



Association suisse
contre l'impunité

Schweizerische Gesellschaft
für Völkerstrafrecht

Swiss association
against impunity

EXECUTIVE SUMMARY

of the

ADDITIONAL REPORT TO THE SPECIAL RAPPORTEUR ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS IN RELATION TO HIS MISSION TO MEXICO

“MIGRANTS AS A VULNERABLE GROUP”

FEBRUARY 2014

I. Background

1. In April 2013, in view of the forthcoming mission to Mexico of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (“the Special Rapporteur”), the *Fundación para la Justicia y el Estado Democrático de Derecho*; Casa del Migrante, Saltillo, Coahuila; Casa del Migrante Guatemala; Comité de Familiares de Migrantes Fallecidos y Desaparecidos - El Salvador (COFAMIDE); Comité de Familiares de Migrantes de El Progreso (COFAMIPRO); Foro Nacional para las Migraciones, and Pastoral para la Movilidad Humana Guatemala submitted to the Special Rapporteur a report entitled “Migrants as a Group Vulnerable to Executions”.

2. The Special Rapporteur carried out his mission to Mexico from 22 April to 2 May 2013 and on the latter date issued its preliminary observations and recommendations, while his integral report will be presented to the Human Rights Council in 2014. The Special Rapporteur pointed out that he would accept **further contributions** in the meantime.

3. The nine associations submitting the integral report take note with satisfaction that in his preliminary observations the Special Rapporteur referred to migrants as a group particularly vulnerable to executions, and denounced the lack of a unified database on disappeared persons, the deficiencies of the forensic analysis and procedures followed, as well as the chronic impunity. However, persuaded that there are a **number of other matters related to migrant persons victims of executions and their families that**

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should be duly mentioned in the final report on the mission to Mexico, the associations wish to present this further document to the Special Rapporteur, containing updated information and additional data.

II. The Lack of a Unified Database on Disappeared Persons and of an Effective Mechanism to Search Disappeared Persons

4. Despite reiterated recommendations issued by international human rights mechanisms, one major problem that persists in Mexico is the **lack of a unified register or database of disappeared persons**. This makes it 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.

Please refer to paras. 9-39 of the integral additional report for details

III. Three Massacres of Migrants and the Insufficient Responses of Mexico

5. As anticipated in the report submitted in April 2013, between 2010 and 2012 mass graves containing the mortal remains of hundreds of human beings were discovered in the States of Tamaulipas and Nuevo León. The mass graves correspond to three massacres (known as “the massacre of 72 migrants in Tamaulipas”, “the 49 common graves of San Fernando”, and “the 49 trunks of Cadereyta”) **where mainly migrant persons were killed and mutilated. The investigations of these three massacres have been plagued by mistakes and omissions and the forensic process to identify the victims has been extremely poor.**
6. A significant progress is represented by the establishment of a Forensic Commission in August 2013. 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 the mass graves concerning the three mentioned massacres. Despite this positive development, it is necessary to point out that new mass graves have been discovered and that the number of mortal remains to be exhumed and identified continues increasing. Outside the framework of the mentioned agreement leading to the establishment of the Forensic Commissions, **exhumations are characterized 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.
7. After three years and four months, on 23 December 2013 the National Human Rights Commission eventually issued a recommendation concerning the massacre of 72 migrants in San Fernando, Tamaulipas. While the long-awaited recommendation is certainly welcome, it is a source of concern that **relatives of the victims have not been involved in the process in any way.** They have neither been consulted by the National Commission, nor were they placed in a position to make their voices heard. The fact that the recommendation **does not qualify the massacre as a case of “gross human rights violations” sounds for many of the relatives as a mockery.** All the more so when in its recommendation the **National Commission fails to establish whether violations of the rights to life and to personal integrity have been committed.** Finally, contrary to international standards and to the Mexican General Law of Victims, **relatives are not considered as victims in the recommendation.** This demonstrates a lack of understanding of the scope of the crime at stake and its consequences and implications, and hampers the rights to truth and reparations.

Please refer to paras. 40-66 of the integral additional report for details

Recommendations

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.

Ensure that domestic authorities, including the National Human Rights Commission, guarantee that **victims and relatives of victims are fully linked to the investigations and ensuing processes and are entitled to present evidences and to be informed of, and have access to, all information relevant to the investigation**. The investigation carried out by these authorities must aim at disclosing to the general public the historical truth and at restoration of the dignity and reputation of the victims.

IV. The Failure to Conduct Effective Investigations on Cases of Executions and to Prosecute and Sanction Those Responsible

8. The investigations launched on cases of executions, as well as on other gross human rights violations, have not been thorough and effective, eventually fostering overall impunity. Often investigations cannot be considered prompt pursuant to international standards and **authorities indulge into lulls and in conflicts of competences among them, instead of cooperating and launching a sound strategy**. In certain cases, the lack of activity of Mexican authorities prompts **families to take investigative steps autonomously, exposing themselves to harassment, reprisals and threats**. The fact that corruption among investigative bodies is common does not foster trust towards authorities. The situation described is sensibly worse in the case of migrants, where families live outside the country and often cannot afford the burden of a journey to Mexico. Also in the cases where they turn to representative associations in order to maintain contact with Mexican investigative authorities, this has been frustrated by the **non-recognition of these associations as “having legitimate interest” in domestic proceedings and by the denial of information**. Both prosecutors and the national authority dealing with transparency and

access to information repeatedly **denied the access to the case-files concerning the three above-mentioned massacres**, which were not considered to be cases of “gross human rights violations”.

Please refer to paras. 104-117 of the integral additional report for details

Recommendations

Ensure that **families of migrants victims of gross human rights violations, including executions are recognized the status of victims in the proceedings before Mexican authorities** and guarantee their access to the information concerning investigations.

Ensure that effective measures are undertaken **impartially and without delay to investigate cases of executions and identify those responsible, prosecute** and sanction them. Special measures must be taken where migrant victims are concerned, so that their families are not subjected to any discrimination.

Given the inherent transnational nature of the phenomenon of migration, ensure that Mexico and other States from the region make every effort to prevent extra-legal, arbitrary and summary executions through measures such as **diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation**.

Governments of the States in the region **must cooperate with each other and afford one another the greatest measure of assistance with a view to assisting families of victims of executions and in exhuming, identifying and returning the mortal remains of their loved ones**. They must also **afford each other legal assistance in connection with investigations and criminal proceedings brought in respect of executions, including the supply of all evidence at their disposal that is necessary for the proceedings**.

Ensure that survivors of executions, witnesses and **relatives of victims of executions are protected from violence, threats of violence or any other form of intimidation**. Where migrants are involved, special measures must be taken to guarantee that this protection is duly extended to them.

Ensure that **effective and accessible mechanisms to guarantee access to information and transparency exist and assist victims** of gross human rights violations and their relatives, including in cases of executions and where migrants are concerned.

IV. The Failure to Codify Extra-legal, Arbitrary or Summary Executions as Autonomous Offences

9. Although the United Nations Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions require that extra-legal, arbitrary and summary executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences, the **Mexican legal framework does not codify them as separate offences**. This hampers the prevention, investigation and prosecution of the crime. Moreover, while it would be important to determine whether the three massacres considered in the report can be qualified as crimes against humanity as defined in applicable international law, Mexico does not codify these crimes at any level (federal or in the States). Accordingly, the **Mexican legal framework is inadequate and fosters impunity**.

Please refer to paras. 118-127 of the integral additional report for details

Recommendations

Mexico shall **codify extra-legal, summary and arbitrary executions as autonomous offences in the criminal code at the Federal level and in all the States of Mexico** and sanction them in accordance with their extreme seriousness.

Mexico shall ensure that authorities in charge of investigations of massive cases of homicides or massacres where State agents may be directly or indirectly involved, **apply the Minnesota Protocol in carrying out their investigations.**

Mexico shall **codify at all levels crimes against humanity.**