including the design, implementation, evaluation, and decision-making.

VIII. The Failure to Recognize the Competence of the Committee on Enforced Disappearances to Receive and Examine Communications

10. On 18 March 2008 Mexico ratified the International Convention on the Protection of All Persons from Enforced Disappearances. However, despite various recommendations by different international human rights mechanisms in this sense, so far it failed to recognize the competence of the Committee on Enforced Disappearances to receive and examine individual and inter-State communications. Undisputedly, the recognition of the competence of the Committee on Enforced Disappearance plays a crucial importance in the prevention and suppression of this heinous phenomenon.

Please refer to para. 135 of the integral follow-up report

Recommendation

Mexico shall **recognize without further delay the competence of the Committee on Enforced Disappearances** pursuant to Arts. 31 and 32 of the International Convention on the Protection of All Persons from Enforced Disappearances **to receive and examine individual and inter-State communications.**