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**FUNDAR, Center of Analysis and Research**

**SUBMISSION FOR THE PREPARATION BY THE UN HUMAN RIGHTS COMMITTEE OF A LIST  
OF ISSUES PRIOR TO REPORTING FOR THE EXAMINATION OF THE SIXTH PERIODIC  
REPORT OF MEXICO UNDER THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL  
RIGHTS**

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Fundar, Center of Analysis and Research, is an independent, interdisciplinary and plural organization devoted to research issues related to democracy and citizen participation. Fundar monitors public policies and public institutions through applied research, critical reflection, experimentation and linkage with civil, social, and governmental actors. Our work is based on a comprehensive conception of Human Rights, an explicit recognition of the need to incorporate and to promote a gender perspective, citizen participation, social justice and the conservation of the environment. These principles guide efforts to find creative solutions to the problems that Mexico faces and to formulate recommendations based on rigorous and interdisciplinary research. For more information:

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## **Fundar submission to the Human Rights Committee for the preparation of a List of Issues for the examination of the Sixth Periodic Report of Mexico**

During its 111 session, schedule for 7 to 25 July 2014, the Human Rights Committee will prepare and adopt a List of Issues. In light of this upcoming session, Fundar is interested in submitting information about the breaches of the State party's obligations under articles 2, 6, 7 and 9 of the International Covenant on Civil and Political Rights (ICCPR) resulting from the lack of investigation, as well as the lack of adequate administrative and legislative frameworks to prevent the disappear of people in Mexico. In addition, we are interested in submitting information on the lack of an adequate implementation of la General Law of Victims, as well as a lack of adequate mechanisms to support and provide assistance to victims.

### **Articles 2, 6, 7 and 9 Right to life, personal integrity, rights to personal liberty and security, and combating impunity**

1. The deprivation of life and forced disappearances were used as a repressive strategy of the Mexican State in the period called "Dirty War" during the decades of the 60's, 70's and 80's. In the concluding observations of the Committee in the Fifth Periodic Report of Mexico, there is a recommendation regarding the human rights violations during the "Dirty War" and Mexico is asked to ensure that all cases of serious human rights violations "continue to be investigated, that those responsible are brought to justice and where appropriate, punished, and that the victims or their relatives receive fair and adequate reparation" (para. 12).<sup>1</sup> Unfortunately, the Mexican State has not accomplished this recommendation; in fact, the situation has worsened in the recent years.

2. Since 2006, when the former president Felipe Calderón declared the war on drugs and militarized rural and urban areas of the country, the phenomenon of the disappearance of people was aggravated and adopted particular characteristics. In this period, the overlap, or gray zones, between State actors and organized crime rendered invisible the State's responsibility, to the degree that terms like "*levantones*" (to pick up people), which unlike the term "enforced disappearance", became popular, hence absolving State responsibility. However, the capacity and political will of the State have been well below those necessary to effectively target what many organizations classify as a national emergency.

3. Reports from international NGO's indicate that "26, 121 people were reported missing

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<sup>1</sup> CCPR, Concluding observations, 7 April 2010, Mexico. CCPR/C/MEXICO/5.

[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=5)

or disappeared in Mexico between December 2006 and December 2012”.<sup>2</sup> Also, in many cases there is evidence to affirm that security forces we participated or were in fact State agents working for organized crime, or collaborating in different ways, to disappear people. None of these cases have been adequately investigated.<sup>3</sup>

4. The family victim’s, who are also victims, face multiple obstacles to pursue the investigations, seek justice and activate channels to pressure the Mexican State to act according to its obligations. For example, in June 2013, the General Prosecutor Office (PGR) created the “Specialized Unit to Search for Disappeared Persons”<sup>4</sup>. However, the after ten months in operation, the results in terms of finding people and prosecuting those responsible are largely insufficient, due in large part for the following reasons: A lack of personnel in charge of the unit in relation to the amount of cases; a lack of mechanisms of coordination with other State institutions and the have an inadequate amount of investigative police participating in the investigations.

5. Moreover, the media has reported the discovery of numerous clandestine graves, but local and federal authorities lack protocols or procedures to homogeneous identifying the remains of people and provide certainty to the families. In addition, ineffective and inappropriate practices forming part of searches, including forensic techniques, tend to re-victimize victims and demobilize or paralyze the victim’s family.

6. After more than a year of the administration of Peña Nieto, the security strategy has not changed in relation to his predecessor and the numbers of murdered and disappearances of people continue to rise.

7. The situation continues to undermine Mexico’s compliance with its obligations under the Covenant, in respect of Articles 2, 6, 7, 9.

8. In light of the information provided, Fundar recommends that the following questions be included in the List of Issues for the examination of Mexico:

- *What strategies will the government implement to properly investigate the 'dirty war' forced disappearances? What plans and administrative measures will be implemented to redress and adequately compensate the victims of the dirty war?*

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<sup>2</sup> See Amnesty International, <http://amnesty.org/en/news/mexico-relatives-disappeared-deserve-more-promises-2013-06-04>

<sup>3</sup> See *Mexico’s Disappeared. The Enduring Cost of a Crisis Ignored*. Human Rights Watch 2013. [http://www.hrw.org/sites/default/files/reports/mexico0213\\_ForUpload\\_0\\_0\\_0.pdf](http://www.hrw.org/sites/default/files/reports/mexico0213_ForUpload_0_0_0.pdf)

<sup>4</sup> Unidad de Búsqueda de Personas Desaparecidas, Diario Oficial de la Federación, 21 de junio de 2013, [http://www.dof.gob.mx/nota\\_detalle.php?codigo=5303411&fecha=21/06/2013](http://www.dof.gob.mx/nota_detalle.php?codigo=5303411&fecha=21/06/2013)

- *What are the updated numbers for disappeared persons, including the adjusted figure based on data from the Ministry of Interior and updated figures of disappeared persons in the current administration?*
- *What are the actions, plans, programs and protocols for searching, locating and identifying persons that the Mexican government is implementing? Which the agencies are involved in those actions. (Please specify the roles and responsibilities of each, and which instance leads or coordinates. Some of these instruments have been publicly mentioned by the authorities are: National Plan Search and Search Network that became public at the end of the XXX National Conference of Prosecutors)?*
- *What are the existing coordination mechanisms between different agencies (PGR, local prosecutors, and federal police) and federal levels (federal, state, municipal) for searching for the disappeared, to investigate the cases and sanction those deemed responsible?*
- *What is the current capacity of the Mexican government at the federal and state level to identify the remains of people (forensic anthropology and archeology, genetic laboratories, etc.)?*
- *What is the number of clandestine graves found, the number of human remains found?*
- *What are the protocols and procedures for exhumation, for the preservation of evidence and cross-checking (and matching) with databases of disappeared persons?*
- *How many disappeared people have been found alive and how many have been found dead? How many cases have been opened at the federal and local level to investigated and prosecute the disappeared persons?*

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## Article 2<sup>5</sup>

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<sup>5</sup> PIDCP. <http://www2.ohchr.org/spanish/law/ccpr.htm>

### Artículo 2

1. Cada uno de los Estados Partes en el presente Pacto se compromete a respetar y a garantizar a todos los individuos que se encuentren en su territorio y estén sujetos a su jurisdicción los derechos reconocidos en el presente Pacto, sin distinción alguna de raza, color, sexo, idioma, religión, opinión política o de otra índole, origen nacional o social, posición económica, nacimiento o cualquier otra condición social.
2. Cada Estado Parte se compromete a adoptar, con arreglo a sus procedimientos constitucionales y a las disposiciones del presente Pacto, las medidas oportunas para dictar las disposiciones legislativas o de otro carácter que fueren necesarias para hacer efectivos los derechos reconocidos en el presente Pacto y que no estuviesen ya garantizados por disposiciones legislativas o de otro carácter.
3. Cada uno de los Estados Partes en el presente Pacto se compromete a garantizar que:
  - a) Toda persona cuyos derechos o libertades reconocidos en el presente Pacto hayan sido violados podrá

## Legislative and other measures to fulfil the obligations under ICCPR

9. Due to the escalating violence of recent years, the demands of the victims have focused on the need for proper investigations and adequate redress. According to different reports, there have been between 47,000 y 70,000 people murdered since 2006; more than 26,000 disappeared persons and approximately 100,000 displaced people.<sup>6</sup> In this context, the government enacted a Victim's Law that was published in 9 January 2013.

11. The General Victim's Law emerged in response to the demands of multiple sectors of society, including academics, civil society organizations, especially victims' organizations, that the State recognizes the magnitude of the situation, take responsibility, and enact a series of measures to effectively respond to their demands. The General Victim's Law was unanimously approved in April 2012, however it didn't enter into force until January 2013, and by May 3 it underwent important changes. The General Victim's Law recognizes the rights of victims to receive support, assistance and attention, right to due process, the right to truth and integral redress, amongst others. To this end, it established the framework to implement immediate measures, assistance and attention. To implement these, the Law created the National System at Attention to Victims and the Executive Commission in Attention to Victims (CEAV), which is the operational body and has under its structure, the National Register in Attention to Victims, the Legal Federal Assistance and the Fund for Assistance and Integral Redress of Victims.

10. The new approach of the Victim's Act is ample and recognizes victim's human rights according to the International Law. Nevertheless, it faces serious challenges in order to protect and fulfil its obligations. For example: The publication of the regulation of the law had a delay of several months; the local implementation of the law of victims is barely underway; the executive committee to assist victims has not finished establishing other bodies such as the direction for legal advice nor the registry of disappeared persons; the Commission has not issued guidelines or protocols; there is no clear policy on victim's participation; there is a lack of implementation of the declaration of absence by disappearance; among many others.

11. This situation causes great uncertainty amongst the victims, particularly when after January 2013, a presidential accord dissolved the (PROVICTIMA) but the CEAV has yet to

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interponer un recurso efectivo, aun cuando tal violación hubiera sido cometida por personas que actuaban en ejercicio de sus funciones oficiales;

b) La autoridad competente, judicial, administrativa o legislativa, o cualquiera otra autoridad competente prevista por el sistema legal del Estado, decidirá sobre los derechos de toda persona que interponga tal recurso, y desarrollará las posibilidades de recurso judicial;

c) Las autoridades competentes cumplirán toda decisión en que se haya estimado procedente el recurso.

<sup>6</sup> Véase Human Rights Watch, "México: Crisis de desapariciones forzadas", 2013, disponible en

<http://www.hrw.org/es/news/2013/02/20/mexico-crisis-de-desapariciones-forzadas>; International Crisis Group, "Peña Nieto's Challenge", pp. 1, 16-20, 26; Parametría, "México y sus desplazados", [http://www.parametria.com.mx/carta\\_parametrica.php?cp=4288#\\_ftnref8](http://www.parametria.com.mx/carta_parametrica.php?cp=4288#_ftnref8) y <http://www.eluniversal.com.mx/notas/821846.html>

create instances and coordinating mechanisms to assist and channel victims to the appropriate offices. Until now, the CEAV has lacked the leadership to implement the Law. Also, the process to elaborate the Regulation framework of the Law was done by the Secretary of State with no citizen or victim participation, despite that many groups had offered proposals. For that reason, the primary source of support for victims is their own organizations and collective. There is no State policy or strategy to reach out to victims that are not organized or that live under marginal conditions.

12. The situation continues to undermine Mexico's compliance with its obligations under the Covenant, in respect of article 2.

Fundar recommends that the following questions be included in the List of Issues for the examination of Mexico:

*- What is the degree of progress in the implementation of the Victim's Law?*

*-What is the level of advance in the implementation of the General Victim's Law in relation to the National Register of Victims, the Federal Legal Support and the Fund for the Support, Assistance and Integral Redress of Victims? How many victims have asked to be included in the Register, what is their status, how many victims have been assisted by the Federal Legal Support and how many victims have been provided resources by this Fund?*

*- What are the actions, plans and programs and what is the level of implementation for immediate support, measures of support and assistance and the measures of integral redress?*

*- What are the mechanisms to allow and ensure the participation of victims (relatives of disappeared persons) in the design, monitoring and evaluation of plans, programs, or search protocols?*