



## **EXECUTIVE SUMMARY TO THE SHADOW REPORT PRESENTED BEFORE THE COMMITTEE ON THE PROTECTION OF THE RIGHTS OF ALL MIGRANT WORKERS AND MEMBERS OF THEIR FAMILIES REGARDING THE PERIODIC REVIEW OF MEXICO**

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### **Report presented by:**

Asociación de Familiares de Migrantes Desaparecidos de Guatemala

Comité de Familiares de Migrantes del Centro de Honduras, A.C.

Comité de Familiares de Migrantes Desaparecidos de El Progreso, A.C.

Comité de Familias de Migrantes Fallecidos y Desaparecidos de El Salvador, A.C.

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Pastoral de Movilidad Humana en Honduras, A.C.

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1. This shadow report before the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (hereinafter, “the Committee” or “CMW”) focuses on three of the topics included in the list of issues: (1) the work of national human rights institutions, (2) the investigation of disappearances and murders of migrants, and y (3) the public policies implemented by Mexico regarding migrant rights.
2. The Fundación para la Justicia y el Estado Democrático de Derecho ( “FJEDD”) legally represents relatives of migrants from Central and South America as well as Mexican migrants who have been disappeared or killed in Mexico. The FJEDD represents, among others, the following cases: **(1)** 72 migrants killed in San Fernando, Tamaulipas, whose bodies were found in a warehouse in August 2010; **(2)** 195 migrants murdered in San Fernando, Tamaulipas, found in 47 clandestine graves in April 2011; **(3)** 49 killed persons whose torsos were found in Cadereyta, Nuevo León, in May 2012; and **(4)** 59 cases presented before the unit for the investigation of crimes against migrants of the Attorney’s General Office (PGR) through the Mechanism for External Support. Those cases refer to 47 disappeared migrants, 11 killed migrants and one arbitrarily deprived from its liberty between 1999 and 2014.

### **1. The role of national human rights institutions (NHRI)**

3. The information presented by Mexico on paragraph 4 of the list of issues (National Human Rights Commission -CNDH- and other public human rights institutions, PHRIs).
4. The CNDH has elaborated important reports on this topic and supports several cases and efforts. However, Mexico has to explain how does the Mexican PHRIs register and process complaints of human rights violations against migrants. PHRIs lack mechanisms so that migrants and their families can follow-up from their countries of origin in their complaints lodged in Mexico.
5. To date, CNDH hasn’t classified as grave human rights violations the clandestine graves case (San Fernando, Tamaulipas) or the Cadereyta case, even though the same CNDH has documented a context of massive kidnapping of migrants with state agents’ tolerance since 2009. In the disappearance of 72 migrants’ case, it was until July 2017 that the CNDH declared the case as a grave human rights violation, after the Mexican Supreme Court ordered the CNDH to consider the perpetration of those violations. The classification as grave human rights violation has an important legal effect in terms of transparency and public access to information, thus the urgency that CNDH acts in consequence in the first two cases as well as in others that can be in the same situation.
6. CNDH hasn’t investigated the participation of state agents in the three massacres nor has assessed violations of due process guarantees.
7. CNDH’s methodology doesn’t consider the participation of victims in the processing of their cases. Also, CNDH denies copies of the files and it doesn’t inform the victims the status of the investigation. Moreover, the public versions of the file issued by CNDH are crossed out, impeding the reading and understanding of the information.
8. The Committee should recommend Mexico that CNDH protects victims’ rights and complies with the mandate given by the *Paris Principles* and the Mexican legislation in order to: (i) guarantee that migrants in transit that suffered human rights violations can easily present complaints before PHRI; (ii) guarantee that relatives of migrants have access to the investigations within PHRIs and that they can lodge complaints through the Mechanism for Mexican Foreign Support; (iii) implement international standards both on due diligence investigations on grave human rights violations as well as on reparations; (iv) guarantee that victims have full access to those investigations; and (v) ensure that the society as a whole enjoys right to truth in cases of grave human rights violations.

## **2. The investigation of disappearance and killing of migrants, and the mechanisms created in that respect**

### **A. Regarding the investigation of: i) the massacre of 72 migrants in San Fernando, ii) the clandestine graves case in San Fernando; and iii) the Cadereyta massacre**

9. The investigation of three massacres perpetrated in northern Mexico share the same deficiencies: (i) PGR lacks a plan and strategy of investigation of the crimes; (ii) PGR is not investigating the possible participation of state agents; and (iii) PGR denies full access to the investigation to victims' relatives and their lawyers
10. In the 72 migrants' case, PGR hasn't informed victims on the status of the investigations. Relatives knew from the media that several persons were apprehended because of their possible involvement in the crimes. In the forensic identifications of remains that were reviewed latter by the Forensic Commission because of the lack of trust by the relatives on Mexican authorities, PGR has refused to comply with the protocols and the agreements set forth by the Forensic Commission. This has delayed the identification procedures and has obstructed the participation of victims in this process.
11. In the clandestine graves case, Mexico didn't inform the Committee that municipal policemen were investigated by PGR for their participation in the crimes. In spite of having proof of the involvement of state agents in the case, PGR lacks an investigation plan that would lead to determine the relationship between state agents and their bosses with organized crime cartels. Furthermore, PGR has denied victims full access to the criminal investigation, including the theory of the case and declarations of the detainees.
12. In the Cadereyta massacre case, to date no suspect(s) has been detained; there is no thorough investigation to identify those responsible for the crime as well as the 35 corpses that remain unidentified. PGR lacks a holistic strategy in the investigation that would conclude whether state agents are involved which is even more serious because they are not taking into account the context of a region that is well known for grave human rights violations against migrants and the collusion of state agents in those crimes. Finally, as it happens in the other two cases, PGR handed over copies of the criminal file to the victims after a federal judge ordered it. However, PGR crossed out every single page of the file to hinder the victims to know the content of the declarations of key witnesses, even read press releases, of know the names of public officials and other individuals that might be involved, and evidence found near the corpses.
13. Because of the above-mentioned, it becomes imperative that the Committee recommends, at least: (i) that Mexico declares the three massacres of grave human rights violations; (ii) that Mexico adopts international standards diligent investigations that would lead to determine the participation of state agents as well as the criminal networks involved and their collusion with public officials; (iii) that Mexico uses science and technology to collect evidence and conducts a detailed context analysis; and (iv) that Mexico designs a comprehensive investigative strategy that includes the participation of victims.
14. Last but not least, we respectfully ask the Committee that it reiterates its 2011 recommendations regarding migrants' massacres and that it takes the 2015 conclusions of the Committee on Enforced Disappearances on this issue.

## **B. About PGR's Migrants Unit and the MAE**

### **Concerning the functioning of the Migrants Unit and the MAE**

15. On December 18<sup>th</sup>, 2015, PGR's agreement A/117/15 was published on the Official Journal of the Federation by which it was created Unit for the investigation of Crimes against Migrants ("the Unit") and the Mechanism for Mexican Foreign Support in the Search and Investigation ("MAE"). The agreement establishes the mandate and organization of both. The MAE opens the Mexican institutions' doors for truth justice and reparation for victims that live abroad.
16. The creation of the Unit and the MAE are positive steps but are not enough. The problems they face are: (i) they lack jurisdiction to investigate all crimes against migrants within PGR; (ii) there is no effective communication nor collaboration between PGR's attachés (*agregadurías*), Mexican embassies and consulates; (iii) there is no permanent and trained staff that operates the MAE within the Mexican embassies, consulates and PGR's attachés in office hours; (iv) there is no dissemination on the existence and the mandate of the Unit; (v) there is no coordination with the institutions in the countries of origin to facilitate procedures; (vi) no collaboration agreements have been signed with other Mexican institutions that should be a part of the MAE (e.g. The Executive Commission of Attention to Victims -CEAV-, THE National Human Rights Commission -CNDH- and the Ministry of Foreign Affairs -SRE-); (vii) there is an absence of international cooperation tools that would ensure protective measures for victims, witnesses and human rights defenders in the countries of origin.
17. The Unit has denied victims their petitions in relation to: (i) the digitalization of their file and the possibility to read it inside of the Mexican Embassy nearest to the victim's country of origin; and (ii) access to the criminal investigation by human rights defenders that are not lawyers. Because of that, 19 writs of amparo have been lodged and their resolution is still pending.

### **Regarding the MAE's capacity as a search mechanism**

18. The Units implements the traditional search through official documents, but there is no field search. The MAE has not proven effective in searching and doing a transnational investigation, and it lacks regional cooperation agreements for a massive genetic confrontation. The few context analysis units created have been inadequate to establish hypotheses for the search and investigation.

### **MAE's guidelines**

19. Para la emisión de los Lineamientos, la Unidad no consideró la propuesta que la sociedad civil elaboró para el adecuado funcionamiento del MAE. Por el contrario: (i) son insuficientes y poco exhaustivos; (ii) colocan al personal de las Agregadurías como los operadores protagonistas del MAE (a pesar de que no hay Agregadurías en todos los países y su personal desconoce el MAE); (iii) no regulan la coordinación al interior de la PGR y con las demás autoridades mexicanas (INM, CEAV, SRE y CNDH) y extranjeras; y (iv) remiten a procedimientos de comunicación lentos y burocráticos en lugar de prever la comunicación directa y ágil entre autoridades. Asimismo, recientemente la Unidad ha publicado el *Protocolo de actuación ministerial*, el cual en ningún momento fue consultado con la FJEDD, ni con los comités de víctimas que acompaña.

### **MAE's human and material resources**

20. It is unfortunate that Mexico omitted the situation of the human and material resources of the Unit and the MAE. The Unit's staff has used budget cut as an excuse to delay visits to other countries. International organs have recommended a specialized prosecutors' office for migrants. Even though PGR said that, if they had enough funding, in the future they would create that organ. However, this hasn't happened yet.

### **Statistics of migrants that are victims of crimes and human rights violations in Mexico**

21. To date, there are no reliable statistics on disappeared or killed migrants in transit. The MAE doesn't foresee the creation of a unified and updated database of migrants deprived from their liberty or under State custody.
22. We ask the Committee to recommend Mexico to: (1) review the Unit's and MAE's guidelines with the participation of victim and civil society; (2) implement a supervisory mechanism for the MAE with the participation of victims and civil society; (3) ensure that Mexican embassies and consulates have permanent, trained and specialized staff to that MAE can work properly; (4) institutionalize follow-up meetings between the Unit and relatives living outside of Mexico; (5) guarantee coordination and collaboration for the adequate implementation of the MAE between: (a) other areas within PGR; (b) other government agencies; (c) institutions from other countries; (6) guarantee victims in their countries of origin full access to assistance measures provided by the General Victims Law; (7) create new PGR's attachés (*agregadurías*); and (8) generate reliable statistics on migrants that are victims.

### **3. With respect to the Forensic Commission for the identification of remains of the three massacres of migrants perpetrated in the north of Mexico**

23. The Forensic Commission's work established good practices in the identification, notification and delivery of remains to relatives. That has been recognised by several international bodies. To date, the Forensic Commission has identified 68 persons from the three massacres, and has drafted multiple reports related to remain reallocations, revision of cases, forensic information correction as well as amendment of initial identifications that were made before the mandate of the Forensic Commission.
24. For the identification of the remains of the three massacres, the Forensic Commission has collected genetic information mainly from relatives of the disappeared persons living in Mexico and Central America. Nevertheless, every time the coordination inside of the Forensic Commission becomes harder, especially because PGR is blocking the Commission's work.
25. By continuously imposing operative obstacles, PGR hampers the effective compliance of the Forensic Commission's mandate. The main barriers are: (i) information that could lead for more identifications is denied to the Commission, even though is their prerogative under the agreement (the information includes criminal files, legal documents or the names of persons that denounced disappearances in the dates close to the massacres); and (ii) the procedures for the delivery of remains or revision of cases were relatives doubt about the identity of their family member take a lot of time and are not always done adequately.
26. In June 2017, a Salvadoran family that had doubt of the identity of her daughter presumably killed in the 72 migrants' massacre, Mexico asked El Salvador the exhumation of the remains so that the Forensic Commission could verify the identity. Unfortunately, the international legal assistance petition didn't expressly ask for the participation of the Forensic Commission in the process and, thus, they didn't take part of it, even when the families' wishes were that the EAAF (part of the Forensic Commission) would examine the remains. The FJEDD presented a habeas corpus in El Salvador, a complaint before the Salvadoran Ombudsman (Procuraduría de Derechos Humanos de El Salvador), and petitions of precautionary measures before the Mexican National Human Rights Commission and the Inter-American Commission on Human Rights. The lack of sufficient time made impossible for those bodies to respond before the exhumation took place.
27. Lastly, the extension of the Forensic Commission's mandate –asked by victims and civil society organizations- is a pending matter which is worrisome because it is a good practice that benefits victims and is a unique public policy worldwide.

28. For those reasons, we ask the Committee to urge Mexico to: (1) give the Forensic Commission all the context information that is required for the adequate fulfillment of its mandate; (2) extend the Forensic Commission's mandate in order to guarantee a gradual confrontation of genetic information between disappeared migrants and unidentified corpses found in Tamaulipas, Nuevo León and other cases aside from the three massacres; (3) allow, facilitate and motivate civil society participation in the Forensic Commission; (4) implement coordination agreements with other countries so that all procedures can be previously arranged, and the relatives' voices are heard.

#### **4. The Executive Commission of Attention to Victims (CEAV)'s reaction in these cases**

29. With regard to the immediate assistance support measures by the CEAV, it is alarming that Mexico hasn't designed nor implemented public policies that facilitate relatives of disappeared migrants that live in Central America, access to funding from their countries of origin. There is a lack of political will both by Mexico and the Central American countries to sign agreements that would guarantee rights to health, housing, education and work for victims in their countries of origin.
30. Revictimization by CEAV's staff has been documented when trying to deny a Salvadoran victim medical attention, by saying that the illness has no relation to the human rights violation suffered.
31. On the other hand, because of the Forensic Commission's work, 29 remains have been repatriated to Honduras, El Salvador and Guatemala. Even though funeral expenses were paid by CEAV: i) the process is excessively bureaucratic, ii) has been dependent on the limits imposed by CEAV and iii) hasn't respected relatives' customs and traditions.
32. Last but not least, it is disturbing that when Mexico informs the Committee on integral reparations it only focuses on economic compensation measures.
33. We respectfully ask the Committee to recommend Mexico to: (1) simplify procedures of admission, immediate attention and integral reparation, and that bureaucratic obstacles are eliminated in CEAV; (2) When applicable, integral reparation procedures are initiated with the participation of victims and their representatives; and (3) encourage collaboration agreements with the countries of origin so that families can receive by public or private institutions the services that they are entitled to as victims.