

***Statement by Non-Governmental Organizations, Academics, Experts and Researchers
in the Americas Concerning the Crisis of Disappeared Migrants from Central America
For the Global Compact for Migration Stocktaking Meeting
In Mexico on Dec. 4-6, 2017***

Introduction

1. The New York Declaration, adopted on 19 September 2016, addresses the question of large movements of refugees and migrants. Through this Declaration, members States committed to develop a global compact for safe, orderly and regular migration.
2. It was expected that the global compact would include shared principles, commitments and understandings among States regarding migration¹.
3. The New York Declaration underlined the importance of adopting a comprehensive approach to this global phenomenon. It recognized the responsibility of States to ensure the respect and the protection of the human rights of migrants.
4. The Resolution adopted by the General Assembly on 6 April 2017 established the Modalities for intergovernmental negotiations on the global compact on migration, including stocktaking meetings.² These stocktaking (Phase II) meetings, taking place between November 2017 to January 2018, include the upcoming meetings in from December 4-6 in Puerto Vallarta, Mexico.
5. Experts, academics and members of non-governmental organizations who participated in a Workshop and Forum at Boston University on November 3, 2017 on the phenomenon of disappeared migrants from Central America, drafted this statement for consideration at the stocktaking meetings. The Chair of the UN Working Group on Enforced or Involuntary Disappearances and the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions presented their recent reports on migrant disappearances at the workshop. Workshop participants also included representatives from: Centro Diocesano para los Derechos Humanos Fray Juan de Larios (Coahuila, Mexico); Casa del Migrante de Saltillo (Saltillo, Mexico); La Fundacion Para La Justicia y el Estado Democratico de Derecho (Mexico, Guatemala, Honduras); Equipo Argentino de Antropologia Forense (Argentina); the International Committee of the Red Cross; the International Organization for Migration (Missing Migrants Project, Geneva); Peace Brigades International/USA; the War Crimes Research project of American University; and the International Human Rights clinical programs of Boston University and American University/Washington College law schools. All participants emphasized the need for urgent action to address the systemic nature of the growing crisis of thousands of migrants disappearing *en route* from the Northern Triangle countries (Honduras, Guatemala and El Salvador) through and to Mexico and the

¹ A/RES/71/1 (p. 21).

² A/RES/71/280.

United States. The participants submit this statement in light of their extensive experience, research, reporting, and expertise.

Measures/recommendations

1. The state of Mexico listed 28,161 persons on its National Registry for Missing or Disappeared Persons between December 2006-March 2016.³ However, these are primarily from complaints concerning missing or disappeared Mexican nationals, and do not account for the thousands of disappeared migrants from the Northern Triangle whose whereabouts were last known in Mexico. The Mesoamerican Migrant Movement, among others, estimates that anywhere from 72,000 to 120,000 migrants have disappeared in Mexico in the last ten years.⁴
2. The systemic nature of the problem, and the characterization of many, if not most, of these persons as being ‘forcibly disappeared’ rather than ‘missing’ is reinforced by the discovery of mass graves containing the remains of hundreds of Central American migrants. Just a few examples suffice to illustrate the enormity of the problem: the remains of seventy-two migrants who were massacred and dumped in a mass grave in San Fernando, Tamaulipas in August, 2010; another mass grave with migrants’ remains in the same area uncovered in April, 2011; forty-nine torsos of migrants found in Cadereyta, Nuevo Leon in May 2012; and the report of nine Guatemalans who were last seen in the hands of government officials in February 2014.⁵
3. The rise in human rights abuses of migrants including disappearances correlates strongly with inter-state policies designed to prevent the movement of migrants from Central to North America. Policies such as the Merida Initiative and Plan Frontera Sur, agreements between the United States, Mexico and other Northern Triangle countries, have contributed directly to the increasing numbers of migrants disappearing in Mexico.⁶ The global compact for safe, orderly and regular migration should reduce or eliminate rigid migratory policies of States that expose migrants to heightened risks of becoming victims of human rights violations, including enforced disappearances and arbitrary executions⁷;

³ SEGOB, National Registry of Missing or Disappeared Persons, available at: <http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php> (May 30, 2016).

⁴ *Central American Migration*, MOVIMIENTO MIGRANTE MESOAMERICANO, Jul. 13, 2016, available at: <https://movimientomigrantemesoamericano.org/2016/07/13central-american-migration>.

⁵ The total number of victims from the first three incidents is 314 people, of which only 114 have so far been credibly identified. *Disappeared Migrants: The Permanent Torture* 4, FUNDACION PARA LA JUSTICIA (May 2014), <http://fundacionjusticia.org/cms/wp-content/uploads/2014/09/Disappeared-migrants.pdf>.

⁶ Alejandra Castillo, *Programa Frontera Sur: the Mexican Government’s Faulty Immigration Policy*, COUNCIL ON HEMISPHERIC AFFAIRS (Oct. 26, 2016), <http://www.coha.org/programa-frontera-sur-the-mexican-governments-faulty-immigration-policy>.

⁷ A/HRC/36/39/Add. 2 (par. 80).

4. States are required to take into account their human rights treaty and customary law obligations when designing their migratory policies, and must consider the impact their policies have on the fundamental rights of migrants to life, safety, and dignity. States must, in particular assess the consequences of compelling migrants to resort to smuggling networks, perilous routes, lack of access to sustenance and other risks that may cost them their lives. States must also focus on preventing conditions that allow migrants to fall prey to trafficking and organized criminal networks, thus contributing to heightened risks of becoming victims of enforced disappearances and arbitrary executions⁸;
5. The global compact for migration should emphasize the fundamental human rights of movement; that irregular entry, the attempt to enter in an irregular manner or irregular stay is not a criminal offence⁹;
6. States should monitor newly identified migratory routes with a view to saving lives and upholding human rights in order to prevent unlawful deaths or enforced disappearances¹⁰;
7. States should recognize the importance of striving to end immigration detention. If detention of adult migrants is absolutely necessary as a measure of last resort, proportionate and justified in law¹¹, States should only hold migrants in officially recognized places of detention. States must ensure that such detention is formally registered, including with accurate information on their detention and place or places of detention, and independently monitored, including providing access to the International Committee of the Red Cross¹²;
8. When detention of adult migrants is absolutely necessary as a measure of last resort, proportionate and justified in law, States should ensure migrants are released in a manner permitting reliable verification that they have actually been released and, further, that they have been released in conditions in which their physical integrity and ability to fully exercise their rights is assured¹³;
9. Child migrants must never be detained under any circumstances¹⁴. States are required to entrust social service agencies or protective service agencies to care for child migrants outside of detention facilities until their family members can be

⁸ A/HRC/36/39/Add. 2 (par. 88(a)).

⁹ A/72/335 (par. 96) ; General Comment No. 2, CMW/C/GC/2, par. 24; Inter-American Commission on Human Rights, *Human Rights of migrants and other persons in the context of human mobility in Mexico*, OEA/Ser.L/V/II Doc48/13 (2013), p. 179.

¹⁰ A/72/335 (par. 112).

¹¹ Inter-American Commission on Human Rights, *Human Rights of migrants and other persons in the context of human mobility in Mexico*, OEA/Ser.L/V/II Doc48/13 (2013), p. 179.

¹² A/HRC/36/39/Add. 2 (par. 88(d)).

¹³ A/HRC/36/39/Add. 2 (par. 88(g)).

¹⁴ A/HRC/36/39/Add. 2 (par. 88(d)); Inter-American Commission on Human Rights, *Human Rights of migrants and other persons in the context of human mobility in Mexico*, OEA/Ser.L/V/II Doc48/13 (2013), p. 188.

- contacted, or government agencies can process their claims for asylum or other forms of international protection.
10. States must strictly conform to the prohibition against expulsion, return (*refoulement*) or extradition of migrants to another State where there are substantial grounds to believe that they would be in danger of human rights violations, such as enforced disappearance or arbitrary executions. Any return must be the subject of careful individual assessment and follow due process, including the right to challenge the decision to expel/return¹⁵;
 11. In order to facilitate a safe and regular migration, and to avoid disappearances and arbitrary executions, States should formally document all returns of migrants and ensure that they are carried out in accordance with international standards¹⁶. Migrants should never be deported far from their places of origin or far from their points of entry into the state processing the deportation;
 12. States should prohibit the push-back of migrants to any country where they would be in danger of enforced disappearance or arbitrary executions¹⁷;
 13. States should collaborate closely to identify criminal organizations, which abuse or exploit migrants, notably trafficking networks, and take all possible measures to prosecute and sanction them. They should also adequately investigate any allegation of involvement, collusion or acquiescence of State authorities in these criminal acts, which may end in the disappearances or executions of migrants¹⁸;
 14. States should take all necessary measures to search for and locate disappeared migrants by using all means at their disposal, including forensic investigative resources, and incorporate ante-mortem information in a centralized database¹⁹;
 15. States should investigate all cases of potential enforced disappearances²⁰;
 16. Moreover, States should promptly investigate mass graves of refugees and migrants, and refrain from taking any measures that would derail or delay the investigation²¹;
 17. States should recognize the importance of carrying out investigations of cases of potential enforced disappearances of migrants with the cooperation of the

¹⁵ A/HRC/36/39/Add. 2 (par. 87(a)).

¹⁶ A/HRC/36/39/Add. 2 (par. 88(f)).

¹⁷ A/HRC/36/39/Add. 2 (par. 87(b)).

¹⁸ A/HRC/36/39/Add. 2 (par. 88(c)).

¹⁹ A/HRC/36/39/Add. 2 (par. 89(a)).

²⁰ A/HRC/36/39/Add.2 (par. 90(a)).

²¹ A/72/335 (par. 100).

- authorities of all States involved, as is normally the case for all criminal acts having a transnational character²²;
18. States should develop common methods of recording information and forensic protocols, including from a gender-sensitive standpoint, and international best practices regarding the dignified treatment of the dead to guide States and others²³;
 19. States should create independent national forensic institutes that could have a mandate to conduct independent forensic examinations²⁴;
 20. States should cooperate with and facilitate the work of civil society organizations engaged in search and rescue operations²⁵;
 21. States should also focus on access to justice for migrants. All refugees and migrants and their families should be able, and should be encouraged, to report arbitrary killings and disappearances, file charges and access witness protection, if needed²⁶;
 22. States should ensure that refugees and migrants and their families have access to effective remedies, adequate, effective and prompt reparation for harm suffered and access to relevant information concerning the unlawful death or disappearance and location of the remains²⁷;
 23. The Global compact on migration should assess the importance for States to take all appropriate action to bring to justice all persons presumed responsible for the death or disappearances of refugees and migrants, including through cooperation with other States²⁸;
 24. Finally, the signatories of this Statement strongly urge the relevant UN bodies to establish in cooperation with the governments of Central America and the United States, an independent, objective, transnational Commission on Missing and Disappeared Persons, with investigation, forensics examination and identification, prosecution and punishment, and compensation authority resting on inter-governmental agreement, for all cases of missing and disappeared migrants.

²² A/HRC/36/39/Add. 2 (par. 90(b)); *Disappeared Migrants: The Permanent Torture* 4, Fundación Para la Justicia y el Estado Democrático de Derecho (May 2014), <http://fundacionjusticia.org/cms/wp-content/uploads/2014/09/Disappeared-migrants.pdf> (p. 1-8-15).

²³ A/72/335 (par. 88).

²⁴ *Undeniable atrocities, confronting crime against humanity in Mexico*, p. 19.

²⁵ A/72/335 (par. 111).

²⁶ A/72/335 (par. 102).

²⁷ A/72/335 (par. 103).

²⁸ A/72/335 (par. 99).

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