

# EXECUTIVE SUMMARY

of the

## ALTERNATIVE REPORT FOR THE EXAMINATION OF MEXICO'S COMBINED FIFTH TO SIXTH REPORTS

(CAT/C/MEX/5-6)

MAY 2012

### I. Background

1. TRIAL (*Swiss Association against Impunity*); i(dh)eas - Strategic Human Rights Litigation (Litigio Estratégico en Derechos Humanos); the National Forum for Migration in Honduras (*Foro Nacional para las Migraciones en Honduras - FONAMIH*); the Foundation for Justice and the Democratic Rule of Law (*Fundación para la Justicia y el Estado Democrático de Derecho*); the Diocesan Centre for Human Rights Fray Juan de Larios (Centro Diocesano de Derechos Humanos Fray Juan de Larios, A.C.); United Forces for our Disappeared in Coahuila (*Fuerzas Unidas por Nuestros Desaparecidos(as) en Coahuila - FUUNDEC*); the Committee of Relatives of Deceased and Disappeared Migrants - El Salvador (*Comité de Familiares de Migrantes Fallecidos y Desaparecidos - El Salvador - COFAMIDE*); and the Association of Relatives of Disappeared-detainees and victims of human rights' violations in Mexico (*Asociación de Familiares de Detenidos Desaparecidos y Víctimas de Violaciones de Derechos Humanos en México - AFADEM*) submit to the Committee against Torture (CAT) an alternative report highlighting the existing obstacles in the implementation of the Convention against Torture by Mexico. In this view, **numerous concrete examples are referred to, as well as recommendations to improve the situation.**
2. The associations that submit this written information have a number of concerns with regard to the implementation by Mexico of the Convention against Torture. However, given the particular expertise of the associations concerned, this document focuses solely on matters related to enforced disappearance. The section of the report concerning universal jurisdiction deals both with enforced disappearance and torture. The omission of other subjects does not imply by any means that the associations submitting this alternative report find that Mexico fully complies with all its obligations under the Convention against Torture.
3. Enforced disappearance is a form of torture and relatives of disappeared people are subjected to inhuman and degrading treatment because of the length of time over which their ordeal is dragged out by State authorities and the attitude of official indifference in the face of their acute anxiety to know the

fate and whereabouts of their loved ones. The phenomenon of enforced disappearance is unfortunately well-known to Mexico. First, during the so-called “Dirty War” of the Sixties and Seventies, students, professors, political activists, trade unionists, and many others were subjected to a systematic practice of enforced disappearance. To date, the fate and whereabouts of those people remain unknown; those responsible for the crimes concerned have not been duly identified, investigated, judged and sanctioned; and relatives have not received adequate and integral redress. A second wave of enforced disappearances is taking place in the context of the so-called “War on drugs and organized crime” and it has sensibly worsened since the military has been deployed in counternarcotics operations. Also in this case, the fate and whereabouts of disappeared people remain unknown; impunity is rampant; and relatives are not granted adequate compensation and integral redress. This situation amounts to an ongoing violation, among others, of Arts. 1; 2, para. 1 and 3; 4; 5; 6; 7; 12; 13 and 14 of the Convention against Torture.

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

4. Art. 215-A of the Federal Criminal Code contains a definition of enforced disappearance that is not in line with international standards on the matter, thus hampering the prevention, investigation and prosecution of the crime. 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.14 to 45 of the full report for details and concrete examples*

5. **Mexico shall amend without delay Art. 215-A of the Federal Criminal Code to bring it in line with international standards on the matter. 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 family members of victims; and establish a national registry of forcibly disappeared persons with the guarantee that relatives, lawyers, human rights defenders and any other interested person 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.

### III. The Failure to Adopt Adequate Preventive Measures

6. Notwithstanding the recommendations of various international human rights mechanisms, Mexican authorities continue invoking and applying the power of “*arraigo*”, which allows prosecutors, with judicial authorization, to detain individuals for up to 80 days before they are charged with a crime. This practice amounts to arbitrary detention and often leads to subsequent enforced disappearance. In many instances, to perform detentions security forces avail themselves of the overly-broad concept of *quasi-flagrancia* or *flagrancia equiparada* that allow any person to detain an individual several hours and even days after the actual commission of the crime. Moreover, at even though Art. 16 of the Constitution stipulates that a detention registry shall exist, at present the detention registry is one of the most underdeveloped databases of the national system of public security. When a registry does actually exist, an entry can be cancelled immediately after the release of the detainee, thus annulling any possibility of denouncing and investigating cases of potential abuses against the person previously detained, including instances of ill-treatment and torture. Moreover, the different police forces do not count with a unified detention procedure. Further, so far, the *amparo* action has proven to be an insufficient remedy. In fact, many judges processing the action of *amparo* require complainants to identify the authority responsible for violating the victim’s constitutional rights—but in cases of enforced disappearance, the perpetrator’s identity is often unknown. Furthermore, judges require the relatives identify the place where the person is being held and request the ratification of the *amparo* by the disappeared person. In the case of enforced disappearance this requirement is evidently impossible to fulfil.

▶ Please refer to paras. 46 to 77 of the full report for details and concrete examples

7. **Mexico shall abolish *arraigo* detention from legislation and practice, both at federal and state level. Mexico shall also take all necessary measures to amend within the shortest delay the legal framework of *flagrancia* to restrict its use to the very moment of the commission of a crime and eliminate from legislation and practice the concepts of *quasi-flagrancia* and *flagrancia equiparada*. Mexico must strengthen the detention registry to ensure that it is updated and harmonised with other databases in order to monitor the physical location of persons; include**

strict control over the authorities responsible for registering detentions and issue proper sanctions for those who fail to do so. The detention registry should indicate the reasons for the arrest; the exact time of the arrested person's arrival at the place of custody; the duration of the deprivation of liberty; the identity of the authority who ordered the person's detention as well as of the officials responsible for enforcing it; the chain of custody of detainees; precise information concerning the place of custody, and the time of the detained person's first appearance before a judicial or other authority. Mexico shall amend the legal framework for *amparo* claims, ensuring that it is in line with the specific nature of enforced disappearance, it includes a broad definition of victims, guarantees an active role of the judicial authorities, avoiding setting impossible demands on the circumstances concerned, such as the identification of the place of deprivation or liberty, the determination of the responsible authority and the direct ratification of the *amparo* by the victim.

#### **IV. The Lack of an Adequate Legal Framework on Universal Jurisdiction**

8. The establishment of universal jurisdiction, intended as the jurisdiction of domestic tribunals to judge and sanction those responsible for torture, enforced disappearance or international crimes that are present in the territory of the State concerned, is a bulwark against impunity. At present, Mexican legislation does not seem to spell out with the necessary clarity that Mexican tribunals could exercise their jurisdiction when a person accused of torture, enforced disappearance or another international crime is present in any territory under Mexican jurisdiction and the State does not extradite him or her and in fact the practice of domestic judicial authorities in this sense is scarce when non-existent. Furthermore, at present legal provisions do not make it clear that the judgment of the accused is not conditional on the existence of a previous request of extradition and that it is not necessary that the offence of which the person is accused is codified both in the State where it was committed and in Mexico (so called "double criminality requirement").

▶ *Please refer to paras. 78 to 92 of the full report for details and concrete examples*

9. **Mexico should consider amending its criminal legislation to explicitly establish the jurisdiction of Mexican authorities over torture, enforced disappearance and other international crimes in cases where the alleged offender is present in any territory under Mexican jurisdiction and the State does not extradite him. Indeed, it must be made clear that the judgment of the accused is not subordinated in any way to the actual existence of a previous extradition request, and that it is not necessary that the offence of which the person concerned is accused is codified as an autonomous offence both in the State where it was committed and in Mexico.**

## V. The Failure to Effectively Investigate, Identify, Judge and Sanction those Responsible for Enforced Disappearance

10. The main responsibility to investigate, judge and sanction those responsible for enforced disappearances lies within the judicial system of Mexico. However, relatives of disappeared persons express deep dissatisfaction towards the work so far carried out by Mexican authorities and point out that impunity still prevails. A first obstacle in the proper investigation of cases of enforced disappearance is the fact that many instances are labelled as “*levantones*” or victims are considered as simply “missing”, “lost” or “absent” and the crime is not registered as an enforced disappearance, but as a different and less serious offence (kidnapping or abuse of power). As such, no criminal investigations are launched, the person concerned is not searched for and those responsible for the crime concerned are not prosecuted. With regard to cases of enforced disappearance committed in the past, it seems that the official report drafted by the Special Prosecutor for Social and Political Movements of the Past (FEMOSPP) is not duly accessible to general public. Also the documents collected by the Office of Investigations and Documentary Analysis of the FEMOSPP are not accessible. All in all, it seems that FEMOSPP failed to secure truth, justice and redress to victims of the Dirty War and their relatives. Investigations on more recent enforced disappearances are plagued by omissions and shortcomings, including not interviewing key witnesses, not visiting the crime scene, and failing to pursue possible leads. Moreover, at present there are no clear rules for the carrying out of exhumations, identification and storage of mortal remains. Even when exhumations took place, relatives of disappeared people do not receive an adequate psychological support. Finally, despite the numerous recommendations by different international human rights mechanisms in this sense, at present Mexican legal framework fails to ensure that only ordinary courts are competent to try those accused of enforced disappearance, while military courts cannot do so and all cases pending before military jurisdiction shall be transferred to ordinary tribunals.

▶ *Please refer to paras. 93 to 153 of the full report for details and concrete examples*

11. **Mexico shall investigate *ex officio* promptly, thoroughly, independently and impartially all instances of enforced disappearances as such, ceasing to use the improper qualification of “*levantones*” or to recur to different offences. Mexico shall ensure that the final report issued by FEMOSPP is made accessible to general public without delay, as well as the documents collected by the Office of Investigations and Documentary Analysis of the FEMOSPP, that can by no means be considered as covered by State secret. All military files of the period of the Dirty War must be transferred to the General National Archives, systematised and made accessible to general public. The names of those responsible for the enforced disappearances committed during the Dirty War, as established by the National Commission on Human Rights in 2001, must be disclosed to general public, and judicial action to prosecute and sanction these people must be undertaken without any further delay. Mexico must adopt without delay a programme to locate, exhume, identify the mortal remains of victims of enforced disappearance, in line with international standards on this subject. Relatives of disappeared people shall be guaranteed**

psychological support during and after exhumations. Mexico must develop a comprehensive legislative framework and ensure the provision of financial and human resources and technical equipment for the forensic investigation of enforced disappearance. Finally, Mexico shall amend its legal framework and ensure the jurisdiction of civilian courts in all matters relating to enforced disappearance and grave human rights violations, regardless of whether the perpetrators are military personnel. Military prosecutors should be legally prevented from initiating any investigation regarding grave human rights violations including enforced disappearances.

## **VI. The Lack of Adequate and Comprehensive Data on Victims of Enforced Disappearance**

12. To date, the very number of victims of enforced disappearance remains a controversial issue in Mexico, and there is no centralised database even for persons deprived of their liberty. The different systems which currently exist do not count with a homogenous criteria to gather information, nor to classify the cases; most do not share information with each other, and none has as objective the search for or investigation of the cases but serve mostly as mechanisms of diffusion. This lack of clarity in numbers and figures that ultimately correspond to broken human lives and to the anxiety of thousands of relatives of disappeared persons, friends and entire communities, aggravates the suffering of victims and family members and deprives them and the Mexican society as a whole of their right to know the truth. Moreover, the lack of reliable and unified data on victims of enforced disappearance hampers their and their relatives' right to justice and to obtain compensation and integral reparation for the harm suffered.

▶ *Please refer to paras. 61 -72; 110-112 of the full report for details and concrete examples*

13. **Mexico shall elaborate within the shortest delay a centralised database containing accurate and complete figures concerning the total number of victims of enforced disappearance. This subject shall be treated with the utmost transparency, accuracy and certainty. Furthermore, Mexico shall create a database with the personal information available on forcibly disappeared persons at the national level, including personal information, principally DNA and tissue samples. Mexico must protect the personal information in these databases at all times.**

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

14. Numerous instances of threats, harassment, and attacks against relatives of disappeared people, their associations or representatives and on witnesses have been reported. The existing legal framework does not offer the necessary protection to these people and, even when these grave crimes are reported, investigations are not conducted promptly, thoroughly, independently and impartially, thus leaving those responsible unpunished a fostering an overall sense of fear and distrust towards

institutions. Mexico does not count with a comprehensive program that guarantees protection and psychological support to relatives of disappeared persons and witnesses prior, during and after trials take place. Províctima, the programme recently created to that end has not acted in a consistent manner in providing psychological support or support to find jobs to the relatives of the victims of enforced disappearance whose livelihoods are often threatened due to the need to move to the capital city to follow-up on the investigation.

▶ *Please refer to paras.154 to 185 of the full report for details and concrete examples*

15. **Mexico shall ensure that a comprehensive programme of witness protection and psychological accompaniment is granted at all levels prior, during and after the trial takes place. Instances of threats or harassment shall be promptly and thoroughly investigated and those responsible shall be judged and sanctioned. Witness protection and support shall be victim-oriented and supplied by experts who are adequately trained to provide these services and are financed by the State. Witnesses shall obtain adequate material support, including safe and free of charge transportation to and from the court.**

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

16. Victims of enforced disappearance are not only the disappeared persons, but also any person who suffers a direct harm as a consequence of enforced disappearance. In particular, relatives of disappeared people are subjected to a grave form of ongoing ill-treatment. Accordingly, victims of enforced disappearance are entitled to receive prompt, fair and adequate compensation, as well as integral reparation, including restitution, rehabilitation, satisfaction (including restoration of dignity and reputation); and guarantees of non-repetition. Mexico established an Interdisciplinary Committee for Reparations to Victims or Those Adversely Affected by Human Rights Violations of Individuals Linked to Social and Political Movements in the 1960s and 1970s. However, so far this Committee has not established clear guidelines for granting reparations, and beneficiaries of measures of reparation will be limited only to the 275 as ascertained by the National Commission on Human Rights in its Recommendation 26/2001, thus excluding a considerable number of people, and hampering the right to redress of victims of most recent enforced disappearances and their relatives. Reparations in general have been considered as an exclusively economic element. The lack of the figure of a “declaration of absence” in the Mexican judicial system obliges families to confront their loved-ones death in order to obtain reparations on behalf of the State, a highly re-victimising process. In general, civil claims for reparations in cases of enforced disappearance lack effectiveness. Moreover, when a victim submits a claim for compensation in the context of criminal proceedings, the burden of proof imposed on the applicant is disproportionate. Even if reparation for damages is granted in addition to a criminal conviction, families usually do not receive it as there are no parameters to determine its amount and the convicted public official in most cases will not have the financial resources to pay the compensation.

▶ *Please refer to paras. 186 to 203 of the full report for details and concrete examples*

17. **Mexico shall adopt a broad definition of the notion of “victim” of enforced disappearance that encompasses also any person who suffers a direct harm as a result of the disappearance. Mexico shall amend its legal framework and adopt all necessary measures to ensure that victims of enforced disappearance obtain prompt, fair and adequate compensation, including restitution, psycho-social and medical support, satisfaction and guarantees of non-repetition. It must be ensured that compensation and reparation are not conditional on the determination of criminal responsibility and on criminal sentencing.**

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

18. 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. 204 of the full report for details and concrete examples*

19. **Mexico shall recognise without further delay the competence of the Committee on Enforced Disappearances pursuant to Articles 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.**