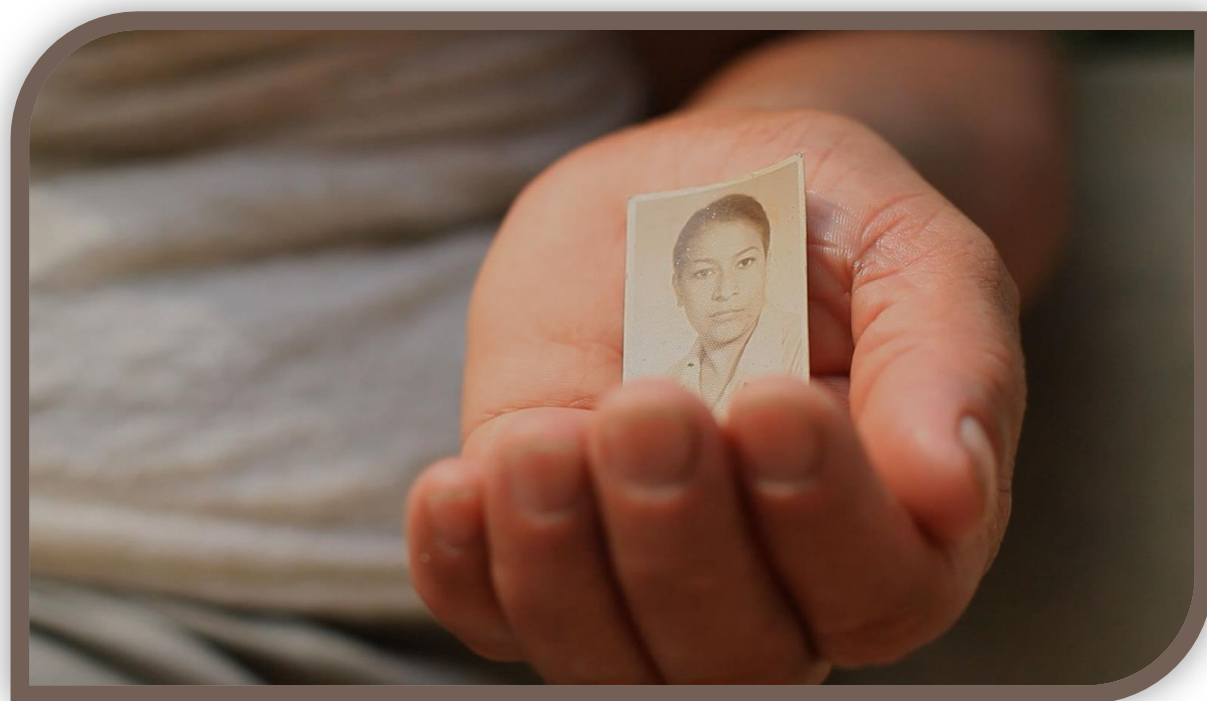


# Disappeared migrants: the permanent torture

*An introduction to the work of the Foundation for Justice and the Rule of Law in support of migrant victims and their families in Central America and Mexico*



**FUNDACIÓN PARA  
LA JUSTICIA**  
Y EL ESTADO DEMOCRÁTICO DE DERECHO

**FUNDACIÓN PARA LA JUSTICIA Y EL ESTADO DEMOCRÁTICO DE DERECHO**

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## Introduction

The Foundation for Justice (Fundación para la Justicia y el Estado Democrático de Derecho in Spanish) was founded in 2011, envisioned to defend, promote, and strengthen the access to justice and the due process of law for particularly vulnerable groups, and thus consolidate the rule of law in Mexico.

Conscious of the dramatic conditions faced by transnational and national migrants in transit through Mexico towards the United States (over 20.000 migrants kidnapped in one year, 26.000 people disappeared in the last presidential term, and 20.000 unidentified remains), the Foundation for Justice joined the families of migrants, from Central America and Mexico, who were disappeared or executed in advocating for regionally-coordinated mechanisms to promote truth and justice for hundreds of cases of human rights violations.

The present publications is based on several reports submitted by the Foundation for Justice jointly with the organizations Trial Track Impunity always, Casa del Migrante de 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. Mesa Nacional para las Migraciones en Guatemala (MENAMIG).

The purpose of this publication is to illustrate the dramatic situation that migrant persons from Central America and Mexico have to face on their way to the United States as well as to display the work the Foundation for Justice has been developing since its foundation in 2011.

## Summary

The migrant persons are under grave vulnerability conditions during their travel through Mexico towards the United States. Apart from being victims of kidnappings, summary executions and enforced the Foundation for Justice and the Rule of Law has documented several possible cases of torture in three massacres perpetrated against migrant people who consequently were executed

In some cases, the participation of civil servants from different authorities of all level has been detected. Presently these acts have not been properly investigated and include illegal detentions, summary executions, enforced disappearances and cruel, degrading or inhumane treatments.

Violations of human rights against the families of disappeared or executed migrant persons have also been documented. Stand out: the absence of search mechanisms for alive persons, effective investigation mechanisms, flaws in the identification and body release processes as well as a lack of follow-up of investigations that constitute cruel, degrading or inhumane treatments.

It has also been documented that authorities, whose obligation is to strengthen the right to truth and implement damages reparation measures, are impeding and denying Access to justice for the victims' families.

Therefore, it is recommended to implement adequate mechanisms, document cases of disappeared migrants, the creation of a national register of unidentified remains, protocols for search and investigation and mechanisms that allow to follow-up such measures. It is crucial that the families receive attention and support, in front of the great number of disappearances, kidnappings, torture acts, bad treatments, homicides and executions that were mainly registered during the previous presidential term and the beginning of the present. The migrant population has since been one of the most vulnerable ( some 20.000 kidnappings have been documented by the National Commission for Human Rights over a period of one year) hence the necessity of a transnational perspective for the searches, investigations, sanctions, attention and integral reparation of damages policies. The migrant population is facing great difficulties to gain Access to justice in Mexico.

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## I. Three massacres of migrant persons.

In August of 2010, April 2011 and May 2012 three massacres against the migrant population were discovered: the massacre of 72 migrant persons in San Fernando, Tamaulipas”, the case of the “clandestine mass graves San Fernando, Tamaulipas” where over 193 remains were detected and the case “massacre of 49 persons in Cadereyta, Nuevo León”. In the cases of the clandestine graves of San Fernando and Cadereyta, authorities first denied the presence of any migrant person without having performed any scientific testing that could allow identification. The victims of the three events sum up to 314 persons, out of which 200 remains are yet to be identified.

### A. Massacre of 72 migrants in San Fernando, Tamaulipas. August of 2010

The 25th of August of 2010 were discovered 72 bodies of murdered migrant persons (58 men and 14 women) in the municipality of San Fernando, state of Tamaulipas in the north of Mexico. According to information released by media, among the victims were found 24 Hondurans, 14 Salvadorians, 13 Guatemalans, 5 Ecuadorians, 3 Brazilians and one person from India. As of today, 12 remains are yet to be identified.

According to the press releases there were two survivors of this massacre, whose declarations gathered and other proofs allowed to understand the *modus operandi* of criminal groups against the migrant. This information should have been used by the authorities to prevent events such as this massacre to occur in the future. This did not happen, and less than a year after, another slaughter was discovered in the same city with 47 clandestine graves containing 193 human remains and the following year, 49 torsos were found in the municipality of Cadereyta, Nuevo León. As for the first slaughter, the press reported that the migrants were first detained, tortured and then asked for money to let them go on their way to America. As a method of payment, they were offered to join organized crime and when they refused, they were massacred.

Moreover, Mexico’s National Commission of Human Rights (hereinafter CNDH for its acronym in Spanish) , in its recommendation on these facts, collected the testimony of two surviving victims, one of which told that " he and other foreigners had been kidnapped by a group of approximately eight men carrying guns who took them to a nearby house, where they tied their hands with tape ... [ Later on ] they were taken to a ranch where they were asked to work for the criminal group, the majority of them refused. They were then blindfolded and thrown to the ground and, moments later, [the surviving victim] began to hear gun shots, and realized that they were aimed at his comrades."

The declaration of one of the survivors, gathered by the Commission and compiled by media allows to understand that they remained for a considerable time in the house, with their feet and hands tied before being transferred to another place, where shots would be fired " with bursts of high power," " for about five minutes," and each " topped with a *coup de grace*."

Days after the event, two decapitated bodies appeared with obvious signs of torture. They were identified as the officers in charge of the investigation of the migrant’s massacre for the

Secretary of Public Safety of San Fernando. Authorities have not yet disclosed the investigations in this case.

Additionally, the process of exhumation and identification of remains found in San Fernando have been riddled with errors and failures, which show at least a lack of diligence from the Mexican authorities. Similarly, the support provided by the authorities to the relatives of executed migrants whose remains were found in San Fernando, can be described as inhumane and degrading.

After the news broke out of the slaughter of 72 migrants in San Fernando, Tamaulipas, the Mexican government, under great international pressure presented a plan under which it promised to fight smugglers organizations and put an end to the phenomenon of mass kidnappings and massacres of migrant persons. As indicated above, the authorities failed to prevent the repetition of such events.

### **B. 47 graves containing 193 human remains in San Fernando, Tamaulipas. April 2011**

In April 2011, the Mexican press reported the discovery of 43 human remains in an unmarked grave in the town of San Fernando, Tamaulipas. Shortly after, more graves with human remains were found. The official figure is of 47 clandestine graves containing the remains of 193 victims of arbitrary executions.

The press has leaked insider information, close to the investigation, stating that the victims were killed in an extremely violent manner and that most of the remains showed signs of torture. In one case, for example, a source from the local prosecutor's office reported that the results of the autopsies indicated marks of mallets fractures, many of which caused collapse of the skulls.

The remains found in these graves belong to both Mexican nationals and foreigners. However, in both cases, they were mostly migrants on their way to the United States. In an effort to curb international pressure, straight from the beginning and without any scientific evidence, the Mexican government denied that they were migrants. Currently, both authorities and families agree that the remains found in these graves are related to mass kidnapping of buses, whose passengers were executed and thrown into mass graves. In this case, as mentioned above, it is considered that there was a participation, either directly or by omission, of police officers and civil servants (for example, 17 civil servants have been officially accused during the criminal investigation. Seven of them are currently being processed for various crimes).

Through the use of USA's Freedom of Information act (FOIA , for its acronym in English ), the National Security Archive (NSA) project of the George Washington University, recently obtained reports related to this case from a series of declassified cables between Washington and U.S. officials stationed in Mexico from 2010 to 2012. According to these reports it appears that the Mexican authorities were aware of the crimes committed by organized crime groups in San Fernando. The cables also mentioned the collusion between municipal, state and federal Mexican officials with criminals. It also states that "the officers of Tamaulipas appear to be trying to downplay the findings of San Fernando and the state's responsibility. During a recent

trip to Ciudad Victoria, state officials revealed that they were fully aware of the dangers of traveling roads in the area."

The existence of ties between authorities and criminal groups facilitate the prevailing impunity in crimes against migrant persons.

### **C. 49 torsos found in Cadereyta, Nuevo León. May 2012**

In May 2012, some 49 torsos were found by the road near Cadereyta, Nuevo León. These torsos were all that remained from 42 men and 7 women. Without any information about the identity of the victims, the first official versions openly stated that these remains were from members of organized crime groups. It is not before July 2013 that the Foundation for Justice, through a public information request, discovered that some of the victims were in fact migrants in transit to the United States. Later on, this information was corroborated by the Forensic Commission<sup>1</sup> with the positive identification of eight Honduran persons.

### **D. Grave human rights violations in the three massacres**

Despite the seriousness of these events and the multiple human rights violations against the victims, the Mexican authorities have not classified these events as serious violations of human rights. Not only this is minimizing the impact of these events for the victims and the Mexican society as a whole, but it also impedes access to information. Even if shortly after the events, ministerial authorities reported briefly on the investigations or the persons responsible, the authorities in charge have currently chosen opacity and information blockade. The progress of the investigation are unknown, a proceeding directly harming the right to truth for the families, the victims and society as a whole.

Recently, after discovering the negative answer to declassify information on the three massacres, the eighth administrative district judge of the First Circuit in Mexico, classified this event as a serious violation of human rights, at least for the purposes of transparency and public information. Undoubtedly this constitutes a progress. The Foundation for Justice, who litigated this case (Indirect Legal Injunction, Amparo No. 1371/2013 ), is still waiting for the judge's decision to be enforced and the release of public versions of the investigation files for the three cases.

The Foundation for Justice has filed over 93 transparency requests to 11 federal executive authorities in Mexico related to the massacres of migrant persons. Some 38 requests were denied by the authority in charge of Access to Information, Mexico's Institute for the Access of Information (IFAI for its acronym in Spanish).

Some opacity practices have been identified from some authorities (such as the General Attorney's Office and the Ministry of Interior) to elude their responsibilities on the matter (i.e. denying previously-published information on the ground of its alleged non-existence).

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<sup>1</sup> Later described in section G of the present report.

Currently, four cases are being refuted through constitutional trials, both for the alleged non-existence and classification as confidential (for these cases, the organization Article 19 in Mexico has supported the organization). The Foundation for Justice is currently talking with grant agencies to support the work performed in the matter, aiming to strengthen advocacy actions towards transparency, access to information and accountability for gross human rights violations. Similar processes have been initiated in El Salvador and Honduras.

### **E. Massive Abduction of migrants**

Interwoven with the massacres of migrants is the grave situation of mass kidnappings against migrant persons in transit through Mexico. In two reports submitted by the National Commission of Human Rights (CNDH for its acronym in Spanish), about 20 thousand kidnapping victims were documented in two different periods of six months. On this occasion, the CNDH, with the support of the migrant households was able to denounce the complicity and collusion between organized crime and some authorities; in these reports, the CNDH called for greater attention to the problems of missing person's searches and access to justice for victims.

Testimonies of abducted migrants clearly illustrate this: " Now I'm afraid that migration department comes [INM] after me, or any other cops. The municipal police was on the side of the criminals. They patrolled every day and I imagine they were given a part of the money, because, if not, then the police would have helped us out, but nothing. They did nothing." "I did not report the kidnapping because I saw that the police was involved, police officers in white shirts and pants came about four or five times, two of them were always there and the others changed turns each time, the police forces also drank and inhaled cocaine ... " .

Some testimonies gathered allows us to conclude that acts of torture were perpetrated against the abducted persons: "In front of me they cut fingers if they were not paid. When people started shouting, they made the calls to the family members so that they would hear how we were being tortured. "

These two issues, complicity with authorities and acts of torture perpetrated against kidnapped migrant persons, were outlined by the First and Second Report on kidnapping migrants from the National Commission of Human Rights. They have also been mentioned by different international human rights protection agencies, as well as the Rapporteur on Migrant's rights of the Inter-American Commission of Human Rights, the Committee for the Protection of the Rights of All Migrant Workers and Their Families, the United Nations' Rapporteur on Extrajudicial Executions and the United Nations itself.

### **III. Enforced disappearance is also torture**

Besides what was reported in the previous section, the way people are being tortured as well as being victims of enforced disappearance, the Special Rapporteur on Torture has concluded that enforced disappearance is clearly a prohibited form of torture or ill-treatment against the relatives of the disappeared person. This was also supported by the jurisprudence of the Human Rights Comity, as well as rulings of the Inter-American Court of Human Rights.



The absence of effective search actions - not only for the remains but also for missing persons alive - the lack of information and even the treatment of a migrant victim's family cause them psychological damage manifested by anxiety, depression, frustration and severe pain that can be described as cruel, inhuman or degrading treatment.

The Foundation for Justice detected that the investigations of missing, kidnapped, killed or executed migrant persons, are generally not performed efficiently and families do not receive proper attention from the state. We believe that these are elements of discrimination not only because these persons are migrants, but also because they live in extreme poverty as well as social and economic exclusion.

Among the main causes of psycho-emotional impacts for the families: the absence of search actions in life and, for the families living in Central America, the impossibility to travel to the country where their relative has disappeared (Mexico) cumulated with the lack of regionally coordinated mechanisms to respond to the families in terms of research and investigation; numerous shortcomings in the exhumation and identification of remains programs. Particularly serious cases of mistaken identities, cremation of remains without ensuring the family's acknowledgement of the deceased' identity and without their consent; almost nonexistent communication between authorities and families of missing persons; lack of scientific information during the remains delivering process to the families, and a prohibition to open the coffins based on supposed health hazards that generate a permanent doubt on the remains received; the total absence of monitoring or access to the investigations after the remains transfer; the non-recognition of the status of victims for the families of missing migrants; the absence of victim support policies and integral reparation policies, despite the existence of Mexico's General Victims Law.

As reported above, the situation worsens because relatives live in another country facing severe economic hardship, which further hinders their access to justice. It should be emphasized that the relatives of missing or executed migrants, are themselves victims of cruel, inhuman or degrading treatment, which has been reported by the Foundation for Justice, and do not receive any kind of psychological, medical or economic support from the Mexican state.

To this situation must be added other systematic problems already identified by the Working Group on Enforced Disappearances of the UN Special Rapporteur on the rights of migrants and the Inter-American Commission of Human Rights and the Rapporteur for Extrajudicial Executions of the United Nations:

- a) Absence of effective mechanisms for the search of missing persons. In this case with a regional focus, given the characteristics of the migrant population.
- b) Lack of a national data bank for missing persons and unidentified remains. In this case, the regional approach is required for the migrant population.
- c) Although the government claims to have different remains identification protocols, for the victims and the organizations it is unclear what is being implemented and, above all, this has yet to be applied in practice.
- d) Lack of control mechanisms of the prosecution and experts.

e) Lack of comprehensive programs to support the victims.

The cases described below are currently accompanied by the Foundation for Justice and will serve to exemplify this.

### **A. Massacre de los 72. The case of an "identified" Brazilian**

On August 2010, a 20 year old Brazilian left his native community in Brazil for the United States. Seven days later, he communicated with his family in Brazil saying that he was in Guatemala and that the next time he would speak to them would be in America.

The family did not hear from him for 14 days, until they discovered the news of the slaughter of 72 migrants in San Fernando, Tamaulipas, Mexico. The family communicated, on August 26 2010, with the Brazilian Embassy in Mexico to mention that their family relative was traveling to the United States and that he could be one of the victims of this slaughter. The same day (40 minutes later to be precise) the Brazilian embassy contacted the family to mention that their relative was one of those identified in the slaughter of the 72 persons. At this time, the family had not yet given any DNA sample so the method with which the identification was performed is still unclear.

After several efforts by the family to contact various Brazilian authorities, from the police to the local governor, on October 5 of 2010, they received a coffin containing the remains of their loved one. Upon delivery they were told they should not open the coffin by order of the Mexican government. The remains were not accompanied by any factual information or identification, only a death certificate. In an effort to ensure that the remains really corresponded to their relative, the family opened the coffin. They were unable to detect anything, no clothes or distinguishing marks that could confirm the identity of their relative. The family manifest their doubt as to what really happened to their loved one and do not have any explanation from the authorities of the circumstances in which he would have been killed, the identity of the person responsible or the investigations that have been made. The family has not received any support or reparation for the damages suffered.

The family later learned, from Brazilian newspapers, that there was a confusion of bodies and that their family relative was first sent to Honduras. Supposedly, the body's identity was previously verified and was sent to the correct family. Under these conditions, the family requested for a DNA based identification. However, the family lives in a remote community and cannot get in touch with the Mexican authorities in order to claim their right to truth and justice.

The events triggered a deep impact in the family, "because [the migrant] did not deserve that [what happened]," this later provoked the need for sleep medication. The deep anguish and pain occurs because the family still ignores the facts surrounding the death of the migrant and has doubts about the identification process, all of which results in physical impairments such as hypertension and "permanent shocks".

### **B. Massacre of 72 migrants. The Case of five identified Guatemalans**

On the 2nd of August, 2010, a group of at least seven people left their community in Guatemala. Five of the group members were from the same family (the father and two of his sons, a niece

and a brother in law). The group communicated with their families on the 7th of August 2010 saying that they spent five days walking but were now in Mexico. Eleven days later the group communicated itself again, mentioning that they had passed the most dangerous passage with the "beast" (the freight train's nickname, commonly used by migrant persons) and that the next step would be to move through the river separating Mexico and the United States of America. The same day (18th of August) a Guatemalan migrant women traveling with them sent a text message to his family asking to "look after the children because no one knows if they can come back." Family members tried to communicate with the group but received no response.

The families discovered in local paper the slaughter of 72 migrants in San Fernando, Tamaulipas. The newspaper mentioned that two people who were traveling with the same group had been located in the pits. The families flocked to Guatemala's Chancellery which declared that, in most cases their relatives had been identified through their clothes. In one case only DNA evidence was used, although with few reference samples. Even if family members were banned from seeing the remains of their relatives, under direct order of the Mexican government, some families were able to see them and discovered that indeed their loved one were amongst the dead. However, both those who viewed the remains of their relatives and those who did not, have expressed doubts about the identification of the remains received, especially because they have not received proper documentation that accredits the identification process.

Some relatives manifested clear psychological impacts and claim that this experience radically changed their lives. The woman, who lost her husband and two children, had to move houses, has received no help from the Mexican or Guatemalan governments, and had to face a situation of extreme poverty. Her testimony states that she "could not laugh since I learned of the death of my relatives," explains that the deep sadness provoked "lack of sleep and appetite."

The other woman, who lost her daughter, was in charge of her grandson left by her daughter. The father of the child fell victim to depression and died in 2013 because of cardiac complications. The symptoms began when he received the notification of the death of his wife. The lady is now responsible for the grandchild, as well as four of her own small children, without receiving any support from governments.

In both cases, the families denounced the violation of their right to truth and believe that until the remains of their loved ones are not identified in accordance with international standard, their loved ones should be considered missing.

### **C. Graves of San Fernando. The case of Guatemalan migrants**

In late October and early November of 2012, Mexico's Attorney Office (PGR) performed the identification of at least seven Guatemalan migrants who had allegedly been found in the mass graves of San Fernando, Tamaulipas. The families were notified through a phone call from a civil servant from the Ministry of Foreign Affairs of Guatemala, who said that "the Mexican government will incinerate the remains before sending them to Guatemala and that they could do nothing about it." The families were opposed to the cremation, and indicated that they had doubts about the identification because they had not been given information or documentation establishing such identification, nor had they been informed of the circumstances of the death.

On November 2012, through an email, the Foundation for Justice transmitted this information to the Deputy Minister of Guatemala, and asked for their collaboration so the remains of Guatemalans nationals would not be cremated. For the same purpose on November 2 2012, an email was sent to the staff of the Human Rights Ombudsman's office of Guatemala, requesting their cooperation. Finally, on November 5 2012, the Foundation for Justice requested urgent precautionary measures before Mexico's National Commission of Human Rights (CNDH) to prevent these cremations. The commission did not prevent such actions.

Because of the absence of response from the CNDH, on November 30 2012, the Foundation for Justice requested the PGR to stop the cremation. The Attorney responded that communication should be maintained with the then Deputy Attorney of Human Rights. The latter replied with an email dated 1 December 2012, stating that the remains had been cremated on November 30 at 15:40 pm and, therefore, it was impossible to execute the request. He stressed that the human rights of the persons had been respected.

Subsequently, the Guatemalan families received a call from a civil servant of the Republic of Guatemala, who asked them on December 6 2012 to come at the office of the Ministry of Foreign Affairs in Guatemala to recollect their relative's ashes. On Thursday December 6 2012, at least seven Guatemalan families were given their relatives' ashes, without being explained how the identification was performed and without providing documentation accrediting the identification or any information regarding the circumstances of death.

On January 11 2013, some families signed a letter to the Office for Human Rights of the PGR in Mexico, asking to be recognized as victims and to become part of the investigation, authorizing lawyers and trusted people, and requiring that, through the Foreign Ministry of Guatemala and/or people of their trust, information and documentation related to the identification of a family, with the reasons for the cremation of the remains and the circumstances of the deaths should be sent.

By January 31 2013, the families were notified that the information and documentation requested was strictly reserved. They were also denied the opportunity to have legal representation and were not recognized as victims. Finally, the PGR said that only the Embassy or Consulate of Guatemala in Mexico could be involved in the repatriation of remains, not even the family.

As a consequence, the Guatemalan families involved were severely hurt and were exposed to re-victimization and deep suffering processes. It should be noted that many of these families belong to indigenous communities in Guatemala, which also involves a violation of their traditions, customs and religions. In the words of one of the family members "when we learned that we lost our family relative we felt much despair and sadness, like a mental torture with physical pains. We got sick of sadness. We never stop mourning, we have nightmares, and we cannot sleep, thinking whether he is alive or dead." On the other hand, in the same family mentioned when they learned that their loved one had been kidnapped they felt powerless. When the family learned about the cremation they suffered an even stronger martyrdom.

Likewise, the wife of one of the unidentified men indicates that "it affected me psychologically; I started having strong reactions against the children, a lot of pressure because of debts. I am not

the same person because I am afraid of everything, I sometimes feel anger and hatred for the people who harmed my husband and then I try to reassure myself. I do not understand why at times I'm fine and, at others, bad. When they delivered the ashes it was hard because I could not see if it really was him. I was worse than before because I kept dreaming of him alive. When my husband disappeared, I dreamt of him every day. When they delivered the ashes, I saw him again in a dream, and he told me not to cry because he was alive. When I was handed the remains I asked why it had a hearse if it was just a box, I said I was not going to pick up a dog. The press bothered me a lot, they harassed me and I asked them not to shoot or record anything, but they did not listen."

From this evidence, it is clear that while the suffering and the psychological effects on the relatives of missing persons begin when the disappearance of their loved one, because of the doubts this situation raise, they are affected again when they learn that their relative was the victim of a summary execution and even more when they learn that they will receive only ashes and not the entire body. These facts, coupled with the lack of documentation accrediting the accuracy of the remains' identification, provokes the families to continue thinking that their relative is still alive impeding them unable to close the grief cycle, caught between hope and uncertainty. Finally, one should not forget that the cremated remains are proofs of investigations and criminal proceedings that have not been completed because the evidence was destroyed while the criminal trial was still in process.

#### **D. Graves of San Fernando. The case of identified Salvadorans**

In March 2011, two Salvadoran migrants left by their own means El Salvador for the United States. In both cases the Attorney General of El Salvador notified the families of the alleged identification of their family graves in San Fernando, Tamaulipas. The relatives of one of the migrants were notified in July 2012, while the mother of the other migrant was notified in December 2012.

The 19th of February, 2013, El Salvador's Foreign Ministry contacted the mother of one of the two persons in question requested their agreement to the cremation of the remains supposedly corresponding to her son. El Salvador's Foreign Ministry said that the incineration of the remains was necessary for his son's remains to be repatriated to El Salvador. The lady refused to sign the agreement. The Foundation for Justice talked with the Foreign Ministry of El Salvador and they indicated that Mexico's authorities were those who ordered the cremation of the remains and that El Salvador could do nothing to prevent such cremations.

In order to avoid cremation, the Foundation for Justice has used multiple internal resources and the Inter-American Commission on Human Rights. One of the responses obtained from the Mexican authorities, the Deputy Attorney Specialized in the Investigation of Organized Crime (SEIDO), which belongs to the PGR, denied the victims' families status into the criminal investigations, rejected their right to legal representation and refused to provide information based on clearly discriminatory criteria, because this is something that would not refuse to Mexican citizens. In the end, through a legal injunction filed against the state of Tamaulipas prosecutor's office, it was possible to suspend the cremation of the remains. This legal action is still in force.

Consequently, the mother and sister of the allegedly identified Salvadoran migrants have been deeply impacted from a psychological point of view. A psychological report based on the Istanbul Protocol was applied to the mother of one of the migrants from El Salvador. One year after receiving the notification that was found among the remains exhumed in San Fernando, the mother did not receive documents proving irrefutably the identification of her child. In this analysis we conclude that she is a victim of torture and psychological abuse due to the actions of both Mexican and Salvadoran governments, as well as a consequence of the uncertainty about her relative during the identification process, the refusal to provide identification information and the contradictory responses received from different authorities from the Mexican government.

The document states the following: "When asked about the idea of a traumatic situation, [ the person concerned ] links it with the experience of her son's loss, saying that nothing has caused her as much pain as this ... saying that only death would be the end of their suffering. " "[The person in question] displayed emotional sadness all along the interview, hopeless, with death thoughts at the idea of losing her son and the lack of response concerning the return of the remains, which was aggravated by the notification of possible cremation of the remains of her son. She presented intense sadness with uninterrupted cries when remembering the facts, expressing emotional resonance. "

The paper concludes that the mother of the migrant supposedly missing and identified, showed behavioral affectations (remembering the places her child used to visit and the habits he had), affective (deterioration of life project and of her relationship with her partner), psychological (psychic trauma, posttraumatic stress disorder, intense sadness while remembering facts, feelings of emotional breakdown, questioning herself and her place in the world, loss of basic trust) , and other somatic effects (pharyngeal ulcer cancer, suspected allergy on the whole of the body, nervous colitis and gastritis) .

As of today the family has not yet received any response from the Mexican authorities to this report.

### **E. Graves of San Fernando. The case of a Mexican migrant**

Lack of access to justice and re-victimization processes in cases of disappearance and execution are not limited to the Central American migrant population. This is a reality that also affects every Mexicans. Apart from the cases above mentioned, the Foundation for Justice has documented the case of a Mexican migrant whose family has suffered the same consequences as the families from Guatemala, El Salvador and Honduras. On March 27 2011, a young man came out of the central region of Mexico towards Matamoros, Tamaulipas, in order to cross the border into the United States. A person who was on the same passenger bus, called the family saying that migrants had been kidnapped and that his cell phone had been left in the bus. The family was able to communicate with the military stationed in San Fernando to declare the kidnapping, but the military said they could not do anything and were unaware of the facts.

On March 30 2011, after three days without notices, the family filed a complaint with the agency 4 of the Public Ministry in Matamoros, Tamaulipas. A few days later the family would discover through the media the finding of mass graves in the town where their family relative

had been kidnapped. Despite several intents from the family to obtain information related to the identification of their relative from the authorities, the family faced great difficulties to obtain information and the family relatives still have several doubts on the identification and the circumstances of his death.

In this case, over a year and a half has passed since the notification of the alleged identification of the young man. There has been no progress in the delivery of information to the families for whom this has involved a serious deterioration in their physical and mental health. The life of the parents was practically paralyzed and they suffer nervous diseases, anxiety and anguish for not having any clear results about the whereabouts of their son.

### **F. Conclusions on the impact for victims' families**

From these cases it is possible to conclude that the lack of information and even the treatment of a migrant victim's family have caused psychological damages translated into states of anxiety, depression, frustration and severe pain that can be described as cruel, inhumane or degrading.

Also, these cases show that the families of missing and / or executed Central American migrants in transit through Mexico are in a situation of complete disadvantage when confronted with Mexican authorities. The family members do not live in this country and have few opportunities to travel to Mexico.

It is thus important to stress that access to justice remains extremely difficult, if not impossible for the families of missing persons. In this sense, there is an obvious limitation for migrants and their families to access to justice, especially when being a migrant in Mexico. The Foundation for Justice has documented several complications and difficulties faced by the families of missing migrants while appealing to the law enforcement institutions. It should be mentioned that difficulties with the authorities exist for every families of Mexican victims, but that they are exponentially increasing for the families of missing migrants from Central America.

There is likewise a discriminatory criteria applied by the Mexican authorities when they refuse to recognize as victims persons with Central American nationalities, restricting their right to be informed of the investigation process related to their relatives as well as the possibility to provide information deemed relevant for the investigation and their right to legal representation. In most of the cases analyzed it was found that the relatives of missing and / or executed migrants did not receive any counseling, legal advice, or any kind of support measures in accordance with the provisions of the Constitution of the United Mexican States or in General Victims Law.

### **G. Forensic Commission to identify the remains of San Fernando, Tamaulipas and Cadereyta, Nuevo León. A joint effort of the Mexican government, the Argentine Forensic Team and civil society in Mexico and Central America.**

A breakthrough initiated by the civil society on August 22, 2013, was the signing of a "cooperation agreement for the identification of more than 200 human remains and corpses found in San Fernando, Tamaulipas and Cadereyta, Nuevo Leon through a Forensic Commission"

between Mexico's Federal Attorney's Office, the civil society in the region (including the Foundation for Justice), and the Argentine Forensic Team.

The purpose of this agreement is to identify the remains of migrants which may be related to the episodes of the 72 migrant persons slaughter, the mass graves found in San Fernando, Tamaulipas, and the 49 torsos found near a road in Cadereyta, Nuevo Leon. The aforementioned agreement allows information previously stored in Forensic Banks implemented by both Argentine Forensic Team, the Committees of Families of Missing Migrants in Central America and NGOs, to be compared with the genetic profiles and other forensic information gathered on the bodies located related to the events, and perform multidisciplinary analysis to identify the bodies.

This effort does not only stand as a proof of coordination between governments and civil society but also represents a regional breakthrough in terms of justice and truth for the victims. The first outcomes of this work brought eight positive identifications of Honduran victims in the Cadereyta massacre and a protocol for the authorities regarding better practices for the notification of positive identifications for victims of human rights violations. Two states in Mexico (Tamaulipas and Nuevo León) have signed addendums to the agreement.

While the work of the Forensic Commission produced positive first results, the Foundation for Justice has detected that while some public servants supporting this effort have been identified, a genuine institutional will is still required from the Attorney General's Office to attend deficiencies and to respond effectively to the families. Throughout multiple reports and forums, the civil society has asked for the creation of protocols (people search, investigation, identification of remains, etc.) but these will not be sufficient if there is no institutional will to eradicate certain malpractices impeding these protocols to be applied. Moreover, the creation of efficient documentation and monitoring mechanisms must be installed, as well as control mechanisms that allow reviewing advances and setbacks during the missing persons search processes.

#### **IV. The Specialized Unit for the Search of Missing Persons PGR**

For the past six years ( 2006 to 2012 ) Mexico reported a large number of violent deaths (about 80 thousand ) and missing persons (about 26 thousand as reported by the Ministry of the Interior ), coupled with nearly 21 thousand unidentified remains and 20.000 migrant kidnappings documented in a period of one year.

The families of missing persons mainly demand an immediate search for life and effective investigations of the facts. Facing this demand, Mexico's Attorney General, established a search unit, which lacks manpower and material resources to carry out its work. An illustration of this situation is the fact that when the Search Unit for Missing Persons was installed in May 2013, it only had 12 members, and no budget or material resources for its operations; twelve months later, the unit still lacks operational and organizational structure. This shows that there is no national will to search for missing persons or investigate the facts.



## **V. National Commission of Human Rights (CNDH for its acronym in Spanish). Ineffective control mechanism to prevent and punish acts of torture as well as a deficient organism for the investigation of serious human rights violations.**

On more than one occasion, the Foundation for Justice, accompanied by family relatives in Central American Committees and other organizations, requested the intervention of the CNDH through precautionary measures to prohibit authorities to carry out actions affecting the rights of migrant victims in Mexico. The CNDH ignored the requests, in spite of its constitutional obligations has not acted to curb the alleged violations, also, the CNDH has not interviewed, counseled or cared for the physical and emotional affectations of the victims' families against cruel, degrading and inhumane treatment of the cases documented by the Foundation for Justice, for both domestic and foreign migrants.

Below are listed some of the major human rights violations committed by the CNDH.

### **A) Precautionary measures to prevent the cremation remains of migrants' graves identified in San Fernando**

In late October 2012, the Foundation for Justice was informed that the federal authorities intended to cremate remains belonging to a group of Central American migrants identified among the 47 clandestine graves along with 193 remains in San Fernando, Tamaulipas. As an attempt to prevent this flagrant violation, on November 5, 2012, the Foundation for Justice, the Committees of families from Central America and other organizations requested that the CNDH issued urgent precautionary measures to prohibit the cremation of the remains, at least until their identification was scientifically proven, that each family was properly notified and received detailed explanations, the criminal investigation concluded and with the previous consent of the families. It also highlighted the risk of destroying evidence while investigations and criminal proceedings were still performed.

Ignoring the warnings, the President of the CNDH did not act to stop the cremation (the measures were requested another time on November 30), which occurred on November 30, 2012. This Commission violated the right to truth and justice for the victims, and the cremation has triggered profound psychological, social and physical impacts. As of today, these families have not been interviewed or advised by the CNDH.

### **B) Precautionary measures to protect the torsos found in Cadereyta, Nuevo León**

After the discovery of the 49 torsos in May 2012, the Foundation for Justice, accompanied by other civil society organizations, requested to the CNDH precautionary measures to ensure effective investigations, adequate transportation of the bodies, respect of the custody chain for the evidence and crime scene according to international standards; thorough and forensic identifications with complete scientific proofs; and ultimately the safeguarding of the rights of the missing migrants' families who may have a family member in the group of people massacred.

Despite the complaints filed, the highest national authority on human rights has not acted at all in this case nor followed-up any of the requested measures.

### **C) Recommendation on the slaughter of 72 migrant persons**

On December 23, 2013, 3 years and 4 months after the events occurred, the Commission of Human Rights issued its recommendation on the slaughter of 72 migrants. The recommendation is addressed to the Attorney General's Office and the State Governor of Tamaulipas. The recommendation states violations of human rights on due process of law, legal certainty, access to justice, right to truth, and decent treatments, " to the detriment of 72 migrants " committed, as well as violation of the rights of legality and legal certainty against two survivors and violations of privacy and data protection identity for one of them.

The recommendation also states the existence of violations of the Model Protocol for the Forensic Investigation of suspicious deaths caused by the violation of human rights; serious weaknesses in the management and protection of evidence, in violation of the Code of Criminal Procedure of the State of Tamaulipas and the Manual on the Effective Prevention and Investigation of Extra Legal or Legal, Arbitrary or Summary Executions. In this respect, the recommendation states that it filed criminal charges against civil servants for the poor treatment of the corpses as well as for the delay in identifying the remains, bodies removed without complying with the health measures or respecting the established procedures; the lack of psychological care for the survivors, the violation of their privacy and security rights; and finally the refusal to provide the CNDH with information about the documentation process of the case.

While it is undoubtedly positive that the CNDH has issued a recommendation on one of the three massacres of migrant persons, the process of this very recommendation is contrary to the fundamental rights of the victims and the survivors.

Firstly, the recommendation was not classified as "serious violations of human rights." Despite some expressions used in the recommendation itself, it does not enter this category. This is no small matter because it affects the correct characterization of the facts in terms of recognition of the right to truth for both individuals and society as a whole; it affects the reparation process - in the sense that it does not recognize the true extent of the facts and fails to re-establish the dignity of the victims – for the family.

Secondly, it is a source of extreme concern and indignation, against all evidence, and although the same recommendation's title is "deprivation of life of 72 migrants and attacks on the lives of the V73 and V74 foreigners", the recommendation of the Commission does not recognize that this is a case of violation of rights to life and personal integrity. The recommendation does not investigate whether there is liability (by act or omission) of the State indicating that there is a violation of the right to life or against inhumane treatments, nor does it consider whether Mexico met its warranty and general protection of the right to life obligations. In the same way, it is noteworthy that the recommendation also fails to analyze and detect whether the victims have suffered enforced disappearance or if they were subjected to torture before execution.

The recommendation does not analyze the current state of research conducted by the authorities, nor does it investigate the impartation of justice for the imputed parties. Whether or not people that are facing criminal proceedings were subject to torture in order to accuse themselves, is a question that the CNDH Recommendation 80/2013 has not clarified.

It should also be noted that the recommendation of the CNDH only considered as victims the 72 people executed and the two survivors, but did not recognize their relatives which is contrary to international standards already established by Article 4 of the General Victims Law of 2013. The families are therefore being re-victimized. Also, the families of the victims have not been in any way involved in the process of the recommendation of the CNDH, enforcing the marginalization process they have suffered.

It is worth remembering that the proceedings before the CNDH are quasi-judicial by nature. The CNDH should listen to the victims, to the authorities responsible, and receive evidence in order to determine violations of human rights. In this case, the families of the 72 persons executed were not interviewed, could not provide evidence, nor were they heard by the CNDH. In particular, the CNDH did not check whether the remains were identified and returned correctly, or if the families were satisfied with it. Finally, by not including relatives among the victims of this crime, it excludes from the reparations benefits, in contradiction with the requirements of both domestic law and international treaties of which Mexico is part.

The Foundation for Justice has initiated two legal injunctions against the CNDH for violations committed against family members in the research process and the recommendation itself. During the litigation proceedings, the CNDH argued that it is not an authority and that the ruling would be against its autonomy status, a sign that the CNDH has not understood the extent of Mexico's constitutional reform for the defense and human rights. This action stands as a precedent for victims of abuses and violations committed by *ombudspersonae* institutions. Through its litigation, the Project aims for Mexico's Supreme Court to establish minimal standards to be observed in terms of investigation and protection of victims of human rights violations.

In parallel with this legal effort, the Foundation for Justice is devising a political strategy in favor of the accountability from the ombudsman office. In this sense, efforts will be made to encourage the Congress of Mexico to summon the President of the National Commission of Human Rights to a public hearing where he can explain the procedures established to investigate the massacre *vis-à-vis* the rights to justice and truth of the victims' families, and the reasons that drove his office to dismiss the events as gross human rights violations. So far, the public hearing process faced partisan barriers that prevented these control mechanisms to be effective.

### **Dissemination material**

The Foundation for Justice with the organization Sandía Digital produced a video called "Migrantes Unidos. Familias Unidas Exigiendo Justicia" (United migrants. United Families Reclaiming Justice" ([http://www.youtube.com/watch?v=oLSL8\\_AV3lo](http://www.youtube.com/watch?v=oLSL8_AV3lo))). The video was widely broadcasted and allowed

that some authorities and human rights organizations to know from the victim's own voice, the challenges they face in their search for justice.

The Foundation already has a web page [www.fundacionjusticia.org](http://www.fundacionjusticia.org) containing all the reports submitted to international organisms, press releases and resource material on disappeared persons.

## V. General Recommendations

### On disappeared migrant persons

- Existence of effective mechanisms for the search of persons and fact-finding investigations. The effective search and, as well as the constant communication with the families, is the best way to diminish the grave sufferings that the families have to go through.
- Establish a national register of persons victims of enforced disappearance that, with the adequate precautions, guarantee that families, lawyers, human rights defenders and any other person interested can obtain full access to the register.
- Ensure that the register documents precisely the enforced disappearance phenomenon, taking into account its transnational dimension and establishing the guarantees and necessary measures for the data access to them from the different countries of the region. It is fundamental that mechanism for the follow-up of the registered information exist and guarantee that the information is effectively confronted or used during the investigations. The data bases by themselves are not sufficient guarantees for the search and investigation.
- Guarantee the effectiveness of the Specialized Unit for the Search of disappeared Persons of Mexico's attorney (*Unidad Especializada de Búsqueda de Personas Desaparecidas de la PGR* in Spanish), ensuring that it has sufficient specialized, with a human rights perspective, and that this unit has a transnational reach in order to provide with efficient answers above all to the phenomenon of disappeared migrant persons.

### On the massacres of migrant persons

- The Mexican state must investigate adequately and efficiently the three massacres mentioned in this document, as well as every case of migrant persons who have been found dead or executed on the Mexican territory taking into account, specifically, that they could also be cases of migrant persons who have suffered acts of torture, and other cruel, degrading or inhumane treatments, as well as summary executions
- Ensure that all the manpower and financial, as well as the necessary conditions for the Forensic Commission established by the Agreement between Mexico's attorney Office, The Argentine Forensic Team and NGOs so that they could perform their task efficiently. Ensure that the Forensic Commission manages to permeate Mexico's Attorney Office in order to overcome obstacles and act accordingly to best practices until now constructed in coordination with the authorities and civil society. Only with an effective collaboration between the authorities and civil society, effective answers for the families can be obtained.

- Following the example of Forensic databases for the Argentine Forensic Team and the effort of the Forensic Commission, establish efficient mechanisms for the transnational reach for the Exchange of information on identification of remains of disappeared migrant victims, and adopt every necessary measure to ensure the due respect to the remains and their transfer to the countries of origin, taking into account the beliefs and customs of the affected families. Create follow-up and monitoring mechanisms for these efforts.

### **On victims of torture, cruel and inhumane treatments**

- The Mexican state must adopt measures and actions for the medical, psychological and economical support of the Central American families of disappeared and/or executed migrant persons, whether they live in Mexico or Central America.

- Ensure that the migrant victims and their families receive proper recognition in the proceedings of the Mexican authorities, and to guarantee their Access to information on the search, investigation, and in cases of death, the identification of remains of their family relative.

- Adopt without delay all of the measures necessary to protect families of disappeared persons, their assessors and their representatives.

- Guarantee that Mexico's General Law on Victims is fully and swiftly implemented and ensure that all the manpower and financial resources are available.

- Adopt a specific protocol to ensure that attention, support and integral reparation of damages in cases of human right's violations against migrant persons and their families. Guarantee the full participation of victims, families and the organizations that represent them in every step of the reparation process, from the design, implementation, and evaluation to decision taking.

- Finally, a precise follow-up to the recommendations elaborated by the Comity Against Torture in its final observations on the fifth and sixth combined reports on Mexico.

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