

DISAPPEARED MIGRANTS FROM CENTRAL AMERICA: TRANSNATIONAL RESPONSIBILITY, THE SEARCH FOR ANSWERS AND LEGAL LACUNAE

**A Report of the Boston University International Human Rights Clinic in Collaboration
with Fundación para la Justicia y el Estado Democrático de Derecho, with field
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Glossary of Terms and Acronyms

American Convention	American Convention on Human Rights
ACA	Asylum Cooperative Agreement
CAFTA-DR	Dominican Republic-Central American Free Trade Agreement
CEAV	<i>Comisión Ejecutiva de Atención a Víctimas</i> (Executive Commission for Attention to Victims) (Mexico)
CEH	<i>Comisión para el Esclarecimiento Histórico</i> (Commission for Historical Clarification) (Guatemala)
CFDP	Inter-American Convention on Forced Disappearance of Persons
CICIG	<i>Comisión Internacional contra la Impunidad en Guatemala</i> (International Commission Against Impunity in Guatemala)
CMW	International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families
CNDH	<i>Comisión Nacional de los Derechos Humanos</i> (National Commission on Human Rights) (Mexico)
COFAMICENH	<i>Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras</i> (family collective in Honduras)
COFAMIDE	<i>Comite de Familiares de Migrantes Fallecidos y Desaparecidos El Salvador</i> (family collective in El Salvador)
COFAMIPRO	<i>Comité de Familiares de Migrantes Desaparecidos del Progreso</i> (family collective in Honduras)
CONADEH	<i>Comisionado Nacional de los Derechos Humanos</i> (National Commission for Human Rights) (Honduras)

CONAPROHM	<i>Consejo Nacional Para La Protección al Hondureño Migrante</i> (National Council for the Protection of Honduran Migrants)
CPED	International Convention for the Protection of All Persons from Enforced Disappearance
EAAF	<i>Equipo Argentino de Antropología Forense</i> (Argentine Forensic Team)
ECAP	<i>Equipo de Estudios Comunitarios y Accion Psicosocial</i> (Guatemalan nonprofit organization)
FAFG	Forensic Anthropology Foundation of Guatemala
FEBPD	<i>Fiscalía Especializada de Búsqueda de Personas</i> <i>Desaparecidas</i> (Specialized Prosecutor for the Search of Disappeared Persons) (Mexico)
FJEDD	<i>Fundación para la Justicia y el Estado Democrático de</i> <i>Derecho</i>
FONAMIH	<i>Foro Nacional para la Migración en Honduras</i> (National Forum on Migration in Honduras)
FOSMIH	<i>Fondo de Solidaridad con el Migrante Hondureño</i> (Fund for Solidarity with the Honduran Migrant) (Honduras)
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court on Human Rights
ICRC	International Committee of the Red Cross
INACIF	<i>Instituto Nacional de Ciencias Forenses de Guatemala</i> (Guatemalan National Forensic Institute)

INM	<i>Instituto Nacional de Migración</i> (National Immigration Institute) (Mexico)
IO	International organization
MENAMIG	<i>Mesa Nacional para las Migraciones</i> (nonprofit organization)
MINEX	<i>Ministerio de Relaciones Exteriores</i> (Ministry of Foreign Affairs) (Guatemala)
NGO	Non-governmental organization
Northern Triangle	Collective term for Honduras, Guatemala and El Salvador
OAS	Organization of American States
PDDH	The <i>Procuraduría para la Defensa de Derechos Humanos</i> (Human Right's Ombudsman)(El Salvador)
FGR	<i>Fiscalía General de la República</i> (Attorney General of the Republic) (Mexico)
PNC	<i>Policía Nacional Civil</i> (National Police) (Guatemala)
PNR	<i>Programa Nacional de Resarcimiento</i> (National Reparations Program) (Guatemala)
SEIDO	<i>Subprocuraduría Especializada en Investigación de Delincuencia Organizada</i> (Specialized Unit for Investigating Organized Crime) (Mexico)
SRE	<i>Secretaría de Relaciones Exteriores de Honduras</i> (Ministry of Foreign Affairs and International Cooperation) (Honduras)
TNC	transnational corporation

EXECUTIVE SUMMARY

Within this past decade alone in Mexico, Honduras, Guatemala, El Salvador and the United States, combined, between 75,000 and 120,000 migrants have disappeared. The exact number is unknown due to the lack of reporting and reliable data in the region. For too long, families have suffered re-victimization at the hands of government authorities who ignore their demands to investigate disappearances, fail to follow up when they open investigations, and handle the process of returning migrant's remains in a disrespectful way. Nor have Mexico, the Northern Triangle countries or the United States provided adequate reparations to the families for the loss of their loved ones—most of whom were the principal family breadwinners—even when the governments are at least partly responsible or complicit in the disappearance.

Under international and regional law, Mexico and the Northern Triangle countries have obligations to respond effectively to migrant disappearances. These obligations include conducting prompt and thorough investigations, prosecuting perpetrators, and identifying and respectfully repatriating remains. To comply with these obligations, Mexico and the Northern Triangle countries, along with the United States, must engage in more effective regional cooperation to locate migrants and provide justice to the families. Moreover, these five states must address all disappearances – forcible, enforced, non-forcible, and non-enforced disappearances.

Along the migratory route, migrants are subjected to forcible disappearances, enforced disappearances, and non-forcible or non-enforced disappearances. *Forcible* disappearances occur when private, non-state actors cause the disappearances and the government is not involved, while *enforced* disappearances occur when government authorities are responsible for, take part in, or knowingly allow the disappearances to occur. *Non-forcible or non-enforced*

disappearances occur without any human intervention, such as when a migrant succumbs to illness during transit or suffers a mishap along dangerous terrain. Often times, the source of the disappearance is unknown. Moreover, when a disappearance occurs, there is usually a delay in reporting, since the family has not yet become aware of the fact. While international and domestic laws have focused almost entirely on *enforced* disappearances, the five states have a duty to treat forcible, non-forcible, and non-enforced disappearances with the same level of attention and response as those that are *enforced*.

This report builds on the urgent call from the families across the region for a transnational response to the crisis of migrant disappearances. In particular, this Report calls for the reform of the Mexican External Support Mechanism for Search and Investigation [Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación] (“MAE”). This transnational mechanism must be significantly improved to ensure successful exchange of information, investigations, prosecutions and repatriation of remains throughout the region.

Established in 2015 as a result of the efforts of civil society and family collectives, the MAE created an avenue for migrants and their families, including those outside of Mexico, to file claims in Mexico and participate in criminal proceedings in cases of disappearances. Currently, substantial delays, lack of political will, lack of accessibility, and lack of transnational coordination render the system ineffective.

The MAE’s mandate to provide access to justice for families outside of Mexico must be fully implemented through the creation of clear guidelines that spell out the obligations of both Mexican authorities and authorities in states of origin and destination. The MAE must be strengthened by the creation of field offices in the Northern Triangle countries and the United States. These offices should be staffed by competent representatives who work closely with

families of the disappeared and civil society to handle claims. In order to promote accountability, MAE offices should produce periodic internal reports to track the progress of individual cases, and annual public reports noting statistics on, and the results of claims. The MAE should collaborate with the Argentine Forensic Team [Equipo Argentino de Antropología Forense] (“EAAF”), specifically EAAF’s *Proyecto Frontera* which has established local forensics databases in the region, with a shared genetic database for the identification, DNA matching, and repatriation of remains to the families.

This report concludes with four thematically-organized sets of recommendations, aimed at the transnational and national levels. The first theme addresses the need for a more robust state response to investigate all disappearances. The second theme addresses the particular phenomenon of *enforced* disappearances, and calls on states to conduct prompt and effective prosecutions to hold those responsible to account, and signal to future perpetrators that such crimes will not be tolerated by the state. The third theme emphasizes the need for proper procedures in the identification and repatriation of remains. The fourth theme calls on all states to provide adequate reparations to victims of disappearances, including the families. As mentioned above, the MAE must play a more assertive monitoring and empowering role, ensuring that states comply with their duty to investigate, prosecute, identify and repatriate remains, and provide adequate reparations with respect to all disappearances.

International and Regional Legal Framework

As States Parties to the International Convention for the Protection of All Persons from Enforced Disappearance (CPED), Mexico and Honduras are required to ensure that rights under this treaty are respected and enforced. Guatemala is a signatory to the CPED, but has not yet ratified this Convention. Neither El Salvador nor the United States are States Parties to the CPED.

Confronting a crisis that affects individuals and communities in all five of these countries, Guatemala, El Salvador and the United States must ratify the CPED and cooperate to ensure its implementation across the region. The CPED requires States Parties to establish mechanisms that effectively respond to disappearances, guarantee the affected families' right to truth and justice, properly and respectfully handle the repatriation of remains, and fully cooperate with other States Parties to achieve these ends. Until Guatemala, El Salvador and the United States ratify the CPED, Mexico and Honduras have obligations under the treaty to cooperate with the other three countries to fulfill its requirements.

All four countries, including El Salvador, are States Parties to the International Convention on the Protection of the Rights of All Migrant Workers ("CMW"), which requires them to protect the rights of migrants and their families. While the U.S. is not a party to either of the two Conventions, it should nevertheless participate in the transnational mechanism, as thousands of migrants have disappeared over the last decade, both at the border between the U.S and Mexico and within the U.S., where more than 2,200 migrant remains have been found since 2014.¹ Moreover, the U.S. is the destination for most, if not all, migrants in the region, and U.S. migration containment policies are a major cause of human rights abuses against migrants, causing thousands to disappear.

As States Parties to the American Convention on Human Rights, Mexico and the Northern Triangle Countries are subject to the jurisdiction of the Inter-American Commission on Human Rights (IACHR) and the Inter-American Court on Human Rights (IACtHR), including the Inter-American Convention on the Forced Disappearance of Persons (CFPD). States Parties to the CFPD, including Mexico and the Northern Triangle countries, must conform their domestic law

¹ Missing Migrants Project, <https://missingmigrants.iom.int/region/americas?region=1422> (last visited Nov. 21, 2020).

to its requirements, particularly its definition of enforced disappearances as an offense bearing state responsibility, and the obligation to prosecute and punish perpetrators accordingly. The IACtHR has interpreted an enforced disappearance as one that occurs with the assistance, complicity, or tolerance of the state. States have a duty to investigate cases that fall under the definition of a forced disappearance when the state is not involved, or even when it is not clear who perpetrated the crime. Moreover, the IACtHR has interpreted the scope of state obligation to include the prevention of enforced disappearances through all means of a legal, political, and administrative nature. Most importantly, the CFPD calls for state parties to cooperate with one another to prevent, punish, and eliminate the problem of forced disappearances. The American Convention also requires states to provide effective judicial measures to victims of human rights violations.

The findings, conclusions and recommendations in this Report, based on five years of extensive research and in-country fieldwork, highlight that the families' demands for truth and justice can only be satisfied through a transnational solution. On behalf of the families, this Report calls for improvements to the MAE. The MAE must be reformed to fulfill its mandate of providing access to justice for families by ensuring robust investigations, prosecutions, data sharing, a joint protocol with EAAF for forensic investigations, and respectful return of remains of missing migrants. Only such a transnational response can effectively address the widespread crisis of migrant disappearances in the region.

Mexico

As of 2020, the Mexican government has reported 61,000 disappearances in the country.² Although Mexico has a substantive legal framework that is largely consistent with its international legal obligations, its implementation of the laws is weak, or there are significant barriers to access legal remedies. For instance, Mexican law is largely inclusive, providing definitions for “direct” and “indirect” victims of human rights violations, which include those directly suffering harm or impairment, as well as their relatives or those with a close relationship to the direct victim. However, in order to attain legally recognized victim status and enjoy the benefits and remedies provided by Mexican law, migrants and their families must file their claim in Mexican territory, a requirement that is not possible for most Central American migrants to meet. Furthermore, there is a lack of coordination between federal and state authorities in the implementation of Mexican law, and concrete pathways to remedies have not been developed. Mexican authorities require migrants to meet a high standard of proof to establish that an administrative agency or federal employee was responsible or involved with a disappearance. However, migrants and their families often do not have enough information to successfully file a claim. Finally, other factors such as fear of detention, deportation, reprisals, or lack of trust in state authorities prevent migrants from reporting crimes. The criminalization of migration in Mexico, influenced by United States policy, has pushed migrants to more dangerous routes, exacerbating the crisis of migrant disappearances.

As a state party to the CMW, CPED, the American Convention on Human Rights and the CFPD, Mexico must comply with international obligations to conduct prompt investigations of all disappearances, prosecute those responsible for cases of disappearances, and properly handle the

² The Mexican government has reported 61,000 disappearances in the country, more than 37,000 non-identified remains and various clandestine graves. *See* Equipo Argentino de Antropología Forense, México, <https://eaaf.org/eaaf-en-el-mundo/mexico/>.

identification and repatriation of remains in a respectful and dignified manner. Mexico is expressly bound by the jurisdiction of the IACtHR, which emphasized in *Velasquez-Rodriguez v. Honduras* the duty of state parties to the Inter-American system to conduct prompt and effective investigations of all disappearances.

In 2017, Mexico enacted the General Victims Law to define victims of human rights violations, and guarantee remedies to them. Although the Law facially provides comprehensive support and redress for victims of human rights violations and allows both direct and indirect victims to access the Law's remedies, a number of obstacles have prevented individuals from benefiting from it. For instance, migrants and their families often encounter difficulties in obtaining "victim" status because they cannot travel to Mexico to file an application or to follow through with the required procedures. Moreover, lack of cooperation and coordination between and among state and federal authorities creates serious obstacles for victims to access the benefits of the Law.

In 2007, Mexico established its National Commission on Human Rights with the goal of addressing the violations of human rights recognized by Mexican law. The National Commission on Human Rights provides support in addition to the General Victims Law. Similar to the challenges presented by the General Victims Law, victims of human rights violations often cannot file claims because they cannot travel to Mexican territory. Even if victims of human rights violations are able to file a complaint within Mexican territory, the burden of proof they have to meet is onerous, making yet another avenue for redress difficult for families. Assuming that victims of human rights violations are able to file a complaint within Mexican territory and the National Commission on Human Rights finds a violation, remedies are limited and often ineffective.

Recommendations for Mexico

- Mexico must promptly, thoroughly, and effectively address migrant disappearances, fulfilling its obligations under the MAE.
- Mexico must ensure that, in accordance with applicable international and regional law, the crime of enforced disappearance is defined in a consistent way across national, state, and local levels.
- Mexico must establish clear institutional routes for the filing of a claim, including the establishment of designated government authorities responsible for the handling of migrant disappearances.
- Mexico must promptly and diligently investigate cases of disappearances in its territory, regardless of the victim's nationality and whether the claim was filed in Mexican territory.
- Mexico must cooperate with the Northern Triangle countries and the United States to the extent necessary to carry out any investigations of disappearances.
- The Mexican government must facilitate access to information to victims and their families, regardless of their nationality and location, concerning the circumstances of a disappearance, the progress and results of an investigation, and the fate of the disappeared.
- Mexico must regularly exchange information with the Northern Triangle countries and the United States upon request of families of the disappeared or their governments, and promptly transmit information of a disappearance, as well as of the status of an investigation through the MAE.
- Mexico must collect, examine, and preserve the bodies and remains of the disappeared according to best practice protocols such as that of the Argentine Forensics Team, and take all reasonable measures necessary to identify the remains and determine the cause of death.
- Upon identification, Mexico must ensure that families of the deceased are promptly informed and, where appropriate, facilitate the repatriation of remains in a manner that is dignified and respectful to the deceased and the family.
- Mexico must adopt all appropriate measures to prevent migrant disappearances. Specifically, Mexico should reform its immigration strategy, implement all migration policies strictly, consistent with its international human rights obligations, and revisit its compliance with US migration policies that are inconsistent with human rights.
- Mexico must reduce the criminalization of migration through the cancellation of migration agreements that have an adverse impact on the human rights of migrants.
- Mexico must adopt a comprehensive national plan to combat human rights violations against migrants, ensuring a consistent and concerted effort across all levels of government.
- Mexico must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and/or identification of remains.

Honduras

Within only five months – from March 2019 to August 2019 – an estimated 741 Honduran migrants were reported missing.³ This estimate does not include the vast number of cases that remain unreported or were reported, but not registered by the government. As a State Party to CPED, CMW, the American Convention, and the CFDP, Honduras must comply with its international obligations to conduct prompt investigations of all disappearances, prosecute those responsible for cases of enforced disappearances, and properly handle the identification and repatriation of remains in a respectful and dignified manner. Honduras is subject to the jurisdiction of the IACtHR, which emphasized in *Velasquez-Rodriguez v. Honduras* the duty of state parties to conduct prompt and effective investigations of all disappearances. Moreover, as the Respondent state in *the Velazquez-Rodriguez* case, Honduras is directly bound by the Court’s decision.

Honduras’ domestic law and institutional capacity are currently insufficient to meet its legal obligations concerning its disappeared nationals. The Honduran Civil and Penal codes incorporate weak or vague definitions that do not trigger the responsibility of state officials to immediately conduct investigations of disappearances. The Civil Code defines a person who disappeared as “absent,” which does not invoke the same responsibilities as someone who is “missing” or “disappeared.” The Penal Code definition of “enforced disappearance” is similarly deficient, by failing to impose the “most severe penalty” on those who commit an enforced disappearance. It also lacks specific provisions requiring that authorities implicated in such a disappearance be held accountable. Furthermore, the penal code does not list all of the mitigating circumstances listed in the CPED, which include revealing information as to the disappeared

³ *Honduras registra 741 migrantes desaparecidos, 18 % de ellos mujeres*, DEPARTAMENTO 19, Aug. 30, 2019, <https://departamento19.hn/honduras-registra-741-migrantes-desparecidos-18-de-ellos-mujeres/>.

person's whereabouts, helping to clarify enforced disappearance cases, and identifying (other) perpetrators.

In 2014, Honduras enacted the Law on the Protection of Migrants and their Families to assist migrants in vulnerable situations abroad. However, this Law has scant reference to migrant disappearances. Its only reference to disappearances is the establishment of the Fund for Solidarity with the Honduran Migrant (FOSMIH), which provides financial assistance to families of Honduran migrants who *died abroad*, and provides the only route for Hondurans to recover the remains of their relatives. FOSMIH does play a useful, though limited, role. Families who need financial assistance for suffering from the disappearance of a relative are eligible to receive such assistance after proving that the missing relative was found deceased. Claiming that the relative is missing, but not dead, is not a sufficient claim for eligibility.

In 2018, Honduras enacted a decree (Section B), which clarifies the rules of FOSMIH, and identifies new mechanisms for the search of missing migrants, prosecution of perpetrators, and the identification and repatriation of remains. However, the Decree's terms are limited. To be eligible for financial assistance through FOSMIH, families are still required to prove the missing relative is dead. With respect to migrant disappearances, the search procedures in the Decree relate only to the identification of remains. The new Penal Code definition announced in the Decree with regard to prosecution of perpetrators is also limited in comparison to the CPED's definition. In the same year, Honduras enacted the Law of the National Registry of Data of Missing or Disappeared Persons to create a unified, consolidated database of missing Hondurans. These combined efforts represent a major step in the right direction, and demonstrate the Honduran government's willingness to address the crisis.

However, these efforts have fallen short of Honduras' international obligations to address and prevent disappearances. Honduras provides no clear institutional route to report a disappearance. Families may file a complaint with the Honduran National Police, submit a claim to the Ministry of Foreign Affairs, or file a claim with the MAE. However, due to deep distrust of police and other government authorities, delays in the process, and inability to travel to Mexico, families are left without an effective and readily available way to report a missing relative. Moreover, while the CPED authorizes the extension of jurisdiction abroad, Honduras has largely ignored its obligations towards disappeared nationals abroad. One of the most frequent complaints by families is the disrespectful handling by government authorities of remains of missing migrants. Families have received remains which they believe are not their family members, have received bodies with missing parts, or have received ashes of their loved ones in the absence of their permission for cremation. Families complain that they find themselves involved in lengthy disputes with government agencies to retrieve the right remains, or missing body parts of their relatives.

Honduras, like the other Central American countries, is unable to address migrant disappearances alone. A regional mechanism is urgently needed to provide the necessary support for Honduras' current legal and institutional efforts in addressing migrant disappearances.

Recommendations for Honduras

This Report calls for Honduras to establish effective national mechanisms that provide clear institutional routes to report disappearances, allow families to participate in investigations, and ensure the proper handling of remains returned to the families.

- Honduras must align the definition of “enforced disappearance” with the CPED definition, and make a serious effort to satisfy the rights of missing migrants abroad by asserting jurisdiction over disappearances abroad.

- Honduras should also have consistent definitions of “missing,” “disappeared,” and “forcibly disappeared” in all of its civil and penal codes, at both local and national levels, in accordance with international legal definitions and those of the transnational mechanism.
- Honduras must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and/or identification of remains.
- Honduras should communicate with the family victims at least every six months to report on the progress of any investigation, prosecution, or repatriation.
- Honduras should allow family members to participate in all stages of the criminal proceedings, provide testimony, and obtain adequate reparations as part of judicial remedies.
- Honduras’ National Prosecutor’s office should incorporate an “Enforced Disappearance” unit, considering the large number of outstanding enforced disappearance cases.
- Honduras must guarantee the integrity of the chain of custody for human remains, and dispose of those unclaimed and unidentified in a dignified and respectful manner.
- Honduras must ensure that access to reparations is not contingent upon the finding of remains or declaration of death.
- Honduras must also incorporate international forensic protocols for human rights investigations into its domestic criminal procedures.

Guatemala

Although migrant disappearances are a pervasive issue in Guatemala, the number of disappeared migrants is unknown and continues to be difficult to estimate.⁴ Like other Central American countries, Guatemala faces extreme challenges in collecting data on migrant disappearances because there is no clear, functioning mechanism for reporting disappearances.

As a State Party to the CMW, the American Convention, the IACtHR and the CFDP, Guatemala must comply with its legal obligations to conduct prompt investigations of all disappearances, properly handle the identification and repatriation of remains, prosecute those responsible for cases of enforced disappearances, and provide adequate reparations to those affected by disappearances.

⁴ As of 2020, the Argentine Forensic Team’s *Proyecto Frontera* lists 111 missing migrants from Guatemala in its database. See Equipo Argentino de Antropología Forense, *Estadísticas Proyecto Frontera 2010 – 3 de abril de 2020*, <https://eaaf.org/wp-content/uploads/2020/04/Estadisticas-Proyecto-Frontera-3abr2020.pdf> [EAAF *Proyecto Frontera*]. In 2018, *Mesa Nacional para las Migraciones* (MENAMIG) estimated that based on filed claims and unofficial reports at least 393 Guatemalans had disappeared in that year alone. See *Menamig estima 393 migrantes guatemaltecos desaparecidos*, LA HORA, Aug. 25, 2018, <https://lahora.gt/menamig-estima-393-migrantes-guatemaltecos-desaparecidos/>.

Although the Guatemalan Constitution, Penal Code, the Law for the Search of Disappeared Women, and the 2016 Migration Code offer some protections to migrants and their families, the State fails to fully comply with its international legal obligations because of gaps in the legal framework and inadequate implementation.

The Guatemalan Constitution, for example, guarantees a number of human rights tied to disappearances. These include freedom of movement, the right to due process, and the right to petition the government for investigations. Additionally, the Penal Code does not explicitly address disappearances, but mandates harsh sentences for kidnapping or deprivation of liberty. In order to address violence against women, the country has also enacted the Immediate Search for Missing Women Law, which establishes a comprehensive registry of missing women. While the Immediate Search for Missing Women Law was not created to address migrant disappearances, it has led to positive results such as the 2018 creation of a national alert system for when a woman disappears.

Finally, the Migration Code of 2016 offers extensive protections to victims of disappearances. The Code establishes a reporting mechanism and a commitment to inter-governmental cooperation on issues relating to the search, prosecution and prevention of crimes relating to migration. The Migration Code entered into force on 1 May 2017, but has yet to be fully implemented.

This recent legislative change is a step in the right direction, but until full implementation of the regulations, there is no way of knowing how effective the new law will be. Additionally, issues like inconsistent definitions of the term “disappearance” in Guatemalan law and a lack of a proper mechanism for reporting and investigation continue to be barriers for those seeking to find their loved ones.

Families can report to multiple government agencies or file a complaint in Guatemala using the MAE. While state authorities claim that the range of options for reporting gives families greater flexibility in where and how they can report, family members claim that the lack of a clear route to file a missing person report has instead created confusion. Coupled with economic and language barriers and discrimination from government officials, the lack of a streamlined reporting procedure precludes proper investigations. When families succeed in filing a report, systemic lack of coordination between government agencies often defeats the effectiveness of those investigations. The lack of coordination results in families not getting answers, retrieving remains, or getting reparations for the disappearance of their loved ones. Although Guatemala's domestic reparations fund for the families of deceased migrants through the *Ministerio de Relaciones Exteriores* ("MINEX") is an encouraging development, in practice, the fund has been inaccessible to many families, and lacks clear and transparent qualifying criteria.

Recommendations for Guatemala

This report calls for Guatemala to implement effective national mechanisms that provide streamlined institutional routes to report disappearances, prosecute those responsible for cases of enforced disappearances, ensure the proper handling of remains returned to the families, and provide adequate reparations. In order to achieve this, Guatemala must fully implement the 2016 Migration Code in accordance with these principles.

- Guatemala must urgently create a comprehensive, streamlined complaint and investigation mechanism for disappearances that complies with the CFDP, as Guatemalan civil society has been demanding.
- Guatemala must make a sustained effort to guarantee the rights of missing migrants and their families by asserting jurisdiction over disappearances of its nationals abroad. The state must fully and systematically cooperate with other countries to carry out investigations.
- In order to facilitate effective prosecution, the state must incorporate a consistent definition of disappearance in its penal and civil code, and ensure that this definition translates to practice.

- Guatemala should cooperate with civil society and the families of the disappeared on the creation of a shared genetic database managed by EAAF's *Proyecto Frontera*.
- The state must work through the MAE to ensure that remains are promptly returned to family members, in the form and manner requested by the families.
- Guatemala must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and/or identification of remains.
- The Guatemalan government must facilitate access to adequate reparations for family members. The state should create a mechanism that will allow families to request and receive the benefits promised to them under the Mexican law. Additionally, Guatemala must streamline and publicize the criteria for the national MINEX repatriation fund.

El Salvador

The number of Salvadoran migrants who have disappeared is unclear, but since 2013 the state's Ministry of Foreign Affairs has received 786 reports of Salvadorans missing abroad,⁵ and as of April 2020, EAAF lists 343 missing migrants from El Salvador in its database.⁶

According to its international obligations under the CMW, the American Convention, the IACtHR and the CFDP, El Salvador is required to conduct prompt investigations of all disappearances, prosecute those responsible for cases of enforced disappearances, properly handle the identification and repatriation of remains, and provide adequate reparations to those affected by disappearances.

Although El Salvador does not have a specific law that addresses migrant disappearances, the Constitution, the Special Law for the Protection and Development of Salvadoran Migrants and their Families, and the Penal Code provide some relevant protections. The Salvadoran Constitution guarantees certain rights relevant to migrants and their families, such as the right to migrate, the right to life, the right to physical and moral integrity and the right to petition the government.

⁵ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, *Consideration of reports submitted by States parties under article 73 of the Convention - El Salvador* CMW/C/SLV/2 ¶ 155 (February 19, 2014).

⁶ EAAF Proyecto Frontera, *supra* note 4.

In 2011, the Salvadoran government passed the Special Law for Migrants to protect the rights of Salvadoran migrants and their families. This Law promises to coordinate efforts and activities that benefit Salvadoran migrants and to create the necessary technical units to assist Salvadoran migrants and their families within the national territory and abroad. The Special Law extends the government's obligations to Salvadoran migrants in transit and to those who have reached destination countries. The Law establishes impressive goals, but it fails to list any specific provisions outlining the options available to Salvadoran migrants and their families, or to establish any mechanism for families to report violations. Families and advocacy organizations claim that the Special Law appears to be more of a political and public relations tactic than an advancement on migrant protections.

Like the other Northern Triangle countries, El Salvador's Penal Code criminalizes deprivation of liberty, kidnapping and extortion. Additionally, the law criminalizes enforced disappearances occurring when a Salvadoran public official detains someone and refuses to disclose his or her whereabouts. Unfortunately, the limited definition of enforced disappearance excludes many of the situations faced by migrants.

Various government entities have taken steps to act on disappearances, but the effort to meaningfully address this serious problem and advocate for the victim's families still rests with civil society. As in the other Northern Triangle countries and Mexico, the lack of a clear route for reporting a disappearance, lack of transnational cooperation, insufficient resource allocation, absence of political will and failure to follow-up with families continue to be problems. Additionally, most families are unable to obtain adequate reparations.

Recommendations for El Salvador

This report calls for El Salvador to implement effective national mechanisms that provide clear institutional routes to report disappearances, prosecute those responsible for enforced disappearances, ensure the proper handling of remains returned to the families, and provide adequate reparations.

- The State should ratify the treaties that address the issue of migrant disappearances, specifically the International Convention on the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons. El Salvador should amend its domestic legal system so that it conforms with these treaties, such as reforming its Penal Code definition of enforced disappearance.
- El Salvador must create a comprehensive legal framework that guarantees and protects the rights of migrants and their families. This framework should ensure effective investigation by developing a streamlined process to be followed by families when reporting a disappearance.
- The state must facilitate effective prosecutions by adopting a clear definition of disappearance, and either amending its Special Law on Migrants or adopting a new law that adequately addresses migrant disappearances.
- El Salvador must make a sustained effort to satisfy the rights of missing migrants by asserting jurisdiction over disappearances of its nationals abroad. The state must fully and systematically cooperate with other countries to carry out investigations.
- Salvadoran authorities must cooperate to strengthen the forensic database established with the help of EAAF's *Proyecto Frontera*. The state must ensure inter-institutional cooperation and that the database has the appropriate financial resources it needs to function.
- El Salvador must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and/or identification of remains.
- The state must facilitate access to adequate reparations for family members and that remains are promptly returned to family members, in the form and by the means requested by the families.

Conclusion

Each year, thousands of migrants disappear in the region. Families of the disappeared suffer on a daily basis with little to no support from their governments. The states make little, if any, effort to track the total number of disappearances and tackle the issue in a coordinated manner. Instead, the states are signing Safe-Third Country agreements with the United States, which will

only exacerbate disappearances. The U.S. has taken little responsibility in addressing migrant disappearances despite being the ultimate destination for the majority of migrants in the region. Migration and the disappearances that result from this phenomenon are a regional phenomenon requiring regional solutions. Each country must make a serious effort to establish clear institutional routes and procedures within its own national mechanisms, and cooperate with the MAE in order to expedite investigations, bring perpetrators to justice, and facilitate the process for identification and repatriation of remains. To effectively address migrant disappearances, all five states must individually take responsibility at home while simultaneously coordinating amongst each other on a regular basis through an already-existent transnational mechanism, the MAE. Families have been demanding such regional efforts for decades. It is time that all five states take the demands for regional coordination seriously and respect the human rights of disappeared migrants and their families.

DISAPPEARED MIGRANTS FROM CENTRAL AMERICA: TRANSNATIONAL RESPONSIBILITY, THE SEARCH FOR ANSWERS AND LEGAL LACUNAE

I. INTRODUCTION

Within a single decade, from 2006 to 2016, estimates are that 72,000 to 120,000 migrants from Mexico and Central America have disappeared in Mexico.⁷ Humane Borders, in partnership with the Pima County Medical Examiner's Office, has collected data on 3,339 migrant deaths in the United States between 1999 and 2018.⁸ The exact number of disappeared migrants in Mexico and the United States is unknown and difficult to uncover given the nature of irregular migration and the lack of coordination on data collection among governments along the migrant route.⁹ Despite a lack of definitive data, evidence such as mass graves containing the remains of hundreds of Central Americans and the testimony of family members of missing migrants speak to a devastating and unrelenting tragedy.¹⁰ Consequently, families of disappeared migrants suffer for months and often years without closure as to their relative's whereabouts, with little or no support from their governments. Because migrant disappearances occur throughout the region and the states involved do not coordinate effectively to address these disappearances, regional solutions

⁷ *Central American Migration*, MOVIMIENTO MIGRANTE MESOAMERICANO, Jul. 13, 2016, <https://movimientomigrantemesoamericano.org/2016/07/13/central-american-migration/> (last visited July 25, 2020) [MOVIMIENTO MIGRANTE MESOAMERICANO]. This report does not cover laws and other efforts to address disappearances in the United States, as those will be discussed in a separate, forthcoming report also authored by the Boston University School of Law International Human Rights Clinic.

⁸ Humane Borders, 1999-2018 Recorded Migrants Deaths and Human Borders Water Stations, Arizona OpenGIS Initiative for Deceased Migrants (2018), https://humaneborders.org/wp-content/uploads/deathmapcumulative_letter_2018.pdf (A non-profit organization dedicated to creating a just and humane environment along the U.S.-Mexico border).

⁹ Interview with Vinicio Sandoval, Director, Grupo de Monitoreo Independiente de El Salvador at 2 (Jan. 21, 2019) [Interview with GMIES]. See also *The missing in Latin America: Families will not stop searching, nor will we stop helping*, INTERNATIONAL COMMITTEE OF THE RED CROSS (July 23, 2019), <https://www.icrc.org/en/document/missing-latin-america-families-will-not-stop-searching>.

¹⁰ See *infra* Ch. IV. See also Ana Lorena Delgadillo, *Dangerous Migration: Women Search for Disappeared Relatives in Mexico*, WOMEN ACROSS FRONTIERS, June 17, 2016, <http://wafmag.org/2016/06/dangerous-migration-women-search-disappeared-relatives-mexico/>. See also *Central American Migration*, MOVIMIENTO MIGRANTE MESOAMERICANO, *supra* note 7.

are necessary. This report is therefore an urgent call by the families of the disappeared and those who represent them for a responsive regional, or transnational, approach.

Under international and regional law, Honduras, Guatemala, and El Salvador (“the Northern Triangle countries”), along with Mexico and the United States must effectively respond to migrant disappearances. This includes: (1) conducting prompt and thorough investigations of all reported disappearances; (2) assuring the prosecution of perpetrators who commit or help commit an enforced disappearance; (3) undertaking proper identification, handling, and repatriation of remains; (4) providing adequate reparations to the families; (5) guaranteeing the families’ right to the truth; and (5) engaging in effective regional cooperation. To fulfill such obligations, the Northern Triangle countries, Mexico, and the United States must coordinate on a regular basis and ensure the proper functioning of Mexico’s Mechanism of External Support for the Search and Investigation of Disappearances (“MAE”). The MAE is a regional mechanism established to allow families to access administrative and judicial institutions in Mexico to report the disappearance of a relative, launch an investigation, and participate in criminal proceedings against alleged perpetrators of enforced disappearances.

This report is based on fieldwork and research conducted over the course of five years by the Boston University International Human Rights Clinic (“IHRC”), in partnership with Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD) and Peace Brigades International (PBI), in Mexico, Honduras, Guatemala and El Salvador.¹¹ Field interviews included meetings with family collectives and other non-governmental organizations in the region who have been at

¹¹ The IHRC is a clinical program at Boston University School of Law that exposes students to the practice of law in the human rights context in the areas of immigration, refugee, asylum, and humanitarian law at the local, national, regional, and international levels. IHRC partnered with PBI to conduct fieldwork in Mexico and in Honduras. IHRC has closely partnered with FJEDD in Guatemala, Mexico and El Salvador, and engaged in ongoing collaboration with FJEDD to understand and develop optimal recommendations based on the priorities and best interests of the families.

the forefront of addressing migrant disappearances: COFAMIDE in El Salvador; COFAMIPRO and COFAMICINEH in Honduras; and FUUNDEC in Mexico. Interviews with international and regional organizations included Human Rights Watch, Amnesty International, the International Committee of the Red Cross, the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration (IOM), and the Missing Migrants' Project. The IHRC team interviewed relevant government officials in each country. Additional interviews with non-governmental organizations included Fray Juan de Larios, the Saltillo Migrant Shelter and the Scalabrinian Sisters (Mexico), CONMIGRANTES and COMCAVIS TRANS (El Salvador), and the Equipo de Estudios Comunitarios y Acción Psicosocial and MENAMIG (Guatemala).¹²

Following the Introduction, this report sets out Global Recommendations in Section II, followed by a detailed discussion of the international and regional legal frameworks governing migration and migrant disappearances in the region in Section III. Section IV addresses the causes and consequences of migrant disappearances across the region. Sections V through VIII analyze each country's approach to migrant disappearances; the factors causing migration; domestic laws relevant to migrant disappearances; challenges in dealing with disappearances; and recommendations for addressing the problems.

II. GLOBAL RECOMMENDATIONS

The Northern Triangle countries, Mexico, and the United States must comply with their international legal obligations to respond to the demands of the families of thousands of migrants who have disappeared. This includes cooperating through a regional mechanism, primarily the MAE, to effectively conduct prompt and thorough investigations, prosecution of perpetrators, and identification and repatriation of remains. It is essential for Mexico, the Northern Triangle

¹² A full list of interviews in each country appears at the end of the report, Appendix I.

countries, and the United States to cooperate closely to effectively address migrant disappearances in the region. Regardless of whether the disappearance was conducted by state or private actors, the five states have an obligation to respond to *all* disappearances in the region. Families of the disappeared have suffered for far too long, and it is time for a coordinated and concrete response to guarantee their legal rights to justice and the truth.

The families of disappeared migrants across the region and the organizations that advocate for them agree that there is an urgent need for a transnational approach through which all relevant states cooperate to search for disappeared migrants; hold perpetrators of enforced disappearances accountable; and ensure proper identification and handling of remains. This report sets out recommendations to improve the functioning of an already existing regional mechanism: the MAE. States must cooperate closely to allow the MAE to fulfill its mandate to assist families in the search for their disappeared relatives, allow them to fully participate in criminal proceedings against perpetrator(s), and assist with identifying and repatriating the remains of their loved ones. The MAE must be redesigned to work closely with family collectives and other relevant actors to ensure the families' demands are taken seriously and implemented by States Parties, in accordance with regional and international legal obligations. The MAE must ensure that all cases will be pursued and addressed in a non-discriminatory manner, without distinction of any kind--race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

With regard to *enforced* disappearances, the MAE must become a more effective tool for monitoring and empowering states to conduct thorough investigations and prosecutions to end enforced disappearances and help bring truth and justice to the families. Enforced disappearances occur when *state actors* are directly or indirectly involved by authorizing or acquiescing in a

disappearance carried out by private actors. State actors involved in enforced disappearances must be brought to justice for their part in the commission of the offense.¹³ All states have a responsibility to prosecute state actors involved in any disappearance, and to prevent such disappearances from occurring. All states have a duty to prosecute state officials involved in disappearances, as a matter of both international and domestic law.

The MAE should designate specially-trained representatives or consular officers assigned to each state involved: Honduras, Guatemala, El Salvador and the U.S. These representatives should regularly meet with state authorities, at least every six months, to obtain information on cases of disappeared migrants. The MAE representatives should be authorized to collect data, track all disappearances reported in the corresponding state, and report to the MAE about new cases or update pending cases. For disappearances suspected to have occurred in a different state, MAE representatives should immediately alert that state, or follow-up on prior reporting.

The MAE should, with permission and support by each state, set up regional MAE offices in each state where families can meet with the representative to report a new claim or discuss their pending claims. These regional offices should be led by the MAE representatives who arrange appointments for families wishing to meet directly with them, are equipped with competent staff trained to handle new reported claims, and are responsive and supportive to the families.

All employees of the MAE, including staff working in Mexico, staff working in regional offices, and the MAE representatives themselves, must be afforded the proper training and resources to ensure the effective functioning of the MAE within Mexico and abroad.

¹³ Human Rights Council, Rep. of the Working Group on Enforced or Involuntary Disappearances on enforced disappearances in the context of migration, Thirty-Sixth Session, ¶ 71, U.N. Doc. A/HRC/36/39/Add.2 (July 28, 2017) [*Enforced Disappearances of Migrants*].

The MAE should conduct periodic reporting on the progress of each claim, the family's involvement, the status of applications submitted by the families for humanitarian visas and reparations, as well as acceptances and rejections of applications, along with an explanation for each rejection. The MAE representatives should conduct regular country visits, meet with the victims' families, and issue public reports on a yearly basis. Based on reports by the MAE representatives and reports within Mexico, the MAE should publish an annual report to include:

- (1) the total number of reported disappearances, including disappearances in which there is a claim that fits the definition of an 'enforced disappearance';
- (2) the number of pending applications for humanitarian visas to travel to Mexico;
- (3) the number of acceptances of such visa applications;
- (4) the number of rejections of such visa applications, including a general explanation for the denial;
- (5) the number of pending applications for reparations, including acceptances and rejections, and a general explanation for the rejections;
- (6) the number of pending repatriations of migrants' remains;
- (7) the number of cases resolved satisfactorily;
- (8) the number of cases resolved unsatisfactorily, such as family victims who believe the remains they received do not belong to their relative, or family victims who have not received all of the remains belonging to their relative;
- (9) the number of cases where families facing financial hardships due to a disappearance have demanded but not received adequate reparation; and

(10) the number of cases of families who claimed a violation of their rights in reporting a disappearance, including but not limited to mistreatment by state authorities and cremation of bodies without the family's consent.

The MAE should work with the Argentine Forensic Team [Equipo Argentino de Antropología Forense] ("EAAF"), to allow it to request access to a centralized, confidential database of family reports of missing or disappeared migrants. This database, including DNA and forensics collection, should be maintained by the EAAF. There is widespread distrust of governmental authorities' management of information and data collection by families of missing migrants across the region, but high regard for the EAAF's work and database, both by families and governments themselves. The EAAF functions as a neutral, impartial third party with a proven record of robust mechanisms to maintain the centralized database necessary for a unified, consolidated but confidential registry.

*"States and the international community as a whole do not seem to be devoting the necessary attention to this issue...States are turning a blind eye and prefer to transfer the blame elsewhere, be it to another State or to a criminal group."*¹⁴

A. Global Recommendations

Mexico and the Northern Triangle countries must promote transnational cooperation through the MAE, and work with the Argentine Forensic Team to ensure the proper identification and repatriation of remains:

- Mexico, the Northern Triangle, and the United States must institutionalize cooperation to address the investigation and prosecution of disappearances, identification and repatriation of remains, and availability of reparations for family members.

¹⁴ Enforced Disappearances of Migrants, *supra* note 13 (Note by the Secretariat).

- Guatemala, Honduras and El Salvador must designate consular officers within each of their Ministries of Foreign Affairs who have specific (and prioritized) duties to carry out search requests and coordinate their actions regarding their citizens who have disappeared. Each consulate must, at minimum, require its designated officials to: (1) cooperate with the MAE and the MAE representatives in their respective state, to guarantee the adequate search and access to justice for families of disappeared migrants from their countries; (2) cooperate and share information about its citizens with the National Search Commission of Mexico, in order to facilitate the search for missing migrants in Mexico.
- In order to promote proper identification and repatriation of remains, the MAE should collaborate with EAAF's *Proyecto Frontera*, which aims to create a regional mechanism to exchange forensic information of disappeared migrants.
- Mexico, Honduras and El Salvador should cooperate in the creation of a centralized forensic database managed by EAAF and integrated into the functioning of the MAE.
- Mexico, Honduras and El Salvador must ensure that local forensic databases established by EAAF have the proper financial resources and agency cooperation needed to function.
- Guatemala should sign an agreement with civil society, EAAF, and families of the disappeared in order to fully become part of *Proyecto Frontera*.
- When remains are identified, family members must be included at each stage of the investigation and repatriation processes.
- Mexican authorities must fulfill for all families, Mexican and non-Mexican, the rights established in the General Law of Victims, including the rights to search, assistance and reparation. The guidelines regulating the implementation of the General Victims Law

should be amended to guarantee victims outside Mexico have equal access to reparations as those within Mexican territory.

- Guatemala, Honduras and El Salvador should reform their national reparations system to adequately compensate the victims' next of kin beyond the costs of repatriation.
- Authorities in Guatemala, Honduras and El Salvador must facilitate the functioning of the MAE and end the pervasive lack of political will by empowering public agencies to provide for families of the disappeared client-centered advocacy that promotes human rights. Government representatives must work closely with affected family members during each step of an investigation and provide support by fully engaging in proceedings that occur outside of the home country.

B. Investigations

The MAE

- 1) All five states should enter into an agreement outlining the roles of each institution and state organization involved in the processing of disappearance cases. The MAE could facilitate this process by organizing and coordinating an inter-governmental conference to discuss and reach agreement on the roles and expectations for each state institution in all five states involved in the handling and processing of reported disappearances.
 - a) Currently, the U.S. does not have a legal obligation to participate in the MAE or other similar regional mechanism. In order to establish and clarify the U.S.'s role in the functioning of the MAE and an overall regional solution to address migrant disappearances, Mexico, the Northern Triangle countries, and the U.S. must urgently consider executing a *transnational agreement* that specifies the roles and obligations of each state actor, including the requirement to provide periodic

updates to the relevant governments and to the MAE. Such an agreement would extend the current regional obligations and bind the U.S. to a regional solution.

- 2) For each reported or claimed disappearance, the state must transmit the reported disappearance case to the MAE and alert INTERPOL that one of its nationals is missing or disappeared.
 - a) The reported case or INTERPOL alert notice of the disappearance should include the disappeared person's full name, date of birth, physical characteristics, last known location, whether the disappearance fits the definition of 'enforced', and other relevant identification features.
 - b) Upon receiving a reported case or INTERPOL notice, the MAE should immediately investigate the disappearance and share any information with respect to the investigation with the disappeared person's home country.
- 3) The MAE in Mexico should communicate on a regular basis with its representatives located in or near the Mexican consulates and embassies in Honduras, Guatemala, El Salvador, and the United States.
 - a) MAE representatives should visit Honduras, Guatemala, El Salvador, and the United States every year, ideally every six months, for a period of one week so that families may have direct access to them and be able to submit claims as well as ask for information about pending investigations.
 - b) Representatives should have offices within or near Mexican consulates so that families may meet with the representatives and apply for a humanitarian visa at the same time. However, if access to a Mexican consulate or embassy is limited, MAE representatives should have offices in central areas accessible to communities from

which a high number of residents migrate—such as Quetzaltenango in Guatemala and San Pedro Sula in Honduras.

- c) The MAE should assign at least two MAE representatives to the United States, along the U.S.-Mexico border.
- d) Representatives should have access to all of the information submitted by families in their corresponding state. The states should provide the MAE with the progress of each reported case, including any evidence or information provided by the family, upon request, or otherwise at least every six months. The representatives should send updates to the families and their representatives at least every six months, including steps that the MAE has taken in the investigation, even when no information is yet available.
- e) Representatives should have regular training on receiving and processing reported disappearances; working with traumatized individuals; and streamlining the processing of claims through the appropriate administrative and judicial institutions in Mexico. They should be familiar with visa processing through the Mexican consulate, and be available to assist families with visa processing, as well as provide support and other resources to families--whether communicating with them remotely or in person.

Region-Specific

- 1) In the case of a migrant disappearance, the Northern Triangle countries, Mexico, and the United States must each facilitate access to its own investigatory mechanisms, allowing victims and their families to file a claim.
- 2) Each country must ensure that, in accordance with applicable international and regional law, the legal definitions of “missing,” “disappeared,” and “forcibly disappeared” are consistent across national, state, and local levels. To this end, state parties should ensure and promote coordination across all levels of government.
- 3) Each country should facilitate timely domestic and international travel for families seeking to participate in investigations, criminal proceedings, or identification of remains abroad.
- 4) Each country must establish clear institutional routes for the filing of a claim, including designating specific government officials for the handling of disappearances. State institutions that normally receive reports of disappearances--police stations, offices of the Attorney General (or National Prosecutor) or other institution with investigative functions--should immediately launch an investigation and send the reported case or notice of disappearance to the MAE representative or to the MAE directly. These should also routinely be sent to INTERPOL.
 - a) State institutions with investigative functions should be accessible to all residents in the country. For communities with little to no access to these institutions, the state should make all necessary and reasonable outreach to these communities.
 - b) The state, for example, could announce through mail, pamphlets, or other media, that it will set up a tent near the community or send officials into the community, for designated full work days. These forms of communication should be available

in indigenous languages as well. This will allow members of communities who are unable to travel to main cities to report a disappearance locally. The state could also use these forms of communication to inform communities about how and where to report a disappearance. The state should also establish a direct phone line for individuals who do not have physical access to the reporting institutions, and other similar remote options. However states choose to implement them, the most important requirements are for states to establish clear institutional routes and ensure accessibility to institutions so that families from anywhere in the country can report a disappearance.

- c) States should not place statutes of limitations on the length of time a person has been missing to pursue an investigation.
 - d) Each state institution with investigatory functions should have a translator for indigenous languages, or the ability to hire competent translators immediately when needed.
 - e) Each country must ensure that all residents know about their right to access the MAE if a relative disappears in Mexico. Victims and their families should not be required to meet unreasonably high standards of proof in order to file a claim and initiate an investigation. Nor should they be required to file burdensome paperwork to prove the basis of their claim of a family member's disappearance.
- 5) Families have the option of filing a claim with their corresponding state or directly with the MAE. Should the family choose to file with the state, that state must inform the family of the right to access the MAE. If the family prefers that the MAE handle the case, the state must promptly transmit the reported case to the MAE, and inform the families of their

rights under Mexico's General Victims Laws and the options provided by the MAE. If the family prefers that the state launch the investigation, the state –specifically, the appropriate state authority handling the claim – must then promptly launch the investigation, and provide the families with feedback about steps taken concerning an investigation on a regular basis.

- a) All reported disappearances made at police stations or related law enforcement institutions, or the Public Ministries of the state, must be submitted/redirected to the state's respective national Prosecutor's office and reported to the MAE. Even when families prefer that the state handle the claim, the state must inform the MAE of this reported disappearance, and of the family's preference to have the state handle the claim.
- b) Law enforcement officials and other state authorities to whom families first report the disappearance should fill out the same forms to be submitted to the national Prosecutor's office. These authorities must also obtain the families' consent to share the information with other institutions, and redact any personal information the families do not wish to share.
- c) There should be a single complaint form used by all states, with minor changes based on the national laws of each country. Each family in the region reporting a disappearance should be filling out substantially the same information in the complaint form. Complaint forms should request and include standardized relevant details relating to the disappeared person: last known location, last communication with the filing family member, any suspicious calls or messages that may indicate signs of a kidnapping or enforced disappearance, and recent photographs. The

Prosecutor's office should then make an exact copy of the case file with all of the relevant information, and provide a copy to the MAE, regardless of whether the MAE or the state is handling the claim, with another copy provided to the family.

- d) The state should also submit a copy of the completed complaint form to the Argentine Forensic Team, which maintains the consolidated registry of missing persons, as well as share relevant information with the Argentine Team. The MAE should monitor the states' progress in submitting all disappearances to the EAAF.
 - e) States must transmit all reported cases to the MAE. For disappearances that allegedly occurred in a state other than Mexico, the state must transmit the reported case to the MAE as well as to the state where the disappearance is presumed to have occurred.
 - f) The state should transfer each reported case with relevant information to the corresponding MAE representative, regardless of whether the case is to be handled by the MAE or the state itself, so the MAE can monitor and track progress.
- 6) Regardless of whether the state or MAE is handling the reported case, each state must facilitate the exchange of information regarding each reported disappearance with the MAE and each other. To this end, states should coordinate and communicate with their corresponding MAE representative at least every six months. States should also establish a point of contact for disappeared migrant cases (e.g., a specific government institution) that is responsible for inter-governmental communication, for providing or requesting information, including periodic updates.
- 7) The Northern Triangle countries, Mexico, and the United States must facilitate access to information for victims and their families, regardless of whether they are nationals. Such

information should include: the circumstances of a disappearance, the progress and results of an investigation, and the fate of the disappeared based on available evidence.

C. Enforced Disappearances: Prosecution

The MAE

- 1) The MAE should regularly communicate with non-governmental organizations (“NGO”) or other representatives of families of the disappeared and should meet with these representatives or the families at least once during their periodic country visits. The MAE should designate a unit or point of contact within Mexico tasked with communicating regularly with the families or their representatives. Families or their representatives should have two avenues of direct communication with the MAE: through the MAE representative and through the point of contact or unit within the MAE in Mexico.
 - a) These two avenues will provide families and their NGO representatives with alternative ways to obtain information on numbers of disappearances and on steps taken to address reported disappearances. It will also allow a process for NGO’s or other family advocates to suggest best practices, to check on the status of investigations and generally communicate with the MAE about the needs and demands of the families.
 - b) The MAE should have an informational packet or pamphlet available in all languages, including indigenous languages, for NGOs, which can distribute them to families and affected communities. These informational packets or pamphlets should include the families’ rights under Mexico’s General Law of Victims, including their right to participate in criminal proceedings against the perpetrator

of an enforced disappearance. These informational materials should be regularly updated with contact and other relevant information.

- 2) The MAE should hold mandatory training sessions for prosecutors, judges, and law enforcement officials in Mexico on how to process claims, provide the necessary information to the families, and on each country's policies on working with the MAE representatives and victims' families. The MAE should regularly interact with prosecutors, judges, and law enforcement officials to reinforce that enforced disappearances are among the most serious international crimes for which all government entities share responsibility to prosecute and punish.
- 3) The MAE should promptly file cases of enforced disappearance with the corresponding federal court of first instance [Juzgado de Distrito] to prosecute alleged perpetrators, and initiate the criminal proceeding in Mexico. The MAE representative in Mexico assigned to the case must:
 - a) inform the families as soon as the criminal proceeding begins;
 - b) provide the family with the court dates for each hearing or trial;
 - c) inform the families of their rights under Mexico's General Law of Victims to participate in the criminal proceeding and provide evidence;
 - d) direct the families on how and where to obtain a humanitarian visa should the families wish to participate in the criminal proceeding; and
 - e) follow up with the families concerning each stage of the criminal proceeding.
- 4) The MAE should regularly communicate with consulates and embassies with regard to pending cases of enforced disappearances. When families outside of Mexico report a

disappearance to a Mexican consulate or embassy, the MAE representative (or an MAE official, should the representative not be available) must:

- a) Assist the family in filling out the report,
 - b) Identify the file as a disappearance case (e.g., using a stamp), inform the families of next steps and their rights under Mexico's General Law of Victims, including their right to participate in criminal proceedings and provide evidence,
 - c) Ask the families if they wish to travel to Mexico under a humanitarian visa. The official should assist the family to fill out a visa application or otherwise facilitate obtaining the necessary visa to travel.
 - d) Immediately transfer the details of the case and any supporting documentation to the MAE.
- 5) The MAE shall assign a prosecutor to the case as soon as reasonably possible, and provide the family's contact information to the prosecutor.
- a) The prosecutor should then immediately contact the family, introduce her/himself, and remind the families of their right to travel to Mexico and participate in the criminal proceeding.
 - b) The prosecutor must follow-up with the families to provide information on the stages of the proceeding and obtain any documentation the prosecutor may need from the family for the proceeding.
- 6) Regional representatives of the MAE should also organize periodic workshops or conferences, where state delegates and members of civil society from all five states can share technical expertise and best practices. These should include regular training of law

enforcement officials, judges, and lawyers involved in the prosecution of an enforced disappearance, and share best practices in successful prosecutions of such cases.¹⁵

- 7) The MAE should play a role in ensuring that perpetrators of enforced disappearances are brought to justice by monitoring the progress of each reported enforced disappearance. As part of this role, the MAE should conduct annual forums designed to bring the penal codes of all five states in line with the CPED.
- 8) The MAE should communicate with INTERPOL, particularly its regional bureau in San Salvador, to facilitate the exchange of information regarding complaints filed by families across the region, wanted notices, and relevant evidentiary material.
- 9) The MAE should monitor the status of family members seeking to gain “victim status” under Mexico’s General Victims Law.
 - a) Application to the General Victims Law should be made with the MAE at the MAE representative’s office in the consulate (or near the consulate). Families should also have the option of applying to the General Victims Law through the state. If families apply through the home state, the home state must forward the application to Mexico through its consulate.
 - b) Petitions to the General Victims Law and their results should be included in the regular reports to the MAE, and the MAE representatives should follow up with all responsible states. The home state must communicate on a regular basis with the MAE for progress/results, and report back at least every six months to the families with status updates on the application.

¹⁵ Committee on Enforced Disappearances, Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention, ¶ 37, U.N. Doc. CED/C/MEX/CO/1 (Mar. 5, 2015).

10) In addition to making the General Victims Law more accessible, the MAE should simplify the process for obtaining a humanitarian visa for families to travel into Mexico, be able to participate in the investigation, criminal proceeding (in the event of an enforced disappearance), and proper identification of remains, and be allowed to accompany the remains of a relative during repatriation.

- a) The criteria of eligibility for humanitarian visas must be clearly established.
- b) Visa requests that meet these criteria should be issued without delay
- c) Any costs incurred during the visa process should be borne by the home state.
- d) All visa requests and approvals must be included in the reports by the MAE representatives to the MAE. All denials, along with an explanation, should be included in the reports as well.

Region-Specific

- 1) All States Parties must incorporate into their penal codes the *exact* definition of “enforced disappearance” from the CPED, as well as fully implement the following provisions:
 - a) Article 2 requires States Parties to ‘prosecute, without delay, state actors directly or indirectly involved in an enforced disappearance.’ This includes state actors directly responsible for any aspect of the disappearance, and those who in any way supported or acquiesced to the disappearance.
 - b) Article 6 requires State Parties to prosecute government authorities who knew of and either disregarded or failed to prevent an enforced disappearance.
 - c) Article 7(a) requires States Parties to expedite investigations and to incorporate into their penal codes the following *mitigating circumstances* for the offense of “enforced disappearance”: (1) bringing the disappeared person

forward alive or providing information about cases of enforced disappearance, and (2) identifying the perpetrators.¹⁶

d) Article 7(b) requires States Parties to incorporate into their penal codes the following *aggravated circumstances*: (1) the death of the disappeared person; (2) enforced disappearance of pregnant women, minors, persons with disabilities or other particularly vulnerable persons.¹⁷

e) The CPED also requires States Parties to classify enforced disappearances as *continuous offenses*, commencing with the moment the person was disappeared to the moment the person is found.¹⁸

2) Considering the enormous suffering caused to families, the gravity of the crime, and the role government actors play in enforced disappearances, the CPED and other treaties require them to be subject to the *most severe penalties*.¹⁹ All states should incorporate the most severe penalties for enforced disappearances in their domestic law.

3) Under the CPED, States Parties may exercise jurisdiction abroad if one of their nationals is the subject of a disappearance. While this language is permissive, States Parties have a strong interest in working closely with the MAE to ensure that an effective investigation is being carried out, provide any relevant evidentiary materials or information, and ensure that the alleged perpetrator is brought to justice, regardless of the perpetrator's nationality. Non-States Parties to this Convention have a similar interest in participating in the investigations and prosecutions.

¹⁶ Committee on Enforced Disappearances, Concluding observations on the report submitted by Honduras under article 29(1) of the Convention, ¶ 14, U.N. Doc. CED/C/HND/CO/1 (July 4, 2018) [*Concluding Observations Honduras 2018*].

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 14.

¹⁹ *Id.* at ¶ 15(d).

- 4) Prosecutions of alleged perpetrators of enforced disappearance must be carried out by impartial prosecutors and judges without institutional ties to the entity to which the alleged perpetrator belongs, in order to ensure that all perpetrators are brought to justice.²⁰
- 5) States Parties should also prosecute those who obstruct justice and hamper criminal proceedings by attacking or threatening judges and prosecutors involved in the prosecution of a perpetrator of an enforced disappearance.²¹
- 6) States should allow family victims to participate in the criminal proceedings of the perpetrator of an enforced disappearance and be able to present their concerns and evidence during the proceedings. Testimony provided by family victims should be taken seriously in determining the facts, penalties, and reparations.²²
- 7) Each state, regardless of whether it has ratified CPED, should add a special 'Enforced Disappearances' unit to its national Prosecutor's office, which should work closely with the MAE and the corresponding MAE representative.

D. Identification and Repatriation of Remains

The MAE

- 1) The MAE should facilitate the cooperation and data sharing between authorities of each of the countries responsible for identifying remains of the disappeared.
- 2) In line with the work of the Mexican Forensic Commission and the EAAF, Mexico and the Northern Triangle countries must collaborate on a database to compile the genetic information of remains found or exhumed. The database should include ante mortem

²⁰ Committee Against Torture, Concluding observations on the seventh periodic report of Guatemala, ¶ 17, U.N. Doc. CAT/C/GTM/CO/7 (Dec. 26, 2018).

²¹ *Id.*

²² *Inter-American Human Mobility Report* ¶¶ 171-172, citing I/A Court H.R., *Rochela Massacre v. Colombia*, Judgment of May 11, 2007. Series C. No. 163, ¶ 195.

and background information of the deceased, post-mortem DNA samples, and genetic information of the biological next of kin. This database should be maintained by EAAF and should only be shared with family members of the disappeared, their representatives or others upon express written release of the family.

Region-Specific

- 1) The Northern Triangle countries, Mexico and the United States must collect, examine, and preserve all discovered bodies and remains. All countries must take all reasonable steps to identify the deceased and to determine the cause and manner of death.
- 2) In cases where remains have been identified, the Northern Triangle countries, Mexico and the United States must inform family members of the location of the remains as soon as possible.
 - a. Each country shall ensure that after remains have been identified, no action is taken without the family members' consent.
 - b. Each country shall ensure that family members decide the time, place, and manner for the burial or other disposal of remains. Additionally, family members must be given full access and opportunity to perform rituals for their dead.
- 3) Each country should ensure that the process of identification of remains is consistent with best practices, such as the guidelines established by the revised UN Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions (Minnesota Protocol).²³

²³ UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, THE MINNESOTA PROTOCOL ON THE INVESTIGATION OF POTENTIALLY UNLAWFUL DEATH, U.N. Doc. HR/PUB/17/4, U.N. Sales E.17.XIV.3 (2016) [*Minnesota Protocol*].

- 4) Each country must guarantee the integrity of the chain of custody of remains. In accordance with the Minnesota Protocol, every stage of evidence recovery, storage, transportation and forensic analysis should be properly recorded to ensure the integrity of the evidence and facilitate identification of remains. Records of the chain of custody should include the information of all persons having any control over the remains. Additionally, all evidence should be uniquely referenced and marked for easy identification.
- 5) The Northern Triangle countries, Mexico and the United States must make all efforts to contact the biological next of kin when remains have been found. The states shall ensure that remains are returned promptly and intact to family members, with complete identification information.
- 6) The Northern Triangle countries, Mexico and the United States should continue the search for remains regardless of how much time has elapsed after the disappearance has been reported.
- 7) In cases where remains have been identified, all countries are responsible for promptly issuing death certificates and providing family members with all necessary assistance in obtaining them.
- 8) In cases where remains are not identified, they need to be returned to the country of origin if that can be identified. In case of no identification, there must be a record kept of all the evidence available at the time of finding the remains in a forensics facility for later identification in the event relatives are found.

- 9) When remains are not identified or cannot be repatriated to family members for exceptional reasons, states shall dispose of them in a manner that is dignified and respectful to the person.
- 10) The Northern Triangle countries, Mexico and the United States must keep an accurate record of where unclaimed and unidentified remains are buried, and maintain gravesites respectfully in the locations where bodies are buried.
- 11) Each state shall incorporate international forensic protocols for human rights investigations into domestic criminal procedures. The updated Minnesota Protocol is a recommended example.²⁴

E. Reparations

The MAE

- 1) The MAE must facilitate the process by which family members of disappeared people can claim reparations by encouraging effective investigations and prosecutions.

Region-Specific

- 1) Authorities in Mexico must guarantee that families of victims of disappearance, Mexican and non-Mexican, will have access to all the rights established in the General Law of Victims, including the rights to search, assistance and reparations.
 - a) The regulations on the implementation of the General Victims Law should be amended so that victims who do not live in Mexican territory can exercise their rights on equal terms and circumstances as Mexicans. Guatemala, Honduras and El Salvador must reform their reparations system to adequately compensate the victims' next of kin in addition to the costs of repatriations.

²⁴ *Id.*

- 2) The Northern Triangle countries, Mexico and the United States must provide reparations proportionate to the gravity of the human rights violation, taking the victim's and family's circumstances into account. For example, the fact that the victim was the sole or primary breadwinner for the family should be factored into compensation.
- 3) The Northern Triangle countries, Mexico and the United States should ensure that providing reparations is not contingent on finding of remains or a declaration of death.
- 4) The Northern Triangle countries, Mexico and the United States must ensure that domestic human rights laws are available and fully implemented, and do not place a high burden on victims and their families to grant them access to restorative justice mechanisms.

III. LEGAL FRAMEWORK

A. International Legal Framework

Mexico and each of the Northern Triangle countries are States Parties to the International Convention for the Protection of the Rights of All Migrant Workers and Members of their Families (“CMW”).²⁵ The CMW definition of “migrant workers” includes non-documented workers and workers who are in an irregular situation. All migrants from the Northern Triangle are guaranteed certain rights enumerated in the CMW.²⁶

Each State Party to the CMW is required to protect the lives of migrants and prohibit torture or cruel, inhuman or degrading treatment or punishment as part of the obligations

²⁵ Status of Ratification Interactive Dashboard, U.N. OFF. OF THE HIGH COMMISSIONER ON HUMAN RIGHTS, <https://indicators.ohchr.org/> (last visited July 28, 2020) [*Status of Ratification Interactive Dashboard*].

²⁶ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families art. 5, Dec. 18, 1990, 2220 U.N.T.S. 3 [*CMW*].

under Articles 9 and 10.²⁷ Under Article 16(2) of the CMW, migrant workers and their families are “entitled to effective protection by the State against violence, physical injury, threats and intimidation, whether by public officials or by private individuals, groups or institutions.”²⁸ These provisions create a positive obligation on Mexico to protect Central American migrant workers from violence in any form that is carried out on its territory.

Article 16(7)(a) of the CMW states that “the consular or diplomatic authorities of [the migrant worker’s] State of origin shall . . . be informed without delay” in case of his or her arrest or detention.²⁹ Moreover, Article 23 establishes the right to recourse for the protection and assistance of consular or diplomatic authorities of the migrant workers’ state of origin, “whenever the rights recognized in the present Convention are impaired . . .”³⁰ Coupled with Article 16(2), this means that migrant workers and their families have the right to protection and assistance from their countries’ consular and diplomatic authorities in Mexico when Mexico fails to provide effective protection against violence, physical injury, threats and intimidation by state officials, private individuals, or groups.³¹ Furthermore, Mexico must compensate victims of unlawful arrest or detention.³²

Mexico, Honduras and Guatemala are also States Parties to the International Convention for the Protection of all Persons from Enforced Disappearance (“CPED”).³³ The CPED defines enforced disappearance in Article 2 as:

²⁷ CMW, at arts. 9-10.

²⁸ *Id.* art. 16(2).

²⁹ *Id.* art. 16(7)(a).

³⁰ *Id.* art. 23.

³¹ For purposes of this report, Mexico is the sole bearer of this obligation under the CMW.

³² International Convention for the Protection of all Persons from Enforced Disappearance art. 1, Dec. 23, 2010, 2716 U.N.T.S. 3 [*CPED*].

³³ Status of Ratification Interactive Dashboard, *supra* note 25 (last visited July 28, 2020). Mexico and Honduras have ratified CPED, but Guatemala has not. *See id.*

[T]he arrest, detention, abduction or any other form of deprivation of liberty by state agents or by persons or groups of persons acting with the authorization, support or acquiescence of the state, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.³⁴

Enforced disappearances are a specific type of disappearance that require certain responsibilities from the state, including prompt and effective prosecution of alleged perpetrators and the obligation to act against impunity. In cases of enforced disappearances, state authorities are directly or indirectly involved (i.e. acquiesce), whether they carry out the disappearance alone or aid and abet a private criminal individual or organization. Disappearances carried out only by private groups are forced disappearances, but if state authorities know and acquiesce to them, the state becomes indirectly involved and it is an enforced disappearance. Other disappearances that are neither enforced or forced include when migrants disappear due to natural disasters, illness, or accidents. In all cases, states have a duty to address disappearances, promptly search for migrants who have disappeared, communicate with their families, prosecute those responsible (if forced or enforced), identify remains, and cooperate at a regional level in all these obligations. The CPED prohibits enforced disappearances even during times of national emergency.³⁵

The CPED requires States Parties to statutorily define the crime of enforced disappearance, to investigate any acts of possible enforced disappearance, and to “bring those responsible to justice.”³⁶ States must also “hold criminally responsible . . . [a]ny person who commits, orders, solicits or induces the commission of, attempts to commit, is an accomplice to or

³⁴ CPED, art. 2.

³⁵ *Id.* art 1.

³⁶ *Id.* at art. 3, 4.

participates in an enforced disappearance” within their territory. Responsibility may be imputed to any high-level official who “consciously disregarded” any information he may have received regarding his subordinates’ participation in enforced disappearances.³⁷

A State Party to the CPED must also create a process for individuals who allege an enforced disappearance to report the facts to the authorities; these authorities, in turn, are required to investigate the claim immediately.³⁸ When there are reasonable grounds to believe that an enforced disappearance has occurred within the jurisdiction of a State Party to the CPED, that country’s authorities must investigate the claim, even without a formal complaint.³⁹

States Parties to the CPED are also required to cooperate with each other to assist the “victims of enforced disappearance, and in searching for, locating and releasing disappeared persons and, in the event of death, in exhuming and identifying them and returning their remains.”⁴⁰ A State Party must provide each victim with the truth “regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.”⁴¹ This obligation includes the right “to respect and return the remains of victims” in the event of death.⁴²

The CPED calls on States Parties to “take the necessary measures to establish its competence to exercise jurisdiction over the offence of enforced disappearance . . . when the disappeared person is one of its nationals and the State Party considers it

³⁷ CPED, art. 6.

³⁸ *Id.* art. 12(1).

³⁹ *Id.* art. 12(2).

⁴⁰ *Id.* art. 15. Victim is defined as “the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance.” *Id.* art. 24(1).

⁴¹ *Id.* art. 24(2).

⁴² *Id.* art. 24(3) and art. 24(4).

appropriate.”⁴³ Thus, States Parties may also assert jurisdiction when their citizens are victims of enforced disappearances abroad.⁴⁴

B. Regional Legal Framework

El Salvador, Guatemala, Honduras, and Mexico are all members of the Organization of American States (“OAS”).⁴⁵ As OAS members and parties to the American Convention on Human Rights (the “American Convention”), these countries are subject to the jurisdiction of the Inter-American Commission on Human Rights (“IACHR”) and the Inter-American Court on Human Rights (“IACtHR”). The United States is also a member of the OAS, though it maintains that as a non-State Party it is not subject to the American Convention or to the jurisdiction of the IACtHR. The Court and Commission have consistently maintained that the United States is bound to the human rights provisions in the American Declaration as a constituent instrument of the OAS Charter and the basis for the rights referred to in the Charter.⁴⁶ In addition to the international treaties listed above, OAS member states also address enforced disappearance in the Inter-American Convention on Forced Disappearance of Persons (“CFDP”).⁴⁷

⁴³ CPED, art. 9.

⁴⁴ *Id.* In effect, it empowers Honduran authorities, for example, to investigate the disappearances of Honduran nationals outside of Honduran territory.

⁴⁵ *Charter of the Organization of American States Signatories and Ratifications*, ORG. AM. ST., http://www.oas.org/en/sla/dil/inter_american_treaties_A-41_charter_OAS_signatories.asp (last visited July 28, 2020).

⁴⁶ *American Convention of Human Rights Signatories and Ratifications*, ORG. AM. ST., https://www.oas.org/dil/treaties_b-32_american_convention_on_human_rights_sign.htm (last visited July 28, 2020); *What is the IACHR?*, ORG. AM. ST., <http://www.oas.org/en/iachr/mandate/what.asp> (last visited July 28, 2020). For the Inter-American Court’s interpretation of the application of the American Declaration to non-States Parties to the American Convention such as the United States, see *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*, advisory Opinion OC-10/89, Inter-Am. Ct. H.R. (Ser.A) No. 10, paras. 37, 43-48 (July 14, 1989).

⁴⁷ Organization of American States, Inter-American Convention on the Forced Disappearance of Persons, June 9, 1994, O.A.S.T.S. No. A-60, 33 I.L.M. 1529 [CFDP]. The term “forced disappearance” is used here to reflect the language of the CFDP. Elsewhere, the term “enforced disappearance” is used for consistency throughout the Report. These terms are used interchangeably in the international and regional legal systems. *Cf.* CFDP, at art. II (“For the purposes of this Convention, forced disappearance is considered to be the act of depriving a person or persons of his or her freedom, in whatever way, perpetrated by agents of the state or by persons of groups of persons acting with the authorization, support, or acquiescence of the state, followed by an absence of information or refusal to acknowledge that deprivation of freedom or to give information on the whereabouts of that person, impeding his or

Like the CPED, the CFDP defines not only “agents of the state,” but also “persons or groups of persons acting with the authorization, support, or acquiescence of the state” as actors who may be held responsible for forced disappearances.⁴⁸ Article III of the CFDP states that parties will “undertake to adopt . . . the legislative measures that may be needed to define the forced disappearance of persons as an offense and to impose an appropriate punishment commensurate with its extreme gravity.”⁴⁹ Although the forced disappearance of migrants is not specifically addressed in the CFDP, Article IV requires that a state party establish jurisdiction over a crime of enforced disappearance when the act “was committed within its jurisdiction.”⁵⁰

The IACtHR first issued a ruling on forced disappearances in the 1980’s in the case of *Velasquez-Rodriguez v. Honduras*.⁵¹ *Velasquez-Rodriguez* was the first of three cases, along with *Albán Cornejo et al. v. Ecuador* and *Heliodoro Portugal v. Panamá*, in which the IACtHR interpreted the scope of state obligations relating to forced disappearances under the various articles of the American Convention.⁵² The IACtHR defined forced disappearance as “a systematic and selective practice of disappearances carried out with the *assistance* or *tolerance* of the government.”⁵³ This language, particularly the word “tolerance,” clarifies the official actions

her recourse to the applicable legal remedies and procedural guarantees.”) and CPED, at art. 2 (“For the purposes of this Convention, ‘enforced disappearance’ is considered to be the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law.”). El Salvador has not signed the CFDP. *Inter-American Convention on Forced Disappearance of Persons Signatories and Ratifications*, ORG. AM. ST. <http://www.oas.org/juridico/english/signs/a-60.html> (last visited July 28, 2020).

⁴⁸ CFDP, *supra* note 47, at art. II.

⁴⁹ *Id.* art. III.

⁵⁰ *Id.* art. IV(a).

⁵¹ *Velasquez-Rodríguez v. Honduras*, Judgment, Inter-Am. Ct. H.R. (Ser. C) (July 29, 1988).

⁵² *Albán Cornejo et al. v. Ecuador*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) (Nov. 22, 2007); *Heliodoro Portugal v. Panamá*, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (Ser. C) (Aug. 12, 2008); Marie Rota, *Case Law of the Inter-American Court of Human Rights: Chronical for the year 2008*, 9 *Revus J. for Const. Theory Phil. L.* 129, 135, (2009).

⁵³ *Velasquez-Rodríguez*, Judgment, *supra* note 51, ¶ 119(a) (July 29, 1988) (emphasis added). A comparative analysis of how each country defines the term with the CFDP definition can be found in their respective sections of this report.

or omissions that may result in a forced disappearance and expands the type of conduct that the IACtHR may consider to be a human rights violation under the CFDP.⁵⁴ The IACtHR not only addressed the type of official participation that may result in the finding of an enforced disappearance, but also emphasized a state's duty to prevent human rights violations from occurring and to carry out effective investigations. This duty includes all legal, political, administrative and cultural measures that promote and protect human rights. It requires states to ensure that any violations are treated as illegal acts, to punish those responsible, and to indemnify victims for damages.⁵⁵

Further, the American Convention requires that a State Party “provide effective judicial remedies to victims of human rights violations,” and where such remedies are not available to a victim, the IACtHR may choose not to apply its usual exhaustion of domestic remedies requirement.⁵⁶

Each country that has ratified the CFDP is required to pass laws that make enforced disappearance a punishable offense under the definition provided by the IACtHR. Under the *Velásquez-Rodríguez* judgment, States Parties must take the necessary actions to prohibit enforced disappearances in their territories, as well provide remedies to victims of enforced disappearances.⁵⁷

⁵⁴ In the Honduran case, the participation of state actors in the alleged disappearances was direct, pervasive and often carried out in broad daylight. However, the Court also included indirect participation by state actors in its definition of forced disappearance. *Velásquez-Rodríguez*, Judgment, *supra* note 51, at ¶¶ 169-73.

⁵⁵ *Id.* at ¶¶ 174-75. The Court detailed the requirements of this duty with respect to forced disappearances, stating that the duty to investigate continues as long as a person remains disappeared, and a failure to investigate a disappearance is an Article 1(1) violation even when the state was not proven to have been directly involved in a particular disappearance. *Id.* at ¶¶ 181-82.

⁵⁶ *Id.* at ¶¶ 62, 81, *quoting* Organization of American States, American Convention of Human Rights, art. 25, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123.

⁵⁷ CFDP, art. II.

Perhaps most importantly, the CFDP requires States Parties to cooperate with one another “to prevent, punish, and eliminate the forced disappearance of persons.”⁵⁸ This obligation requires inter-state cooperation in addressing the problem of enforced disappearances. Additionally, the CFDP allows States Parties to establish jurisdiction over enforced disappearance cases where the victim is a national of the state, but was last seen in the territory of another state.⁵⁹ While this is not an obligation *per se*, it does allow states to assert jurisdiction against perpetrators of enforced disappearances of the state’s migrant nationals whose whereabouts were last known in another state, or whose bodies were found in another state.

States Parties to the CFDP are also subject to the IACtHR’s interpretation of forced disappearance and to its findings of what obligations flow for the state responsible for a forced disappearance.⁶⁰ The IACtHR established that the CFDP creates a positive obligation to prevent, investigate, and punish those responsible for forced disappearances.⁶¹ The obligation extends beyond the responsibilities addressed in *Velasquez-Rodriguez* alone, which focused on the facts and evidence required to prove government targeting and the disappearance of specific individuals. The Court established a duty to investigate when there are reasons to believe that torture may have been committed, even if proof of torture could not “be proven in a concrete case”—as may be the case in instances of alleged forced disappearances.⁶² This places a positive obligation on states to investigate cases of forced disappearances even where they are not the states responsible, and even where it is not altogether clear *who* committed the offense.⁶³ The

⁵⁸ CFDP, art. I.

⁵⁹ *Id.* art. IV(c).

⁶⁰ *Id.* art. XIII.

⁶¹ *Velasquez-Rodríguez*, Judgment, *supra* note 51, at ¶ 166.

⁶² *Id.* at ¶ 177.

⁶³ *Id.* at ¶¶ 166-67, 172, 176-77. The Court states that every State Party to the Inter-American Convention on Human Rights has a duty to protect the “rights recognized by the Convention to every person subject to its jurisdiction.” *Id.* at ¶ 62. The State must investigate any violations of these rights. For example, Honduran migrants are Honduran citizens, making them subject to the jurisdiction of Honduras. This necessarily implies that Honduras has a duty to

Court specifies that the investigations must “be assumed by the State as its own legal duty, not as a step taken by private interests that depends upon the initiative of the victim or his family...”⁶⁴ Thus, when a person is presumed to have disappeared, states have the responsibility to investigate without the victim’s family having to request, fund, or otherwise spearhead the investigation. This includes cases where the victim has disappeared at the hands of another state.

Additionally, the Court determined that “[a]n illegal act which violates human rights and which is initially not directly imputable to the State . . . can lead to international responsibility of the State, not because of the Act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the CFDP.”⁶⁵ This means that states have a duty both to act to prevent violations, and to respond to violations ostensibly committed by non-State actors. This is important in countries in the Northern Triangle, where both gang violence and government corruption run rampant.⁶⁶

IV. BACKGROUND TO DISAPPEARANCES OF CENTRAL AMERICAN MIGRANTS

The National Commission of Human Rights in Mexico reported 9,758 migrant victims of kidnapping between September 2008 and February 2009, and 11,333 victims from January to December 2010.⁶⁷ Official estimates by the Mexican government by August 2017 were that around 36,265 people remained disappeared or “not located.”⁶⁸ Other sources gave the number at the

investigate violations of Honduran migrants’ rights. This obligation holds *even when these violations take place outside of Honduras* and even when it is not altogether clear that another State government is the one perpetrating the act.

⁶⁴ *Id.* at ¶ 177.

⁶⁵ *Id.* at ¶ 172.

⁶⁶ Interview with Migdonia Ayestas, Director, Observatorio de la Violencia, in Tegucigalpa, Honduras (Feb. 27, 2017) [Ayestas Interview].

⁶⁷ Fundación para la Justicia y El Estado Democrático de Derecho, REUNIÓN CON EL RELATOR ESPECIAL DE LOS DERECHOS HUMANOS DE LOS MIGRANTES: LA FALTA DE ACCESO A LA JUSTICIA DE MIGRANTES VÍCTIMAS DE GRAVES VIOLACIONES A LOS DERECHOS HUMANOS (2019), https://www.fundacionjusticia.org/wp-content/uploads/2019/04/Relator-Migrantes_220419.pdf.

⁶⁸ *Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*, SECRETARIADO EJECUTIVO DEL SISTEMA NACIONAL DE SEGURIDAD PÚBLICA, <https://www.gob.mx/sesnsp/acciones-y-programas/registro-nacional-de-datos-de-personas-extraviadas-o-desaparecidas-rnpd> (last visited Aug. 25, 2020) [*Mexican Missing Person Registry*].

same time as likely much higher.⁶⁹ More recently, in 2019, Mexico reported 1,363 cases of enforced disappearances, 1,307 of which remain pending.⁷⁰ Of these 1,307 pending cases, only 365 investigations were launched, where eight persons were found alive and ten deceased.⁷¹ Twenty-five persons went missing on February 21, 2019 and twenty-two on March 7, 2019 in Tamaulipas, Mexico.⁷² Such disappearances continue at an alarming rate. The exact number of disappearances, however, is unknown due to lack of data and deficient reporting by the states.⁷³

While the disappearances of Mexican citizens have begun to garner some attention on the international stage, the disappearances of Central American migrants traveling through Mexico have received comparatively little attention.⁷⁴ The dearth of coverage, both regionally and internationally, is likely due to the difficulty of collecting reliable information about migrant disappearances: migrants often enter Mexican territory covertly and work hard to remain undetected.⁷⁵ In turn, fear of detention and deportation makes migrants disinclined to report any

⁶⁹ A report by the Open Society Foundation suggests that fear of retaliation, lack of access to prosecutors in rural areas, and misclassification of disappearances by state authorities all contribute to the inaccuracy of government reports on disappeared people. See *Undeniable Atrocities: Confronting Crime Against Humanity in Mexico* 14, OPEN SOCIETY FOUNDATION, June 2016, <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-2nd-edition-20160808.pdf> [OSF Report].

⁷⁰ INFORME ANNUAL DE ACTIVIDADES DE LA FISCALIA ESPECIALIZADA EN MATERIA DE DERECHOS HUMANOS. FISCALIA GENERAL DE LA REPUBLICA (2019), <https://www.animalpolitico.com/wp-content/uploads/2020/01/INFORME-DERECHOS-HUMANOS.pdf>.

⁷¹ *Id.*

⁷² Fundación para la Justicia y El Estado Democrático de Derecho, Los Crímenes contra Migrantes Desaparecidos: RECOMENDACIONES PARA LA BÚSQUEDA, IDENTIFICACIÓN, ACCESO A LA JUSTICIA Y NO REPETICIÓN (2019), https://www.fundacionjusticia.org/wp-content/uploads/2019/04/VERSI%C3%93N-FINAL_Justicia-y-migrantes_Bachelet_05.04.2019.pdf.

⁷³ MOVIMIENTO MIGRANTE MESOAMERICANO, *supra* note 7.

⁷⁴ News media around the world reported on the disappearance of 43 students from Ayotzinapa, Mexico on September 26, 2014. See Randal Archibald, *43 Students, a Mass Grave and a Suspect: Mexico's Police*, N.Y. TIMES, Oct. 6, 2014, <http://www.nytimes.com/2014/10/07/world/americas/43-missing-students-a-mass-grave-and-a-suspect-mexicos-police-.html>; Valeria Luiselli, *Ayotzinapa*, EL PAIS, Dec. 15, 2014, http://elpais.com/elpais/2014/12/15/eps/1418655091_215685.html; *What Happened to the 43 Ayotzinapa Students?*, AL JAZEERA, Sept. 24, 2015, <http://america.aljazeera.com/articles/2015/9/24/what-happened-to-the-43-ayotzinapa-students.html>.

⁷⁵ The Comisión Nacional de Derechos Humanos (“CNDH”), Mexico’s national human rights commission, states that official statistics estimate that 150,000 migrants attempt to cross Mexico each year; however, Mexican civil society organizations estimate this number is much closer to 400,000. See *1er Informe Estadístico 5*, UNIDAD DE INVESTIGACION DE DELITOS PARA PERSONAS MIGRANTES,

criminal incidents to the authorities.⁷⁶ As a result, there is no verifiable data on the number of migrants who have disappeared in Mexico. One group, the Mesoamerican Migrant Movement, estimates that anywhere from 72,000 to 120,000 migrants have gone missing in Mexico over the past decade.⁷⁷ Despite a lack of definitive data, evidence such as mass graves containing the remains of hundreds of Central Americans and the testimony of family members of missing migrants speak to a serious and unrelenting problem.⁷⁸

Most people are forced to flee from the Northern Triangle due to a combination of structural violence, organized criminal gangs and poor living conditions.⁷⁹ The Northern Triangle countries are by far the most violent in Central America, and have some of the highest homicide rates in the world. In addition to a staggering number of murders, the Northern Triangle is plagued by gang activity, extortion, domestic violence, and a lack of economic opportunity.⁸⁰ Although much of the blame has been placed on rampant drug cartel and small gang

https://www.gob.mx/cms/uploads/attachment/file/241119/UIDPM-1er_Informe_Estadistico_FINAL_ahora_si.pdf (last visited Aug. 25, 2020) [2017 MAE Update].

⁷⁶ Interview with Alberto Xicotencatl, General Director, Casa Del Migrante Saltillo, in Mex. (Oct. 20, 2015) [Xicotencatl Interview].

⁷⁷ MOVIMIENTO MIGRANTE MESOAMERICANO, *supra* note 7 (last visited July 25, 2020).

⁷⁸ See *infra* Ch. V (A). See Ana Lorena Delgadillo, *Dangerous Migration: Women Search for Disappeared Relatives in Mexico*, WOMEN ACROSS FRONTIERS, June 17, 2016, <http://wafmag.org/2016/06/dangerous-migration-women-search-disappeared-relatives-mexico/>. See also MOVIMIENTO MIGRANTE MESOAMERICANO, *supra* note 7.

⁷⁹ Silma Estrada, *Corrupción e impunidad, "verdaderas causas" de migración forzada en Honduras*, RADIO HRN, Aug. 31, 2015, <http://www.radiohrn.hn/l/noticias/corrupci%C3%B3n-e-impunidad-verdaderas-causas-de-migraci%C3%B3n-forzada-en-honduras>.

⁸⁰ See *Intentional Homicides* (per 100,000 people), THE WORLD BANK (2013), http://data.worldbank.org/indicator/VC.IHR.PSRC.P5/countries/1W?order=wbapi_data_value_2013%20wbapi_data_value%20wbapi_data_value-last&sort=desc&display=default (last visited July 28, 2020). With 84 homicides per 100,000 people (twice the number of Jamaica, the country ranked second), Honduras had the highest number of recorded intentional homicides in the world in 2013. El Salvador was ranked third in the world, with 40 homicides per 100,000 people in 2013. *Id.* See *Intentional homicide, counts and rates per 100,000 population*, U.N. OFF. ON DRUGS AND CRIME, https://data.unodc.org/sys/rpt?reportfile=crime-statistics-homicide-count-data®ION=Americas®ION_label=Americas&SUBREGION=Central%20America&SUBREGION_label=Central+America&COUNTRY=ALL&COUNTRY_label=All+%28%29&format=html&fullscreen=true&howtoc=true#state:0; see also OBSERVATORIO DE LA VIOLENCIA, *Boletín Nacional, Edición No.40, Febrero 2016, Enero - Diciembre 2015*, <http://www.iudpas.org/pdf/Boletines/Nacional/NEd40EneDic2015.pdf>. Cristina Eguizábal, Matthew C. Ingram, Karise M. Curtis, Aaron Korthuis, Eric L. Olson, Nicholas Phillips, *Crime and Violence in Central America's Northern Triangle 1*, WOODROW WILSON CENTER REPORTS ON THE AMERICAS (2015). In 2014, over 62% of Honduras' population was living in poverty. *Data: Honduras*, THE WORLD BANK, <http://data.worldbank.org/country/honduras>. In 2014, over 31% of the population of El Salvador was living in

activity, weak political and law enforcement institutions, and pervasive corruption also play significant roles in perpetuating instability and impunity.⁸¹ Pinpointing a single cause of the dire situation in the Northern Triangle has long eluded scholars and government officials, leading to the conclusion that the situation is better characterized as a volatile amalgamation of many problems.⁸² As one Woodrow Wilson Center report puts it:

Is violence the principal challenge to be addressed in Central America or simply a symptom of deeper problems? Is that deeper problem one of drug trafficking that has rediscovered the region, pushed there by Mexico's crackdown on criminal networks? Are youth gangs to blame? Have weak and corrupt institutions of government penetrated by organized crime rendered the state incapable of a coherent response becoming, instead, an incubator of crime? Do long-standing issues of poverty and inequality at the heart of internal armed conflicts in the 70s, 80s, and 90s—never fully addressed in subsequent peace processes—linger on today resulting in less ideological and more criminal conflicts?⁸³

The authors conclude that the answer to each of these questions is 'yes' and that all must be considered in understanding of the region's instability.⁸⁴

Poverty, the exploitation of natural resources and the regional civil wars have all contributed to the rise of gangs, as well as the rise in internal and external displacement.⁸⁵ Many

poverty, *Data: El Salvador*, THE WORLD BANK, <http://data.worldbank.org/country/el-salvador>. In 2014, nearly 54% of the population of Guatemala was living in poverty, *Data: Guatemala*, THE WORLD BANK, <http://data.worldbank.org/country/guatemala>.

⁸¹ Cristina Eguizábal, Matthew C. Ingram, Karise M. Curtis, Aaron Korthuis, Eric L. Olson, Nicholas Phillips, *Crime and Violence in Central America's Northern Triangle 2*, WOODROW WILSON CENTER REPORTS ON THE AMERICAS (2015) [*Crime and Violence in Central America's Northern Triangle 2*].

⁸² *Id.* at 20-21.

⁸³ *Id.* at 23.

⁸⁴ *Id.* at 23-24.

⁸⁵ Interview with the United Nations High Commissioner for Refugees ("UNHCR"), in Tegucigalpa, Honduras (Feb. 28, 2017) [*UNHCR Interview*]. One study found that about 40% of migrants between the ages of 18-35 who were deported from the U.S. between June and December 2013 had left Honduras to escape violence and insecurity. See UNHCR, *Diagnóstico Caracterización de la Población Hondureña Retornada con Necesidades de Protección* 29 (2015), <http://reliefweb.int/sites/reliefweb.int/files/resources/10027.pdf>.

individuals fleeing the wars in Central America in the 1980s landed in southern California, where the young men formed gangs to defend themselves from gangs already established in the area.⁸⁶ The U.S. deported 4,000 undocumented gang members with criminal records back to Central America in the mid-1990s, with catastrophic consequences for all the countries in the Northern Triangle.⁸⁷ The deportations enmeshed the region in violence when gang members returned home bringing with them a Los Angeles gang culture.⁸⁸ Unfortunately, because of the corruption, severe poverty and lack of opportunities that already existed in the Northern Triangle, the conditions were ripe for the establishment of a violent criminal culture.⁸⁹

The danger is not only in the homeland. For many years, Central American migrants' primary method of crossing the 1,800 miles of Mexican countryside from the Guatemalan border to the southern border of the United States, has been on a large train colloquially known as *la bestia* or "the beast."⁹⁰ The route that the train takes through Mexico is well known to cartel members, Mexican immigration authorities, and other members of non-cartel criminal organizations, all of whom have reportedly participated in the robbery, kidnapping, beating, and murder of migrants in transit.⁹¹ Though the train is still heavily used, migrants have begun to find alternate routes north in order to avoid the dangers associated with *la bestia*.⁹² This diversification of means of travel has hindered the collection of information on the number of migrants travelling through Mexico as well as the number that may have disappeared along the way because migrant

⁸⁶ Óscar Martínez, *A HISTORY OF VIOLENCE XX* (2016).

⁸⁷ Danielle Renwick, *Central America's Violent Northern Triangle*, COUNCIL ON FOREIGN RELATIONS, Jan. 19, 2016, <https://www.cfr.org/background/central-americas-violent-northern-triangle>.

⁸⁸ CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., R34112, *GANGS IN CENTRAL AMERICA* 8 (2014).

⁸⁹ *Who's to blame for El Salvador's gang violence?*, PBS NEWSHOUR, Nov. 8, 2014, <http://www.pbs.org/newshour/bb/central-americans-flee-us-policies-blame-el-salvadors-gang-violence/>.

⁹⁰ Rodrigo Dominguez Villegas, *Central American Migrants and "La Bestia": The Route, Dangers and Government Responses*, MIGRATION POL'Y INST., Sept. 10, 2014, <http://www.migrationpolicy.org/article/central-american-migrants-and-la-bestia-route-dangers-and-government-responses>.

⁹¹ Villegas, *Central American Migrants*, *supra* note 90.

⁹² *Id.*

shelters, almost exclusively located along the route that *la bestia* takes north, are often the only collectors of reliable information from migrants.⁹³ Furthermore, Mexico's 'war on drugs' disrupted the drug trafficking routes between Colombia and the U.S. that were used by criminal groups, as well as shifted the balance of power among the groups operating in the Northern Triangle, leading to higher rates of violence.⁹⁴

For its part, Honduras has struggled with organized crime and political violence, problems that were exacerbated by a 2009 military coup, which ousted the democratically elected President, Manuel Zelaya.⁹⁵ Honduras' location between South America and North America, the homes of drug production and consumption, contributes to the persistence of organized crime in the country.⁹⁶ Geographical location, coupled with a climate of impunity, has made the country a target for the expansion of Mexican drug cartels and local gangs.⁹⁷ After the 2009 coup, the Honduran military and police cracked down on citizens and organizations they perceived were opposed to the new government.⁹⁸ The post-coup government "rewarded coup loyalists with top ministries," opening the door to further "violence and anarchy."⁹⁹ The coup's consequences included a sharp increase in drug trafficking, violence, state-sponsored repression, and impunity.¹⁰⁰ Although it consistently has one of the highest homicide rates in the world, impunity persists in Honduras,

⁹³ See Adam Isaacson, Maureen Meyer, Gabriela Morales, *Mexico's Other Border: Security, Migration, and the Humanitarian Crisis at the Line with Central America*, WASH. OFF. ON LATIN AM. (Aug. 2014), <https://www.wola.org/files/mxgt/report/>.

⁹⁴ Assessment Capacities Project, *Otras Situaciones de Violencia en el Triángulo del Norte Centroamericano* 14 (2014), http://reliefweb.int/sites/reliefweb.int/files/resources/otras_situaciones_de_violencia_en_el_triangu_lo_del_norte_centroamericano_impacto_humanitario_mayo_2014.pdf.

⁹⁵ *Crime and Violence in Central America's Northern Triangle* 2, *supra* note 81, at 165.

⁹⁶ *Id.* at 165-166.

⁹⁷ *Id.* at 165.

⁹⁸ *Who Rules in Honduras? 'Coup's Legacy of Violence*, NPR, Feb. 12, 2012, <http://www.npr.org/2012/02/12/146758628/who-rules-in-honduras-a-coups-lasting-impact>.

⁹⁹ Dana Frank, *Hopeless in Honduras?* FOREIGN AFFAIRS, Nov. 11, 2013, <https://www.foreignaffairs.com/articles/honduras/2013-11-22/hopeless-honduras> [Frank Foreign Affairs]

¹⁰⁰ UNHCR Interview, *supra* note 85; Interview with Casa Alianza in Tegucigalpa, Honduras (Feb. 28, 2017).

with 96% of murders remaining unpunished.¹⁰¹ Young Honduran men in their twenties are particularly at risk of suffering violence or murder, and are estimated to “face a 1-in-300 chance of being murdered, or 1-in-150 in the most dangerous towns.”¹⁰² Women and children also face high risks of violence: Honduras has been among the countries with the highest rates of femicide (gender-motivated murder) in the world.¹⁰³ In 2017, Honduras was deemed the most violent country for children in Latin America and the Caribbean.¹⁰⁴ In addition to the extreme violence and general insecurity, Honduras is plagued by poverty, unequal distribution of income, and high unemployment.¹⁰⁵

Likewise, Guatemala has a history of political instability, and has experienced an increase in violence over the past decade.¹⁰⁶ A civil war ravaged the country for thirty-six years before

¹⁰¹ Nick Harding, *Murder Capital of the World: A Social History of Honduras*, THE TELEGRAPH, Oct. 24, 2014, <http://www.telegraph.co.uk/sponsored/lifestyle/honduras-gangs/11172581/murder-capital-of-the-world.html> Impunidad Honduras, ASOCIACIÓN PARA UNA SOCIEDAD MÁS JUSTA, <http://asjhonduras.com/webhpn/tag/impunidad-honduras/>.

¹⁰² Secretaria de Estado en el Despacho de Seguridad, Dirección General de la Policía Nacional, Dirección de Planeamientos, Procedimientos Operativos y Mejora Continua de Departamento de Estadísticas (2019), [https://www.sepol.hn/artisistem/images/sepol-images/files/PDF/INFOGRAFICO%20ANUAL\(1\).png](https://www.sepol.hn/artisistem/images/sepol-images/files/PDF/INFOGRAFICO%20ANUAL(1).png) (*Secretaria de Estado 2019 Report*). *Out of Control*, THE ECONOMIST, Mar. 9, 2013, <http://www.economist.com/news/americas/21573108-first-two-reports-threat-rampant-violence-central-americas-small>.

¹⁰³ Juan Forero, *Women in Latin America Are Being Murdered at Record Rates*, WSJ, December 19, 2018, <https://www.wsj.com/articles/it-is-better-not-to-have-a-daughter-here-latin-americas-violence-turns-against-women-11545237843>; Intentional homicides, female (per 100,000 female), THE WORLD BANK, https://data.worldbank.org/indicator/VC.IHR.PSRC.FE.P5?end=2017&most_recent_value_desc=false&start=2017 (last visited Aug. 25, 2020).

¹⁰⁴ *Stolen Childhoods*, Save the Children (2017), at 20, https://campaigns.savethechildren.net/sites/campaigns.savethechildren.net/files/report/EndofChildhood_Report_2017_ENGLISH.pdf. The state of Honduras reported that 260 minors were killed in 2019 and 299 in 2018. See Secretaria de Estado 2019 Report, *supra* note 102. In 2011, the number of extrajudicial killings of minors was 1,068 in 2011. *Central America: Femicides and Gender-Based Violence*, U.C. HASTINGS CTR. FOR GENDER & REFUGEE STUD., <http://cgrs.uchastings.edu/our-work/central-america-femicides-and-gender-based-violence>.

¹⁰⁵ Laura Iesue, *The Alliance for Prosperity Plan: A Failed Effort for Stemming Migration*, COUNCIL ON HEMISPHERIC AFF., Aug. 1, 2016, <http://www.coha.org/the-alliance-for-prosperity-plan-a-failed-effort-for-stemming-migration/> [*COHA APP Report*]. As of 2015, around 65% of the population was living in poverty. Honduras, *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, Aug. 11, 2020, <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html> (last visited Aug. 25, 2020).

¹⁰⁶ *Guatemala 2016 Crime and Safety Report*, U.S. DEP'T OF STATE, Mar. 14, 2016, <https://www.osac.gov/pages/ContentReportDetails.aspx?cid=19279> [hereinafter *Guatemala 2016 Crime and Safety Report*].

finally coming to an end in 1996.¹⁰⁷ By the end of the war, 200,000 people had died and many more had fled to escape the violence.¹⁰⁸ Despite the passage of more than two decades, Guatemala continues to struggle with severe political, social, and economic volatility. In 2015, the Guatemalan *Policía Nacional Civil* (National Police) (“PNC”) reported around 4,750 homicides.¹⁰⁹ The *Instituto Nacional de Ciencias Forenses de Guatemala* (Guatemalan National Forensic Institute) (“INACIF”), however, estimates that the figure is closer to 5,500.¹¹⁰ Home invasions, sexual assault, kidnapping, drug trafficking, and petty crime levels are also high.¹¹¹ The PNC is inadequately funded, trained and equipped, which results in high levels of insecurity and impunity.¹¹² In addition to extreme levels of crime and violence, Guatemala is one of the poorest countries in the region, where more than half of the country’s population lives below the poverty line, with 23% living below the extreme poverty line.¹¹³ Investment in health, education, and nutrition is sorely lacking, and land ownership inequality is very high.¹¹⁴

Finally, El Salvador—like Honduras and Guatemala—has an astoundingly high homicide rate: 2,383 people were murdered in El Salvador in 2019 alone.¹¹⁵ El Salvador surpassed Honduras

¹⁰⁷ Talea Miller, *Timeline: Guatemala’s Brutal Civil War*, PBS, Mar. 7, 2011, http://www.pbs.org/newshour/updates/latin_america-jan-june11-timeline_03-07/.

¹⁰⁸ *Id.*; Susanne Jonas, *Guatemalan Migration in Times of Civil War and Post-War Challenges*, MIGRATION POL’Y INST., Mar. 23, 2013, <http://www.migrationpolicy.org/article/guatemalan-migration-times-civil-war-and-post-war-challenges>.

¹⁰⁹ This figure does not include those who left a crime scene alive and subsequently died of their injuries. *Guatemala 2016 Crime and Safety Report*, *supra* note 106.

¹¹⁰ *Necropsias Realizadas del 01 de enero al 31 de diciembre de 2016 a Nivel Nacional*, INSTITUTO NACIONAL DE CIENCIAS FORENSES DE GUATEMALA, <http://www.inacif.gob.gt/docs/estadisticas/anual/AnualM2016.pdf>.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Guatemala, *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, Aug. 11, 2020, <https://www.cia.gov/library/publications/the-world-factbook/geos/gt.html> (last visited Aug. 25, 2020).

¹¹⁴ *Id.*

¹¹⁵ Alex Papadovassilakis, *Are El Salvador’s Gangs Behind Historic Murder Drop?*, INSIGHT CRIME, Jan. 20, 2020, <https://www.insightcrime.org/news/analysis/gang-truce-behind-el-salvador-historic-murder-drop/>. 900 people were murdered in El Salvador in August 2015 alone. *How El Salvador Fell unto a Web of Gang Violence*, NPR, Oct. 5, 2015, <http://www.npr.org/sections/goatsandsoda/2015/10/05/445382231/how-el-salvador-fell-into-a-web-of-gang-violence>.

as the murder capital of the world in 2015.¹¹⁶ The high rates of violence have been blamed on a war between two rival gangs, the MS-13 and Barrio 18 (also known as “18th Street gang”).¹¹⁷ Much of the violent crime is directed towards women: El Salvador has the highest rate of gender-based murders in the world.¹¹⁸ It appears that in recent years, El Salvador is returning to the violence levels of its twelve-year civil war in which 75,000 people were killed and many more displaced.¹¹⁹

The migration of Central Americans through Mexico must be viewed through this context of violence and insecurity. Hundreds of thousands of Central Americans of all ages, from five to seventy-five, leave their homes each year in an attempt to flee the dangerous and inhospitable environments that their countries have become.¹²⁰ The number of apprehensions and deportations of Central American migrants in the United States and Mexico also gives some sense of the scale of migration: the U.S. and Mexican governments have apprehended over 1.5 million migrants from El Salvador, Honduras and Guatemala since 2010.¹²¹

¹¹⁶ *Murders in Notoriously Violent El Salvador Drop 20 Percent in 2016: Police*, REUTERS, Jan. 2, 2017, <http://www.reuters.com/article/us-elsalvador-violence/murders-in-notoriously-violent-el-salvador-drop-20-percent-in-2016-police-idUSKBN14M15F>.

¹¹⁷ *Id.*; The country’s police have blamed 80% of the homicides on the two gangs. *El Salvador Gang Violence Pushes Murder Rate to Postwar Record*, THE GUARDIAN, Sep. 2, 2015, <http://www.theguardian.com/world/2015/sep/02/el-salvador-gang-violence-murder-rate-record>.

¹¹⁸ *Central America: Femicides and Gender-Based Violence*, U.C. HASTINGS CTR. FOR GENDER & REFUGEE STUD., <http://cgrs.uchastings.edu/our-work/central-america-femicides-and-gender-based-violence>.

¹¹⁹ *El Salvador Gang Violence Pushes Murder Rate to Postwar Record*, THE GUARDIAN, Sep. 2, 2015, <http://www.theguardian.com/world/2015/sep/02/el-salvador-gang-violence-murder-rate-record>.

¹²⁰ The number of unaccompanied Central American migrants under the age of 13 has greatly increased in recent years P.J. Tobia, *No Country for Lost Kids*, PBS, June 20, 2014 <http://www.pbs.org/newshour/updates/country-lost-kids/>. While concrete numbers of Central American migrants are difficult to obtain, over 93,000 were detained by Mexico in the first seven months of 2015, compared to over 70,000 detained by United States authorities, suggesting that the actual number of people that migrate from Central America through Mexico each year is well over 160,000. Sonia Nazario, *The Refugees at Our Door*, N.Y. TIMES, Oct. 10, 2015, <http://www.nytimes.com/2015/10/11/opinion/sunday/the-refugees-at-our-door.html>.

¹²¹ By the end of FY 2016, the two governments apprehended 1,843,573 migrants from El Salvador, Guatemala, and Honduras. See *2015 Yearbook of Immigration Statistics* 92-93, U.S. DEP’T OF HOMELAND SECURITY OFFICE OF IMMIGRATION STATISTICS (2016), https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2015.pdf; *CBP Border Security Report FY 2016 2*, U.S. Customs and Border Patrol, <https://www.cbp.gov/sites/default/files/assets/documents/2016-Dec/CBP-fy2016-border-security-report.pdf>. See also *Boletín Mensual de Estadísticas Migratorias* 2010 118, SECRETARÍA DE GOBERNACIÓN (Mex.) (2012), <http://bit.ly/2eHT2Re>; *Boletín Mensual de Estadísticas Migratorias* 2011 113, SECRETARIA DE GOBERNACION (Mex.) (2012), <http://bit.ly/2gWMAGZ>; *Boletín Mensual de Estadísticas Migratorias* 2012 138, SECRETARIA DE

Migrants repeatedly suffer kidnappings, disappearances, and mass killings by criminal groups, often directly by or with the acquiescence of government authorities. As widespread violence and disappearances continue to occur at alarming rates, families of the disappeared are re-victimized by abusive and insensitive government authorities. The injustice does not end with the discovery of the body or remains of a disappeared person. Several families whose relatives were found dead received only parts of their relative's remains. Many families suspect that the remains they received do not belong to their relative. Families are often instructed not to open boxes containing human remains, leaving them in doubt as to whether the remains actually belong to their relative. Moreover, many families have received the remains of their relative in the form of ashes without having consented to cremation. Families of the disappeared face countless rights-violations at each stage of the disappearance: from authorities refusing to initiate prompt investigations to the government's disrespectful treatment of their relative's remains. The responsible authorities have also failed to provide families with adequate reparations, even when the disappeared relative was the household breadwinner. There are no clear institutional routes to report a disappearance or obtain answers in any of the states, and thousands of families of the disappeared lack closure to their grief.

Under international and regional law, Mexico, the Northern Triangle countries, and the U.S. must respect the rights and dignities of migrants and their families by promptly and effectively responding to migrant disappearances. Mexico and Honduras are States Parties to the CMW, CPED, the American Convention on Human Rights and the CFDP. Guatemala and El Salvador

GOBERNACION (Mex.) (2015), <http://bit.ly/2tTMkta>; *Boletín Mensual de Estadísticas Migratorias 2013* 133, SECRETARIA DE GOBERNACION (Mex.) (2016) <http://bit.ly/2uqcQOB>; *Boletín Mensual de Estadísticas Migratorias 2014* 134, SECRETARIA DE GOBERNACION (Mex.) (2015), <http://bit.ly/1t4EPMz>; *Boletín Mensual de Estadísticas Migratorias 2015* 134, SECRETARIA DE GOBERNACION (Mex.) (2016), <http://bit.ly/2uPUmMr>; *Boletín Mensual de Estadísticas Migratorias 2016* 136, SECRETARIA DE GOBERNACION (Mex.) (2017), <http://bit.ly/2eIbCsr>.

are States Parties to the CMW, the American Convention, the Inter-American Court of Human Rights and CFDP. By virtue of having ratified the Charter of the Organization of American States, the U.S. has legal obligations under the American Declaration of the Rights and Duties of Man.

Mexico and the Northern Triangle countries have accepted the jurisdiction of the Inter-American Court of Human Rights, which has emphasized these states' duty to conduct prompt and effective investigations of all disappearances in *Velasquez-Rodriguez v. Honduras*. As States Parties to these instruments and the Inter-American Court, all four countries must comply with their international obligations to conduct prompt investigations of all disappearances, prosecute those responsible for enforced disappearances, and properly handle the identification and repatriation of remains in a respectful and dignified manner.

Mexico plays a key role in this regional crisis. More than 40,000 migrants have disappeared in Mexico since 2006. Moreover, between 2006 and July 2020 over 71,678 people were the victims of enforced disappearance in Mexico.¹²² In response to the disappearances and substantial human rights violations, the Mexican government enacted the General Victims Law in 2013, which defines victims of human rights violations, and guarantees access to justice to all victims, regardless of nationality. Then, in late 2015, Mexico established the MAE, through which migrants and their families, including those outside of Mexico, can file claims in Mexico and participate in criminal proceedings in cases of enforced disappearances.¹²³ In addition, Mexico established the

¹²² According to Amnesty International, these figures should be treated with caution, given that they do not indicate how many of those people are presumed to be victims of disappearances by non-state actors, and how many are thought to be victims of enforced disappearance. See Amnesty International, *Amnesty International Statement for Lantos Commission Hearing on Enforced Disappearances* (Sept. 20, 2020), <https://www.amnestyusa.org/our-work/government-relations/advocacy/amnesty-lantos-statement-enforced-disappearances/>.

¹²³ Ley General de Víctimas, Diario Oficial de la Federación [DOF] DOF 09-01-2013, últimas reformas DOF 03-01-2017 (Mex.), http://www.diputados.gob.mx/LeyesBiblio/pdf/LGV_030117.pdf [*Ley General de Víctimas*]; ACUERDO A/117/15 por el que se crea la Unidad de Investigación de Delitos para Personas Migrantes y el Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación y se establecen sus facultades y organización (Dec. 18, 2015), http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015 [*Agreement A/117/15*].

National Commission on Human Rights in 2017 to address human rights violations recognized by Mexican Law. However, victims of human rights violations often cannot file claims because they are unable to travel to Mexico. Moreover, the lack of cooperation and coordination between and among state and federal authorities prevents victims from benefitting from the Law.¹²⁴ Although Mexico has a substantive legal framework largely consistent with its international legal obligations, its implementation of the laws is weak.

As for Honduras, within only five months – from March 2019 to August 2019 – an estimated 741 Honduran migrants were *reported* missing.¹²⁵ This estimate does not include a large number of cases that remain unreported, or were reported, but not registered by the government. In 2014, Honduras enacted the Law on the Protection of Migrants and their Families to assist migrants in vulnerable situations abroad. However, this Law has minimal focus on migrant disappearances. In 2018, Honduras enacted a decree (Sección B), which identifies new mechanisms for the search of missing migrants, prosecution of perpetrators, and the identification and repatriation of remains. However, the Decree’s coverage is limited. The search procedures detailed in the Decree for disappearances relate only to the identification of remains. In the same year, Honduras enacted the Law of the National Registry of Data of Missing or Disappeared Persons to create a unified, consolidated database of missing Hondurans. These combined efforts represent a major step in the right direction, but have fallen short of what is needed. Honduras provides no clear institutional route to report a disappearance. Its Civil and Penal Codes

¹²⁴ FJEDD AND TRIAL INTERNATIONAL, INFORME PRESENTADO AL COMITÉ CONTRA LA DESAPARICIÓN FORZADA EN VISTA DEL DIALOGO DE SEGUIMIENTO CON RESPECTO A MÉXICO, EN OCCASION DE LA 15A SESSION, Nov. 2018, ¶ 104. <https://trialinternational.org/wpcontent/uploads/2018/11/Full-report-to-the-Committee-on-Enforced-Disappearances-Spanish.pdf> [FJEDD and Trial International Report].

¹²⁵ Honduras registra 741 migrantes desaparecidos, 18 % de ellos mujeres, DEPARTAMENTO 19, Aug. 30, 2019, <http://departamento19.hn/honduras-registra-741-migrantes-desparecidos-18-de-ellos-mujeres/>. See also Honduras registra 741 migrantes desaparecidos, 18% mujeres. PROCESO DIGITAL, Aug. 30, 2019, <https://www.proceso.hn/actualidad/7-actualidad/honduras-registra-741-migrantes-desparecidos-18-de-ellos-mujeres.html>.

incorporate vague definitions that do not trigger the responsibility of state officials to promptly conduct investigations. Moreover, while the CPED authorizes the extension of jurisdiction abroad, Honduras has largely failed to carry out its obligations towards disappeared nationals abroad.

The number of disappeared migrants from Guatemala is currently unknown and continues to be difficult to estimate. The Guatemalan Constitution guarantees a number of human rights tied to disappearances, including freedom of movement, the right to due process and the right to petition the government for investigations. The country has also enacted the Immediate Search for Missing Women Law, establishing a comprehensive registry of missing women. While not created to address migrant disappearances, this Law has led to some positive results, such as the creation in 2018 of a national alert system for female disappearances. Finally, the Migration Code of 2016 offers protections to victims of disappearances by establishing a reporting mechanism and a commitment to inter-governmental cooperation on issues relating to the search, prosecution and prevention of crimes relating to migration. These efforts are a step in the right direction, but still leave critical gaps. While mandating harsh sentences for kidnapping or deprivation of liberty, the Penal Code does not explicitly address disappearances. Additionally, inconsistent definitions of the term “disappearance” in Guatemalan law and the absence of a proper mechanism for reporting continue to be barriers for families of the disappeared. Even when reports of a disappearance are filed, lack of coordination between government agencies hampers investigations, and families do not receive responses, obtain reparations, retrieve remains, or get other means of closure for their loss.

Since 2013, El Salvador’s Ministry of Foreign Affairs has received 786 reports of Salvadorans missing abroad. As of January 2019, the Ministry of Foreign Affairs had 330 open cases of migrant disappearances. However, the total number of Salvadoran migrants who have

disappeared remains unclear. Although El Salvador does not have specific laws addressing migrant disappearances, the Constitution, the Special Law for the Protection and Development of Salvadoran Migrants and their Families, and the Penal Code have relevant provisions. In 2011, the Salvadoran government enacted the Special Law for Migrants, promising to coordinate efforts and activities that benefit Salvadoran migrants, and to create the necessary technical units to assist Salvadorans migrants and their families within El Salvador and abroad. Despite these efforts, El Salvador falls short of its legal obligations to respond effectively to migrant disappearances. The Special Law for Migrants, for instance, fails to list any specific provisions outlining the options available to Salvadoran migrants and their families or establishing any mechanism for families to report violations. The definition of enforced disappearance, according to Salvadoran law, unfortunately excludes many of the situations faced by migrants. Moreover, the lack of a clear institutional route for reporting a disappearance, lack of transnational cooperation, insufficient resource allocation, lack of adequate reparations, absence of political will and failure to follow-up with families continue to be barriers to justice for the families.

For its part, the U.S. has not ratified the CPED or CMW. However, the U.S. plays a key role in the widespread disappearance of migrants in Mexico and Central America. The U.S. is the destination for most migrants from the Northern Triangle countries and Mexico. As part of the migration trajectory, the U.S. must also be part of the solution to protect migrants. Instead, recent U.S. policies have exacerbated the risk of disappearance. Upon the election of Donald Trump, who repeatedly promised during the 2016 presidential campaign to “build the wall,” thousands of migrants headed north to enter the U.S. before the wall was completed. While traveling in large groups is safer, and minimizes the risk of enforced disappearances, disappearances continued to occur at an alarming rate. The most damaging of the recent Trump Administration policies on the

safety of migrants, however, are the new Asylum Cooperative Agreements (“ACA”), by which the U.S. sends migrants to the Northern Triangle countries to seek asylum there. Guatemala signed an ACA in May 31, 2019, Honduras on September 25, 2019, and El Salvador on September 20, 2019.¹²⁶

In a letter to the Departments of State, Justice, and Homeland Security, a group of U.S. senators pointed out that the ACAs are in direct violation of the U.S.’s legal obligations under CAT, and its own Immigration and Nationality Act (“INA”), prohibiting *refoulement* under Section 208(a)(2)(A).¹²⁷ The senators also emphasized that the Northern Triangle countries have high homicide rates and weak, “practically nonexistent,” asylum systems.¹²⁸ Under 8 U.S.C. 1158(a)(2)(A), migrants, when transferred, need to “have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection...”¹²⁹ Sending migrants to unsafe countries with weak asylum systems that do not provide a “full and fair procedure,” as the senators indicated, violates domestic and international law.¹³⁰ Moreover, the influx of migrants into states already facing widespread violence—violence which so many are fleeing in the first place—exposes individuals who have just survived a dangerous journey to more dangers and higher risk of disappearing.

The Department of Homeland Security (“DHS”) has entered into other agreements with the Northern Triangle countries, including Border Security Arrangements, Biometric Data Sharing

¹²⁶ Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, U.S. Dept. of Homeland Security, https://www.dhs.gov/sites/default/files/publications/19_1028_opa_factsheet-northern-central-america-agreements_v2.pdf [*Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador*].

¹²⁷ Letter to Secretary Michael R. Pompeo, Department of State, William P. Barr, Attorney General, and Chad F. Wolf, Acting Secretary of Homeland Security, Feb. 5, 2020, at 4, <https://www.warren.senate.gov/imo/media/doc/2020.02.05%20Letter%20to%20State.%20DOJ,%20DHS%20about%20Northern%20Triangle%20Asylum%20Cooperative%20Agreements.pdf> [hereinafter *Letter to Secretary Michael R. Pompeo*].

¹²⁸ *Id.* at 3.

¹²⁹ *Id.*; see also 8 U.S.C.A. § 1158(a)(2)(A).

¹³⁰ Letter to Secretary Michael R. Pompeo, *supra* note 127.

Program (“BDSP”) Arrangements, and Temporary Agricultural and Non-agricultural Workers Programs Agreements.¹³¹ According to DHS, these agreements are in place to “improve safety, security, and prosperity throughout the region,” and that the U.S., as a “good partner to its Central American neighbors,” offers to provide expertise and other resources to achieve those ends.¹³² While parts of these agreements are legally questionable, they mark a trend towards regional cooperation, which may be promising for purposes of convincing the U.S. to enter into a more rights-oriented agreement with Mexico and the Northern Triangle countries to effectively address migrant disappearances.

All five states must work together to address the limitations that each face in their own respective territories, coordinating more closely and systematically. Since migrant disappearances are a transnational phenomenon, the problem requires a transnational solution. Regional efforts have been initiated, primarily by Mexico. Mexico’s General Law of Victims provides rights and remedies to all migrant victims and their family members, irrespective of nationality. Moreover, Mexico’s MAE is a regional system meant to assist family victims in their search for the truth of the fate or whereabouts of their disappeared relatives in Mexico. However, this regional institution is currently plagued by delays, lack of accessibility, a failure of communication among state authorities, and lack of coordination and political will by state authorities in the region. Moreover, the MAE does not clearly define the roles of state authorities in the Northern Triangle countries, and excludes the U.S. from any responsibility-- though all five states share responsibility for the problem and must have an equal part to play in finding solutions.

¹³¹ Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, *supra* note 126.

¹³² *Id.*

V. MEXICO

A. The Dangers of Migration through Mexico

Migrant disappearances in Mexico are occurring in an environment of extreme violence and impunity, particularly in certain areas of the country.¹³³ Over the past two decades, Mexico has struggled with high levels of crime—from drug and human trafficking to large-scale torture and murder—few of which have been seriously investigated or prosecuted by the state.¹³⁴ Migrants traveling through Mexico are particularly vulnerable, given their undocumented status and lack of resources, as well as their tendency to travel long distances through cartel-held territory.¹³⁵

1. The Effect of the Merida Initiative

The dangers of crossing through Mexico have grown alongside the increase in size and power of Mexico's drug cartels. Although Mexican drug cartels have existed for some time, they became more powerful after the demise of Colombia's drug cartels in the 1990s.¹³⁶ As a result, Mexican drug cartels now dominate the wholesale illicit drug market in the United States; an estimated 90% of cocaine entering the United States transits Mexico.¹³⁷ In 2007, due to the increase in drug trafficking, Mexican President Felipe Calderon asked U.S. President George W. Bush for assistance in combating drug and weapons trafficking.¹³⁸ Between 2008 and 2019, the United

¹³³ An estimated 99.3% of all crimes go unpunished in Mexico. See Juan Antonio Le Clercq Ortega, INDICE GLOBAL DE IMPUNIDAD MÉXICO 2018 (Mar. 2018), https://www.udlap.mx/igimex/assets/files/2018/igimex2018_ESP.pdf; See also *La impunidad en México es de 99.3%; no hay policías ni jueces suficientes: UDLAP*, ARISTEGUI NOTICIAS, Mar. 13, 2018, <https://aristeginoticias.com/1303/mexico/la-impunidad-en-mexico-es-de-99-3-no-hay-policias-ni-jueces-suficientes-udlap/>.

¹³⁴ An estimated 42,583 homicides were reported in 2017, the highest number since December 2012. See *Amnesty International Report 2017/18*, AMNESTY INT'L, 257, Feb. 22, 2018, <https://www.amnesty.org/download/Documents/POL1067002018ENGLISH.PDF>. Mexican authorities reported more than 37,400 people who have disappeared since 2006. *Mexico: Events of 2018*, HUM. RTS. WATCH, (2019) <https://www.hrw.org/world-report/2019/country-chapters/mexico>.

¹³⁵ OSF REPORT, *supra* note 69, at 9, 14, 44.

¹³⁶ CONG. RESEARCH SERV., RL34215, MEXICO'S DRUG CARTELS (2008).

¹³⁷ *Id.*

¹³⁸ KRISTIN FINKLEA & CLARE RIBANDO SEELKE, CONG. RESEARCH SERV., R41349, U.S.-MEXICAN SECURITY COOPERATION: THE MÉRIDA INITIATIVE AND BEYOND 9 (2017).

States Congress appropriated more than \$3.0 billion in aid to Mexico through the Mérida Initiative, a partnership between the United States and Mexico “to address drug trafficking and crime.”¹³⁹ Among other things, this assistance from the U.S. has been used to implement comprehensive justice sector reforms in Mexico, train Mexican law enforcement, and establish anti-corruption programs.¹⁴⁰

The Mérida Initiative has received mixed reactions. The governments of both countries have lauded the program, calling it a success.¹⁴¹ Human rights groups, however, have blamed it for worsening Mexico’s security and human rights situation.¹⁴² Over 43,000 people were killed during President Peña Nieto’s first two years in office, compared with 14,000 during his predecessor’s first two years.¹⁴³ Disappearances more than doubled from 6 per day under President Calderón to 13 per day under President Peña Nieto.¹⁴⁴ Additionally, the Mérida Initiative helped to fund the deployment of at least 96,000 Mexican troops in the “war on drugs,” which left at least 70,000 people dead and 26,000 disappeared at the hands of security forces.¹⁴⁵

As Mexico’s U.S.-funded war on drugs intensified through the Mérida Initiative, Mexican criminal organizations looked for other ways to make revenue,¹⁴⁶ turning to extortion, kidnapping,

¹³⁹ Clare Ribando Seelke, CONG. RESEARCH SERV., IF10578, MEXICO: EVOLUTION OF THE MÉRIDA INITIATIVE, 2007-2020 (2019).

¹⁴⁰ *Id.*

¹⁴¹ See generally Merida Initiative, U.S. DEP’T OF STATE, <https://2009-2017.state.gov/j/inl/merida//index.htm>. Congress has sought to encourage efforts to combat human rights abuses and impunity in Mexico by placing conditions on assistance for the program. Through FY2015, Congress directed that 15% of certain assistance provided to Mexican military and police forces would be subject to human rights conditions. In FY2014, Congress reprogrammed funding to other countries due to human rights concerns. See Finklea et al., *supra* note 138, at 12. The State Department points to Mexico’s apprehension of more than 150,000 migrants as an indication of success of the Mérida Initiative. *Id.* at 24.

¹⁴² Tim MacGabhann, *Mexico’s Plan Merida on Trial*, TELESUR, Sept. 26, 2015, <https://www.telesurenglish.net/opinion/Mexicos-Plan-Merida-on-Trial-20150926-0020.html>; See also *México: Eventos de 2009*, HUM. RTS. WATCH, <https://www.hrw.org/es/world-report/2010/country-chapters/259138>; *La Iniciativa Mérida y la seguridad ciudadana en México y Centroamérica*, WASH. OFF. ON LATIN AM., Mar. 9, 2008, <https://www.wola.org/es/2008/03/la-iniciativa-merida-y-la-seguridad-ciudadana-en-mexico-y-centroamerica/>;

¹⁴³ MacGabhann, *Id.* at 58.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ IOAN GRILLO, *EL NARCO: INSIDE MEXICO’S CRIMINAL INSURGENCY* 265 (2012).

auto theft, human smuggling, retail drug sales, and other illicit enterprises.¹⁴⁷ Thus, the unprecedented spike in kidnappings and disappearances in Mexico can be traced to the supposed “success” of the Mérida Initiative.¹⁴⁸ Irregular migration is deemed one of the main sources of revenue for organized crime in Mexico.¹⁴⁹ Criminal organizations target migrants for kidnapping because they offer easy profit and minimal risk of prosecution, given the undocumented status of their victims.¹⁵⁰ Although they are poor, migrants often have relatives with financial savings; by kidnapping just one migrant, criminal organizations often extort at least \$5,000 from the migrant’s family.¹⁵¹ As a result, these organizations kidnap dozens of migrants at a time from trains or buses, or simply ambush those trekking through the country.¹⁵² The captured migrants are kept until family members in the U.S. or in Central America wire payments to the cartel.¹⁵³

A network of corrupt public officials abets the drug cartels.¹⁵⁴ Migrants have reported that officials from the Mexican *Instituto Nacional de Migración* (National Immigration Institute) (“INM”) and police have detained them and then handed them over to the criminal gangs.¹⁵⁵

¹⁴⁷ Finklea et al., *supra* note 138, at 1.

¹⁴⁸ MacGabhann, *supra* note 142.

¹⁴⁹ Alejandro I. Canales Cerón & Martha Luz Rojas Wiesner, *Panorama de la Migración Internacional en México y Centroamérica*, COMISIÓN ECONÓMICA PARA AMÉRICA LATINA Y EL CARIBE 51 (2018), https://repositorio.cepal.org/bitstream/handle/11362/43697/1/S1800554_es.pdf [*Panorama*]; *Situation of Human Rights in Mexico*, INTER-AM. COMM’N ON HUMAN RIGHTS ¶ 60 (2015),

<http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf> [*IACHR Human Rights Report*]; *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, INTER-AM. COMM’N ON HUMAN RIGHTS ¶ 101 (2013), www.oas.org/en/iachr/migrants/docs/pdf/report-migrants-mexico-2013.pdf [*IACHR Migrant Report*].

¹⁵⁰ *Panorama*, *Id.* at 77; *IACHR Human Rights Report*, *Id.* at ¶ 60; *IACHR Migrant Report*, *Id.* at ¶¶ 84-85.

¹⁵¹ *IACHR Migrant Report*, *Id.* at ¶ 110.

¹⁵² GRILLO, *EL NARCO*, *supra* note 146, at 266.

¹⁵³ *Id.*

¹⁵⁴ Government authorities were found to have been involved in 8.9% of documented kidnappings in 2010. *Informe Especial Sobre los Casos de Secuestro en Contra de Migrantes (Special report on abductions of migrants)* 27, COMISIÓN NACIONAL DE DERECHOS HUMANOS (Feb. 22, 2011). This is the last time the Commission has issued a report of this nature. See *Pronunciamientos, Estudios e Informes Especiales*, COMISIÓN NACIONAL DE DERECHOS HUMANOS, <https://www.cndh.org.mx/pronunciamientos-estudios-informes-especiales> (last visited Oct. 11, 2019). However, the Commission still acknowledges that public servants have colluded with drug cartels and organized crime. *Informe de Actividades del 1 de enero al 31 de diciembre 2018* 160, COMISIÓN NACIONAL DE DERECHOS HUMANOS (Jan. 2019).

¹⁵⁵ *IACHR Human Rights Report*, *supra* note 149, at ¶169; *IACHR Migrant Report*, *supra* note 149, at ¶¶ 112, 123, 230.

Impunity is a major problem in Mexico; it is estimated that 94% of crimes are not reported due to fear of repercussions, and to public perception that investigations are a waste of time.¹⁵⁶ Since 2007, Mexico's *Comisión Nacional de los Derechos Humanos* (National Commission on Human Rights) ("CNDH") has registered more than 10,000 complaints against the Mexican armed forces, of which only 38 ended in sentences for military personnel in a six-year period.¹⁵⁷

Despite the dangers, the number of migrants attempting to cross into Mexico has soared in recent years.¹⁵⁸ After the unprecedented surge of unaccompanied Central American child migrants crossing the U.S.-Mexico border in 2014, Mexico tightened immigration control along its southern border, through a program known as *Programa Frontera Sur*, funded by the Mérida Initiative.¹⁵⁹ Mexican President Enrique Peña Nieto launched Programa Frontera Sur "to protect migrants who enter Mexico, and . . . to manage the ports of entry in a way that promotes the security and prosperity of the region."¹⁶⁰

Human rights groups have severely criticized this program for its focus on deportations, instead of policies that protect migrants fleeing dangerous situations.¹⁶¹ Between January and September 2019, refugees made an unprecedented 54,377 applications for asylum in Mexico, of

¹⁵⁶ 2017 MAE Update, *supra* note 75, at 9; IACHR Human Rights Report, *Id.* at ¶¶ 7, 12, 307, 485.

¹⁵⁷Maureen Meyer, *Mexico's Proposed National Guard Would Solidify the Militarization of Public Security*, WASH. OFF. ON LATIN AM. (Jan. 10, 2019), <https://www.wola.org/analysis/mexico-national-guard-military-abuses/>; *Perpetuar el Fallido Modelo de Seguridad*, CENTRO DE DERECHOS HUMANOS MIGUEL AGUSTIN PRO JUAREZ A.C. 58 (Apr. 2018), <https://centroprodh.org.mx/2018/04/26/perpetuar-el-fallido-modelo-de-seguridad-2da-edicion/>; MacGabhann, *supra* note 142.

¹⁵⁸ *Migrantes en México: Vulnerabilidad y Riesgos*, INT'L ORG. FOR Migration 16 (2016), https://publications.iom.int/system/files/pdf/micic_mexico_2.pdf.

¹⁵⁹ Mexico has received more than \$100 million in U.S. equipment and training specifically for security along its southern borders with Guatemala and Belize. See Finklea et al., *supra* note 138, at 15; 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/> [COHA *Frontera Sur Report*].

¹⁶⁰ Pedro Valenzuela and Christopher Wilson, *Mexico's Southern Border Strategy: Programa Frontera Sur 1*, WILSON CENTER MEXICO INSTITUTE (July 11, 2014), https://www.wilsoncenter.org/sites/default/files/Mexico_Southern_Border_Strategy.pdf.

¹⁶¹ Finklea, *supra* note 138, at 21.

which only 6.8% were approved.¹⁶² While asylum seekers between 2013 and 2019 increased by 4096% (from 1,296 to 54,377), the funds allocated to the *Comisión Mexicana de Ayuda a Refugiados*, the Mexican agency that oversees the processing of asylum applications, have remained well below US \$2 million.¹⁶³ At the same time, the INM, which oversees the detention and deportation of migrants, has an annual budget of US \$69 million, the lowest budget since 2007.¹⁶⁴ The human rights organization *Fundación para la Justicia y el Estado del Derecho* (“FJEDD”) issued a report that shows a direct correlation between the intensification of border patrol through *Programa Frontera Sur* and violations of various human rights, such as the right to bodily integrity and the right to liberty.¹⁶⁵ Between May 2017 and May 2019, the number of migrants detained in Mexico rose 220%.¹⁶⁶

While Mexico continues to voice its opposition to stricter U.S. immigration policies, it turns its back on Central American migrants.¹⁶⁷ The intensified border control in the south has forced Central Americans to look for more dangerous routes to the U.S. to evade checkpoints and

¹⁶² *Estadísticas de Solicitantes de Refugio al Mes de Septiembre de 2019*, COMISIÓN MEXICANA DE AYUDA A REFUGIADOS (Sept. 4, 2019), https://www.gob.mx/cms/uploads/attachment/file/498410/REPORTE_AL_CIERRE_DE_SEPTIEMBRE_2019_2-oct_pdf.

¹⁶³ Lizbeth Diaz & Delphine Schrank, *Mexico's Refugee Agency Turns to U.N. Amid Asylum Surge, Funding Cuts*, REUTERS (May 21, 2019), <https://www.reuters.com/article/us-usa-immigration-mexico-idUSKCN1SS06N>.

¹⁶⁴ Rolando Ramos, *Instituto Nacional de Migración Pierde 222.2 de Pesos en Una Década*, EL ECONOMISTA (June 13, 2019), <https://www.economista.com.mx/politica/Instituto-Nacional-de-Migracion-pierde-222.2-millones-de-pesos-en-una-decada--20190613-0005.html>.

¹⁶⁵ Rodolfo Córdova Alcaraz & Alma García, *La Reconstrucción de la Dignidad Humana: Como Las Víctimas Migrantes Buscan la Justicia y la Verdad 1*, FUNDACIÓN PARA LA JUSTICIA Y EL ESTADO DEMOCRÁTICO DE DERECHO.

¹⁶⁶ Alberto Pradilla & Manu Ureste, *AMLO Defiende a Migrantes Frente a Trump, Pero las Detenciones en México se Disparan 100%*, ANIMAL POLÍTICO (June 1, 2019), <https://www.animalpolitico.com/2019/06/migrantes-detenciones-amlo-trump/>. Official data from the INM could not be obtained.

¹⁶⁷ See Kevin Sieff & Scott Clement, *Unauthorized Immigrants Face Public Backlash in Mexico, Survey Finds*, WASH. POST (July 17, 2019), https://www.washingtonpost.com/world/the_americas/unauthorized-immigrants-face-public-backlash-in-mexico-survey-finds/2019/07/16/f7fc5d12-a75e-11e9-a3a6-ab670962db05_story.html; COHA *Frontera Sur Report*, *supra* note 159.

patrols.¹⁶⁸ These isolated routes raise the risk of kidnapping, disappearance or murder along the way.¹⁶⁹ Within the first year of *Programa Frontera Sur*'s implementation, there was an increase of 4.7% in crimes against migrants in four southern Mexican border states.¹⁷⁰

One of the greatest obstacles in addressing the disappearance of Central American migrants in Mexico is the lack of data on the numbers and identities of migrants who have disappeared.¹⁷¹ In April 2018, the Mexican government estimated the number of disappeared people in Mexico at 36,265, but counted only 209 missing migrants among them.¹⁷² This undercount is understandable, given that Central American migrants attempt to cross the border into Mexico undetected so as not to risk detention and deportation.

2. Migrant Disappearances in Mexico

In the absence of data on the number of migrants who enter Mexico each year and the number of migrants that disappear, four documented incidents give some insight into how Central American migrants are murdered and disappear: the massacre of seventy-two people in San Fernando, Tamaulipas in August 2010; the discovery of a mass grave in San Fernando, Tamaulipas in April 2011; the discovery of forty-nine human torsos in Cadereyta, Nuevo León in May 2012; and the case of nine missing Guatemalans in February 2014.¹⁷³

¹⁶⁸ John Holman, *Mexico's 'Invisible Wall', A Migrant Double Standard*, AL-JAZEERA, (Feb. 16, 2017), <http://www.aljazeera.com/indepth/features/2017/02/mexico-invisible-wall-migrant-double-standard-170214213612822.html>.

¹⁶⁹ *COHA Frontera Sur Report*, *supra* note 159.

¹⁷⁰ *Id.*

¹⁷¹ OSF REPORT, *supra* note 69, at 44-45 (“There is no comprehensive database on crimes against migrants, but according to the CNDH, only three cases of migrant kidnappings had been opened at the federal level between January 2008 and August 2009.”).

¹⁷² Mexican Missing Person Registry, *supra* note 68. According to the Open Society Foundation, the government estimate is “misleading and largely arbitrary—a flawed government accounting of missing persons”. OSF REPORT, *Id.* at 14.

¹⁷³ The total number of victims from the first three incidents is 314 people, of which only 114 have been identified. *Disappeared Migrants: The Permanent Torture 4*, FUNDACIÓN PARA LA JUSTICIA (May 2014), <https://www.fundacionjusticia.org/wp-content/uploads/2014/09/Disappeared-migrants.pdf> [FJEDD Report].

a. *San Fernando Massacre, August 2010*

On August 25, 2010, seventy-two bodies were discovered in the municipality of San Fernando, Tamaulipas in northern Mexico.¹⁷⁴ Of the seventy-two bodies, twenty-four were identified as Honduran, fourteen as Salvadoran, thirteen as Guatemalan, five as Ecuadoran, three as Brazilian, and one as Indian.¹⁷⁵ To date, there are nine victims who have not yet been identified and families who are not certain whether the remains they received belong to their family member.¹⁷⁶ Even ten years after the massacre, the lack of answers and reparations leave several families without closure and little justice.¹⁷⁷

The only two survivors from the massacre stated that eight armed men kidnapped them and took them to a house where they were tortured and pressured to join a criminal organization. When most of the migrants refused to join, they were transferred to a separate location where they were shot to death. During the transfer, the two survivors managed to escape to safety.¹⁷⁸ In the days following the discovery of the bodies, two more decapitated bodies appeared with obvious signs of torture. The bodies were identified as officers from the Secretariat of Public Safety of San Fernando, who were overseeing the investigation of the massacre.¹⁷⁹

As of 2020, nine of the bodies remained unidentified, and the exhumation and identification process of the other remains are claimed to be replete with errors and failures, indicating “a lack of diligence from the Mexican authorities.”¹⁸⁰

¹⁷⁴ *Id.* at 4.

¹⁷⁵ *Id.*

¹⁷⁶ Fundación para la Justicia y El Estado Democrático de Derecho, *A Diez Años del Caso de la Masacre de 72-Migrantes las Familias Centroamericanas Exigimos Justicia*, Blog, (Aug. 24, 2020), <https://www.fundacionjusticia.org/a-diez-anos-del-caso-de-la-masacre-de-72-migrantes-las-familias-centroamericanas-exigimos-justicia/> [FJEDD 72 Tenth-Anniversary Campaign]

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 4.

¹⁷⁹ *Id.* at 4-5.

¹⁸⁰ *Id.*; See also FJEDD Report, *supra* note 173, at 5. As of 2017, ten bodies remain unidentified. Areli Villalobos, *Siete Años de Inconsistencias en San Fernando: 10 Cuerpos sin Identificar y Ocho Detenidos sin Sentencia*,

b. San Fernando Mass Grave, April 2011

In April 2011, forty-three human remains were found in an unmarked grave in the town of San Fernando, Tamaulipas.¹⁸¹ Shortly thereafter, additional remains were found, amounting to “forty-seven clandestine graves containing the remains of 193 victims of arbitrary executions.”¹⁸² The remains showed signs of extreme torture, including collapsed skulls.¹⁸³

On March 27, 2011, the family of a Mexican migrant received a phone call from a stranger, informing them that migrants on the bus had been kidnapped and that this cell phone had been left behind.¹⁸⁴ The family reported the kidnapping to the armed forces stationed in San Fernando, but they refused to help, denying any knowledge of the incident.¹⁸⁵ On March 30, 2011, the family filed a complaint with the Tamaulipas Public Ministry, the state’s prosecutor’s office, and a few days later, the family learned that a mass grave was discovered in San Fernando.¹⁸⁶ To this date, government authorities and the families of the disappeared believe that the remains in these graves are those of the migrants who were kidnapped from buses.¹⁸⁷

c. Discovery of Remains in Cadereyta, Nuevo León, May 2012

FJEDD recorded yet another brutal incident involving the May 2012 discovery of forty-nine torsos in Cadereyta, Nuevo León.¹⁸⁸ These torsos were all that remained of forty-two men and seven women. Initial official reports claimed that the victims were members of organized crime groups; however, later reports in 2013 stated that some of the victims were migrants in

PROCESO (Aug. 23, 2017), <https://www.proceso.com.mx/500192/siete-anos-inconsistencias-en-san-fernando-10-cuerpos-sin-identificar-ocho-detenidos-sin-sentencia>.

¹⁸¹ *Id.* at 4-5.

¹⁸² *Id.* at 4.

¹⁸³ *Id.*

¹⁸⁴ *Id.* at 13.

¹⁸⁵ *Id.*

¹⁸⁶ *Id.*

¹⁸⁷ *Id.* at 5.

¹⁸⁸ *FJEDD Report, supra* note 173, at 6.

transit to the United States.¹⁸⁹ Eight Honduran migrants were identified among the dead.¹⁹⁰ Exact details of what transpired remain unclear. The repatriation of remains took over two years. The families have serious complaints about how repatriation was handled, with some families reporting that they received remains that do not correspond to their family member.¹⁹¹

d. Nine Missing Guatemalans, February 2014

The case of the nine missing Guatemalans is being investigated with assistance to the families from FJEDD.¹⁹² According to the organization, approximately eleven Guatemalans left Guatemala with a *coyote*, a human smuggler, to make their way to the United States.¹⁹³ The last time the Guatemalans communicated with their families was in Ciudad Victoria, Tamaulipas in February of 2014.¹⁹⁴ Somewhere along the route, the migrants and the *coyote* disappeared.¹⁹⁵ Months later, the families of the disappeared migrants received demands for ransom. The families deposited the money as instructed, but never heard from the callers or their loved ones again.¹⁹⁶

FJEDD initiated an investigation into the case in June 2014.¹⁹⁷ The organization filed a complaint with the Tamaulipas Attorney General and the *Fiscalía General de la República* (Attorney General of the Republic) (“FGR”) on behalf of the Guatemalan families who were struggling to communicate with the Mexican authorities from their homes in rural Guatemala. At first, the FGR ordered the federal police to search for the missing migrants in Tamaulipas and

¹⁸⁹ *Id.*

¹⁹⁰ *Id.* at 6.

¹⁹¹ *See infra* Ch. VI (D)(2).

¹⁹² Email from Marisol Flores, Legal Dep’t of Fundación para la Justicia y el Estado Democrático de Derecho, to Stephanie Bonilla, Student Attorney of the Boston University School of Law International Human Rights Clinic (Jan. 26, 2016) (on file with author).

¹⁹³ Interview with Alma Garcia, Coordinator of Analysis and Documentation of Fundación para la Justicia y el Estado Democrático de Derecho, in Mex. City, Mex. (Oct. 22, 2016) [*Garcia Interview*].

¹⁹⁴ *Id.* Some family members say the migrants were already *en route* to Reynosa.

¹⁹⁵ *Id.*

¹⁹⁶ *Garcia Interview, Id.*

¹⁹⁷ Email from Marisol Flores, *supra* note 192.

investigate the crime, but this order was not carried out. The FGR protocol requires authorities to search detention centers and shelters for missing people when a complaint is filed. Instead, federal police limited their search to databases and information requests from the INM and the authorities in Tamaulipas.¹⁹⁸

It was not until September 2015, over a year after FJEDD filed its complaint, that the FGR solicited information from all states regarding the missing Guatemalans. Unfortunately, this search yielded no results and it remains unclear what happened to the missing migrants, with no leads so far of the route taken by either the victims or the perpetrators.¹⁹⁹

In light of the Mexican authorities' apparent inability to carry out a proper investigation, in 2015 FJEDD requested that the U.N. Committee on Enforced Disappearances issue precautionary measures in the case.²⁰⁰ The Committee issued recommendations, including a request to form a search commission.²⁰¹ FJEDD and other civil society organizations currently await the Mexican government's response to the recommendations, but there has been no significant progress in this case or closure for the victims' families.²⁰²

These four incidents offer a very limited view of the scope and dimensions of the problem of disappeared migrants in Mexico. They illustrate some of the greatest challenges in addressing these disappearances, such as the lack of clear legal requirements for prompt and thorough investigations, failure to prosecute those found responsible, as well as lack of compensation and other remedies for the victims and their families.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

²⁰⁰ Fundación para la Justicia et al., *Informe de seguimiento presentado al Comité contra la Desaparición Forzada sobre el Cumplimiento de las Medidas Recomendadas en las Observaciones Finales Adoptadas el 13 de Febrero de 2015 (CED/C/MEX/CO/1)*(Feb. 2016), http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_NGS_MEX_23956_S.pdf.

²⁰¹ *Concluding Observations on the Rep. Submitted by Mexico*, ¶ COMM. ON ENFORCED DISAPPEARANCES, 31, CED/C/MEX/CO/1 (Mar. 5, 2015).

²⁰² Email from Marisol Flores, *supra* note 1922.

B. Mexican Law

In addition to being party to international and regional agreements on forced disappearances, Mexico has relevant domestic laws. Mexico operates under a monist system with respect to international law, meaning that although an additional law implementing the treaty provisions is not required, international treaties require legislative approval before taking effect.²⁰³

1. Federal Statutes

a. *General Victims Law*

Among the relevant federal statutes, the *Ley General de Víctimas* (General Victims Law) defines victims of human rights violations and provides for reparations to them.²⁰⁴ The purpose of the law is to “recognize and guarantee the rights of victims of crimes and violations of human rights, especially the right to assistance, protection, truth, justice . . . and all the rights conferred in the Constitution, in human rights treaties [to which] Mexico is a party, and other human rights instruments.”²⁰⁵

The law provides a definition for both “direct victims” and “indirect victims.” Direct victims are individuals who have suffered some harm or impairment from a violation of their recognized human rights, and indirect victims are relatives or those with a close relationship to direct victims.²⁰⁶

²⁰³ David Sloss, *Domestic Application of Treaties* 8-9, SANTA CLARA LAW: FACULTY PUB. (2011), <http://digitalcommons.law.scu.edu/cgi/viewcontent.cgi?article=1620&context=facpubs>. In terms of legal hierarchy, where there is a conflict of laws, international treaties rank higher than Mexican federal statutes, but lower than the Mexican Constitution. *Id.* at 9. Mexico’s legal system is based on civil law, composed of codes which rank lower than federal statutes in the Mexican legal hierarchy. Jorge A. Vargas, MEXICAN LAW FOR THE AMERICAN LAWYER 23 (2009).

²⁰⁴ *Ley General de Víctimas*, *supra* note 123.

²⁰⁵ *Ley General de Víctimas*, *Id.* at art. 2.

²⁰⁶ *Id.* at art. 4. Direct victims are defined as “People who have suffered some harm or impairment that is economical, physical, mental, emotional, or in general any setting that brings danger or harm at a person’s legal assets or rights as a consequence of the commission of a crime or violation to their human rights recognized in the Constitution and international treaties to which Mexico is a party.” Indirect victims are “family members or people who have an immediate relationship to the direct victim and are responsible for the direct victim.”

The General Victims Law also defines “violation of human rights” as “all acts or omissions that affect the human rights recognized in the Constitution or in international treaties when the agent is a public official in the exercise of his functions or attributions or an individual that exercises public services.”²⁰⁷ A violation of human rights includes “when the action or omission described occurs by an individual instigated or authorized explicitly or implicitly by a public agent or when the individual acts with acquiescence from or in collaboration with a public official.”²⁰⁸ The General Victims Law applies to migrants who have been subject to enforced disappearance as direct victims, and to their families as indirect victims.

Any person believing she or he qualifies under the General Victims Law may apply to be recognized as a “victim” and entered into the Victim Registry.²⁰⁹ The application requires a significant amount of detailed information.²¹⁰ Completed applications are submitted to the *Comisión Ejecutiva de Atención a Víctimas* (Executive Commission for Attention to Victims) (“CEAV”) for review.²¹¹

The General Victims Law allows CEAV, domestic or international human rights organs, or a penal judge to evaluate applications and grant the “victim” status.²¹² If there is reasonable doubt about the facts, information about the victim or the person applying to the registry, the Law provides the opportunity to hold a hearing to clarify the issue.²¹³ Any of the entities that have the

²⁰⁷ *Id.* art. 6.

²⁰⁸ *Id.* art. 2.

²⁰⁹ *Id.* art. 98 (“Any authority and any individual that has knowledge of a crime or violation of human rights has the obligation to apply the names of the victims into the Registry with whatever information they have.”).

²¹⁰ The application requires the following: information on each one of the victims; the complete name, position, and signature of the public employee receiving the application; the fingerprint and signature of the person soliciting the registry; the circumstances, time, and place before, during, and after the occurrence of the victimizing acts; contact information for the person soliciting the registry; and information on the family or relationship with the victim, or the person soliciting the registry if not the victim him or herself. *Id.* at art. 99.

²¹¹ *Id.* art. 98

²¹² *Id.* arts. 101, 110.

²¹³ *Id.* art. 101.

power to grant “victim” status may also deny a person’s application and inclusion in the registry if it finds that an application provides misleading information about the crime.²¹⁴ Any denial, however, cannot be general, but must provide reasons and specific findings in relation to each of the claimed acts or crimes.²¹⁵

Once an individual is granted “victim” status, she or he has access to the General Victims Law’s benefits and remedies through the *Sistema Nacional de Atención a Víctimas* (National System of Attention to Victims), including specific services, access to truth and justice mechanisms, and reparations.²¹⁶ Victims are entitled to a prompt investigation into the crime, to prosecution of those responsible, to intervene in judicial proceedings on their claims, and to receive regular updates on their case. The General Victims Law also requires the state to facilitate family reunification; to return victims to their place of origin or to relocate them; to provide specialized treatment for physical and psychological rehabilitation and basic services.²¹⁷ Other remedies include scholarships to both public and private educational institutions, from elementary school to college;²¹⁸ financial support to cover basic needs from the *Fondo de Ayuda, Asistencia y Reparación Integral* (Help, Assistance, and Comprehensive Reparation Fund) (“Fondo”);²¹⁹ and medical, psychological, and rehabilitative care.²²⁰ These benefits provide recognized victims with a broad range of protections as compensation and reparation for human rights violations.

Under this framework, families of the disappeared have the right “to be informed in a clear, precise and accessible manner of their rights by the Public Ministry or the first authority with

²¹⁴ This means that the applicant would not be a “victim” under the General Victims Law. *Id.* art. 103.

²¹⁵ *Id.*

²¹⁶ *Id.* at arts. 111-12.

²¹⁷ Ley General de Víctimas, *Id.* art. 7.

²¹⁸ *Id.* art. 116. Although tuition in Mexican public schools is free from elementary to middle school, students must finance textbooks, school supplies, uniforms, and transportation. *Public Education in Mexico: Guaranteed, but Not Free of Cost*, ICF (May 22, 2018), <https://icfdn.org/public-education-in-mexico-guaranteed-but-not-free-of-cost/>.

²¹⁹ *Id.* art. 139.

²²⁰ *Id.* at arts. 9, 34, 62.

which they have contact.”²²¹ Moreover, “each victim who has been reported as disappeared has the right to effective and urgent investigations by competent authorities to find their location, and, in specific cases, their timely rescue.”²²² That being said, state authorities must “initiate, in an immediate and prompt manner . . . all of the necessary measures to determine the whereabouts of the disappeared person,” including proper search protocols and exhumations “carried out with due diligence and competence . . . using scientific standards recognized in the international community.”²²³ When an enforced disappearance is reported, the relevant authorities must be informed within *twenty-four hours*.²²⁴

b. General Law on Disappearances

In addition to the General Victims Law, in 2017 the Mexican legislature enacted the Ley General en Materia de Desaparición Forzada de Personas (General Law on Forced Disappearance of Persons) (“General Law”).²²⁵ This legislation distinguishes between a “Disappeared Person” and a “Missing Person”. A “Disappeared Person” is someone whose whereabouts are unknown but is presumed to be related to commission of a crime; a “Missing Person [Not Located]” is a person whose location is unknown but whose absence is not related to the probable commission of a crime.²²⁶ The General Law conformed the criminal definition of “enforced disappearance” to international law, defining it as occurring when “the public servant or the individual who, with the authorization, support or acquiescence of a public servant, deprives a person of freedom in any

²²¹ *Id.* art. 12.

²²² *Id.* art. 19.

²²³ *Id.* art. 21.

²²⁴ *Id.* art 108.

²²⁵ Ley General en Materia de Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas, Diario Oficial de la Federación DOF 17-11-2017 (Mex.) [*Ley de Desaparición Forzada*].

²²⁶ *Id.* art. 4.

form, followed by an abstention or refusal to recognize such deprivation of freedom or to provide information about it.”²²⁷

Accordingly, the General Law on Disappearances establishes liability for actors who are not public servants but nevertheless participate with state actors in effecting the disappearance of people. It imposes prison terms for public and private actors who conceal or refuse to provide information about a person’s disappearance.²²⁸ The General Law establishes the *Sistema Nacional de Búsqueda* (National Search System) and the *Comisión Nacional de Búsqueda* (National Search Commission) to spearhead the search for missing persons, and the *Registro Nacional de Personas Desaparecidas y No Localizadas* (National Registry of Disappeared and Missing Persons). It also authorizes Local Commissions of Search in the Federal Entities to assist in searching for missing and disappeared persons, and requires coordination between authorities from distinct levels of government.²²⁹ The Mexican government allocated \$20 million for the National Search Commission’s budget for the 2019 fiscal year.²³⁰ Additionally, the institution can access the \$390 million *Fondo de Aportaciones para la Seguridad Pública* (Public Security Contribution Fund), through which resources are transferred to states to comply with national public security strategies.²³¹

The General Law on Disappearances authorizes the inclusion of families of the disappeared in the design, implementation, monitoring, and evaluation of the search and identification of disappeared and missing persons, and guarantees their participation in investigations. It also entitles families to give their opinions, receive information, and provide evidence, and emphasizes

²²⁷ *Id.* art. 27.

²²⁸ *Id.* at arts. 28, 30.

²²⁹ *Ley de Desaparición Forzada*, *supra* note 225, at art. 2.

²³⁰ Press Release, Office of the President of the Mexican Republic, Presidente López Obrador Presenta Plan de Implementación de la Ley General en Materia de Desaparición Forzada de Personas (Feb. 4, 2019).

²³¹ *Id.*

Mexico’s duty of due diligence in the search for disappeared persons, and to provide answers to family members.²³² Moreover, it recognizes the right to truth, access to justice and reparations, and requires state authorities to initiate searches “from the moment...the authorities have news of the disappearance.”²³³ Families also have the right to participate in search missions and judicial proceedings, propose procedures to be adopted by the authorities, and have direct access to records or files regarding the investigation.²³⁴

2. State Law

As of September 2015, nineteen out of the thirty-one Mexican states have passed legislation that incorporates enforced disappearance as an independent crime, distinguishing it from similar crimes, such as murder or kidnapping.²³⁵ In addition to the specialized offices of the FGR, the authorities of the Mexican state where an alleged disappearance took place have a mandate to investigate disappearances.²³⁶

C. Efforts to Address Migrant Disappearances

1. Investigations of Migrant Disappearances

Five or more distinct offices within the FGR may be involved in the investigation of enforced disappearances, depending on the circumstances of the case.²³⁷ These include:

- *Subprocuradurías Especializadas* (Specialized Investigation Units) within the Deputy Attorney General’s Office, with its *Subprocuraduría Especializada en Investigación de Delincuencia Organizada* (Specialized Unit for Investigating Organized Crime) (“SEIDO”);

²³² *Id.* art. 5.

²³³ *Id.* at arts. 5, 137.

²³⁴ *Id.* art. 138.

²³⁵ *Situation of Human Rights in Mexico*, INTER-AM. COMM’N ON HUMAN RIGHTS ¶ 115, (2016), <http://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf> [*IACHR Mexico Report*].

²³⁶ Ley de Desaparición Forzada, *supra* note 225, at arts. 25, 26.

²³⁷ OSF REPORT, *supra* note 69, at 129.

- the *Fiscalía Especializada de Búsqueda de Personas Desaparecidas* (Specialized Prosecutor for the Search of Disappeared Persons) (“FEBPD”);
- the *Unidad de Investigación de Delitos para Personas Migrantes* (Specialized Prosecutor for the Investigation of Crimes against Migrants) (the latter two are within the Attorney General’s Specialized Investigation Unit for Human Rights, Crime Prevention, and Community Services);
- the Attorney General’s Office for Federal Crimes’ *Unidad Especializada en Investigación de Delitos Cometidos por Servidores Públicos y contra la Administración de Justicia* (Specialized Investigation Unit for Crimes committed by Federal Public Servants and against the Administration of Justice);
- and the *Fiscalía Especializada en Investigación de los Delitos de Desaparición Forzada* (Special Prosecutor’s Office for the Investigation of Enforced Disappearance Crimes).²³⁸

Public distrust of the Mexican authorities stems from years of most cases remaining unsolved, despite clear evidence of torture, enforced disappearances and extrajudicial executions.²³⁹ Families have reported failures by Mexican authorities in every step of the forensics process when bodies have been found in mass graves, from improper removal of the bodies to the uncertainty of their identities.²⁴⁰ Since victims’ families distrust Mexican authorities, they have

²³⁸ The OSF Report describes how the complex institutional structure leads to confusion. *Id.* The overlap and potential confusion over who has investigative authority is blamed for responsibility-shifting and investigative inertia. See also *La PGR crea Fiscalía Especializada en Investigación de Desaparición Forzada*, PROCESO, Feb. 16, 2018, <https://www.proceso.com.mx/522922/la-pgr-crea-fiscalia-especializada-en-investigacion-de-desaparicion-forzada>.

²³⁹ Fundación para la Justicia et al., *Los Crímenes contra Migrantes Desaparecidos: Recomendaciones para la Búsqueda, Identificación, Acceso a la Justicia y no Repetición* 2, 4, Apr. 5, 2019, https://www.fundacionjusticia.org/wp-content/uploads/2019/04/VERSI%c3%93N-FINAL_Justicia-y-migrantes_Bachelet_05.04.2019.pdf.

²⁴⁰ *IACHR Mexico Report*, *supra* note 235, at ¶ 127.

invited foreign forensic teams to accompany investigations as independent investigators.²⁴¹ In August 2013, the FGR, civil society organizations, and the *Equipo Argentino de Antropología Forense* (Argentine Forensic Team) (“EAAF”) created a Forensic Commission to identify the remains of migrants found in the various mass graves in San Fernando, and the forty-nine torsos found in Cadereyta.²⁴² The EAAF used data samples from the families of missing migrants, obtained through the family collectives and other NGOs, compared them with the genetic profiles and other forensic information gathered from the remains, and performed multidisciplinary analyses to identify the bodies.²⁴³

2. Prosecution of Migrant Disappearances

Mexico’s Attorney General appointed a new head of the Specialized Prosecutor for the Search of Disappeared Persons, Eréndira Cruzvillegas Fuentes, in June 2016.²⁴⁴ This was a positive step, as the unit was without leadership for almost a year.²⁴⁵ Ms. Cruzvillegas Fuentes vowed to handle “cases of disappeared persons with professionalism, efficiency and according to the highest standards of human rights.”²⁴⁶ Then, in 2018, the attorney general’s office, now known as the federal prosecutor general’s office, created the Specialized Prosecutor for the Investigation

²⁴¹ *Ayotzinapa: A Timeline of the Mass Disappearance That Has Shaken Mexico*, VICE (Sept. 25, 2015), https://www.vice.com/en_us/article/bja4xa/ayotzinapa-a-timeline-of-the-mass-disappearance-that-has-shaken-mexico; Alberto Nájjar, *¿Por qué se Desconfía de las Investigaciones sobre Desaparecidos en México?*, BBC MUNDO, Nov. 8, 2014, http://www.bbc.com/mundo/noticias/2014/11/141108_mexico_desconfianza_investigacion_desaparecidos_ayotzinapa_an.

²⁴² *FJEDD Report*, *supra* note 1733, at 14-15. The EAAF arrived in Mexico after the discovery of the first mass graves, and now tests genetic samples from the relatives of missing migrants who believe their loved ones have died in Mexico.

²⁴³ *FJEDD Report*, *supra* note 173, at 14-15.

²⁴⁴ Ms. Cruzvillegas Fuentes previously served as the head of Human Rights Coordination for the state of Oaxaca, as well as working with other human rights-related civil society organizations. Gustavo Castillo, *Nombra PGR Nueva Fiscal Para Personas Desaparecidas*, LA JORNADA, (June 16, 2016), <http://www.jornada.unam.mx/ultimas/2016/06/16/nombra-pgr-nueva-fiscal-para-personas-desaparecidas>.

²⁴⁵ *Id.*

²⁴⁶ René Cruz, *PGR Nombra a Eréndira Cruzvillegas como Nueva Fiscal para Personas Desaparecidas*, MVS Noticias (June 16, 2016), <https://mvsnoticias.com/noticias/nacionales/pgr-nombra-a-erendira-cruzvillegas-como-nueva-fiscal-para-personas-desaparecidas-44/>

of Enforced Disappearances” which is now largely responsible for *prosecuting* crimes of enforced disappearance.²⁴⁷ This new unit came about partly as a result of the flawed investigation of the 43 students who disappeared in September 2014, four years prior. Responding to the disappearance of the 43 students, “in 2018, a federal judge deemed the initial investigation flawed,” and “President López Obrador later established a truth commission,” along with the new prosecutorial unit on enforced disappearances.²⁴⁸ In March 2020, the new unit sought arrest warrants, which were granted by a federal judge, to arrest “a former Mexican marine and five former officials in the office of the attorney general for torture and obstruction of justice” in relation to the disappearance of the 43 students.²⁴⁹ Several arrest warrants were also issued for Mexican soldiers and law enforcement officials.²⁵⁰

3. National Commission on Human Rights

The National Commission on Human Rights [Comisión Nacional de Derechos Humanos] (“CNDH”) is another entity tasked with addressing the disappearance of migrants.²⁵¹ The CNDH is an autonomous public organization in Mexico, created in 1990 to monitor the human rights practices of government institutions and promote respect for fundamental rights.²⁵²

The stated mission of the CNDH is to defend and promote the human rights recognized in the Mexican Constitution, federal laws, and the international treaties that Mexico has ratified, and

²⁴⁷ Acuerdo A/013/18 por el que se crea la Fiscalía Especializada en Investigación de los Delitos de Desaparición Forzada y se establecen sus atribuciones, Diario Oficial de la Federación [DOF] 16-02-2018 (Mex.), formato HTML, http://www.dof.gob.mx/nota_detalle.php?codigo=5513521&fecha=16/02/2018.

²⁴⁸ CLARE RIBANDO SEELKE & RACHEL L. MARTIN, CONG. RESEARCH SERV., HUMAN RIGHTS CHALLENGES IN MEXICO: ADDRESSING ENFORCED DISAPPEARANCES, (2020).

²⁴⁹ CONG. RESEARCH SERV., HUMAN RIGHTS CHALLENGES IN MEXICO, *supra* note 248.

²⁵⁰ *Id.*

²⁵¹ See *Manual de Organización General de la CNDH* 12, Comisión Nacional de Derechos Humanos, (Apr. 2018), https://www.cndh.org.mx/sites/default/files/documentos/2019-04/Manual_OG_CNDH.pdf (noting that the offices dedicated to crimes against migrants were created within CNDH in late 2004).

²⁵² Decreto por el que se crea la Comisión Nacional de Derechos Humanos como un órgano desconcentrado de la Secretaría de Gobernación, Diario Oficial de la Federación [DOF] 06-06-1990 (Mex.), formato HTML, http://dof.gob.mx/nota_detalle.php?codigo=4659530&fecha=06/06/1990.

research and report on information regarding violations.²⁵³ The CNDH receives complaints of violations of human rights, investigates allegations, formulates public recommendations and reports, mediates between the complainant and the authorities, and creates and administers programs to prevent human rights violations.²⁵⁴

The CNDH focuses on actions or omissions that violate human rights carried out by an administrative authority or a public federal employee, and does not intervene in claims regarding violations of human rights between individuals.²⁵⁵ Human rights violations committed by state or municipal authorities must first be presented to state commissions of human rights; only if the state commission fails to take action or to comply with its procedure and mandate can the matter be presented to the CNDH.²⁵⁶

In its 2018 annual report, the CNDH recognized that while migration flows through Mexico have increased, migrants continue to face extreme dangers such as kidnappings, disappearances, and murder.²⁵⁷ In order to protect the rights of migrants, the CNDH has investigated complaints, published recommendations, visited shelters, detention centers, and civil society organizations, granted precautionary measures for the defenders of the human rights of migrants, and conducted workshops to educate migrants and the general public on the rights of migrants.²⁵⁸

²⁵³ *Preguntas Frecuentes*, COMISIÓN NACIONAL DE DERECHOS HUMANOS, <http://www.cndh.org.mx/cndh/preguntas-frecuentes>.

²⁵⁴ *Id.*

²⁵⁵ *Id.* The CNDH does not, however, have authority over actions carried out by those involved in the judicial branch or deal with electoral issues.

²⁵⁶ *Preguntas Frecuentes*, COMISIÓN NACIONAL DE DERECHOS HUMANOS, *supra* note 253. See also *Neither Rights nor Security: Killings, Torture, And Disappearances in Mexico's "War on Drugs"* 208, HUMAN RIGHTS WATCH, (Nov. 2011), https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf ("Each of Mexico's thirty-two states has a state human rights commission, and its capital of Mexico City also has its own human rights commission. These bodies are empowered to receive formal complaints and issue recommendations directed at state and municipal officials.") [*Mexico's War on Drugs Report*].

²⁵⁷ *Informe Anual de Actividades 2018*, COMISIÓN NACIONAL DE DERECHOS HUMANOS (2018), <http://informe.cndh.org.mx/>.

²⁵⁸ *Id.* A request for Precautionary Measures is a mechanism originally created through the IACHR to ensure a quick response to serious and urgent situations presenting an imminent risk of irreparable harm to persons in any of the thirty-five OAS states. IACHR, OAS, Web,

The CNDH also seeks to address migrant disappearances through submission of reports to UN working groups,²⁵⁹ and the creation of two different databases: one for individuals who are lost, disappeared, or absent (“SINDE”) and another for individuals who are dead but have not been identified (“SINFANI”).²⁶⁰ The CNDH is organized into several “*Visitadurías*,” or specialized areas, each of which deals with different forms of violations of human rights.²⁶¹ One of the relevant *Visitadurías* is the “*Primera Visitaduría*,” which focuses on victims of crimes and alleged disappearances.²⁶² The other relevant *Visitaduría* is the “*Quinta Visitaduría*,” responsible for issues including regarding migrants and human trafficking.²⁶³

If it finds that an administrative agency or a federal public servant has committed a human rights violation, the CNDH can take various actions, but usually issues recommendations.²⁶⁴ It also issues special reports to “address generalized practices or systemic abuses.”²⁶⁵ Once a recommendation is issued, the authority to whom it is addressed must indicate whether they accept or reject the recommendation. If accepted, the authority must provide CNDH with evidence of compliance.²⁶⁶ The CNDH is responsible for following up and ensuring that the recommendations are fulfilled.²⁶⁷ Any authority rejecting a recommendation must justify the decision to CNDH.²⁶⁸

https://www.oas.org/en/iachr/consultation/2_measures.asp#:~:text=Background,the%2035%20OAS%20member%20states. National human rights bodies have subsequently utilized this mechanism in various countries in the Americas.

²⁵⁹ For example, in February 2018, the CNDH presented a report to the UN Working Group on Enforced Disappearances in which it proposed to create a national genetic testing registry. See *Informe Anual de Actividades 2018 Anexo III.3.1*, COMISIÓN NACIONAL DE DERECHOS HUMANOS (2018), [http://informe.cndh.org.mx/uploads/nodos/412/content/files/Anexo%203%203%200_1%20\(1AVIS%201%20de%2011%20\)%20Personas%20desaparecidas.pdf](http://informe.cndh.org.mx/uploads/nodos/412/content/files/Anexo%203%203%200_1%20(1AVIS%201%20de%2011%20)%20Personas%20desaparecidas.pdf).

²⁶⁰ *Informe Anual de Actividades 2018*, *supra* note 257.

²⁶¹ *Preguntas Frecuentes*, *supra* note 253.

²⁶² *Preguntas Frecuentes*, *supra* note 253.

²⁶³ *Id.*

²⁶⁴ *Id.*

²⁶⁵ Mexico’s War on Drugs Report, *supra* note 256, at 208.

²⁶⁶ *Preguntas Frecuentes*, *supra* note 253.

²⁶⁷ Ley de la Comisión Nacional de los Derechos Humanos [LCNDH], Art. 15-X, Diario Oficial de la Federación [DOF] 22-06-1992, últimas reformas DOF 25-06-2018 (Mex.); Mexico’s War on Drugs Report, *supra* note 256, at 208.

²⁶⁸ *Preguntas Frecuentes*, *supra* note 253.

An authority that rejects CNDH’s recommendations or fails to comply with them once they are accepted, may be called to appear before the Mexican Senate.²⁶⁹

4. The MAE

On December 18, 2015, the FGR established a new unit and procedure to address crimes against migrants: the *Unidad de Investigación de Delitos para Personas Migrantes* (Unit for the Investigation of Crimes for Migrants) (“the Unit”) and the *Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación* (Mechanism for Mexican Foreign Support of Search and Investigation) (“MAE”).²⁷⁰ These two initiatives were established to guarantee access to justice for migrants and their families; to search for disappeared migrants; and to coordinate and oversee the provision of redress to victims.²⁷¹ The MAE has representatives in Mexican embassies and consulates in each of the Northern Triangle countries to facilitate the filing of complaints from abroad.²⁷² Between March 2016 and April 2017, the MAE received 479 complaints about migrants who were direct victims of crimes in Mexico, of which approximately 67% originated from the Northern Triangle.²⁷³

The FGR implemented the MAE as a response to civil society pressure, and recommendations by both the United Nations Committee on Enforced Disappearances (“CED”) and the IACHR. The MAE was established to implement rights recognized in several domestic laws in Mexico, but primarily in the General Law of Victims. Under the Law, any person, regardless of nationality or location, may access Mexico’s administrative and judicial entities to

²⁶⁹ *Id.*

²⁷⁰ Acuerdo A/117/15 Por el que se Crea la Unidad de Investigación de Delitos para Personas Migrantes y el Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación y se Establecen sus Facultades y Organización, Diario Oficial de la Federación [DOF] 18-12-2015 (Mex.), formato HTML, http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015.

²⁷¹ 2017 MAE Update, *supra* note 75, at 4.

²⁷² *Id.* at 16; Interview with International Committee on the Red Cross (“ICRC”), in Tegucigalpa, Honduras (Mar. 2, 2017) [*ICRC Interview in Honduras*].

²⁷³ 2017 MAE Update, *supra* note 75, at 19-20.

search for a disappeared relative; report a disappearance, including an enforced disappearance; participate in the search, investigation, and criminal proceedings against complicit state actors; and participate in the identification and repatriation of remains. The MAE is a *regional-based* system meant to assist family victims in the search for the truth, about the fate or whereabouts of their disappeared relative in Mexico.²⁷⁴

The MAE was created to “safeguard the interests of Mexican citizens abroad, “protect the rights of foreigners within the national territory,” and to “guarantee an effective, clear, impartial and transparent criminal justice system” accessible to Mexican citizens and foreigners regarding crimes committed against relatives in Mexico.²⁷⁵ Relying on the CED’s recommendations, Mexico designed the MAE to ensure that family victims, regardless of where they live, ‘to obtain information and take part in the investigations and the search for the disappeared persons.’ Through the MAE, victims of disappearances and families have access to Mexican institutions in charge of investigating offenses committed against migrants in Mexico, can directly report cases and provide evidence in investigations and proceedings.²⁷⁶

D. Challenges and Gaps in Addressing Migrant Disappearances

Mexico has taken a number of legislative and institutional steps to address enforced disappearances. However, based on research begun in Mexico in the fall of 2015 and concluded in the fall of 2020, it is evident that Mexico’s initiatives to address enforced disappearances (of migrants and of its own citizens) remain inadequate and have fallen short of their objectives.

²⁷⁴ Acuerdo A/117/15 Por el que se Crea la Unidad de Investigación de Delitos para Personas Migrantes y el Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación y se Establecen sus Facultades y Organización, Diario Oficial de la Federación [DOF] 18-12-2015 (Mex.), formato HTML, http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015 [Acuerdo A/117/15 MAE].

²⁷⁵ Acuerdo A/117/15 MAE, *supra* note 274.

²⁷⁶ *Id.*

1. General Victims Law

On its face, the General Victims Law appears to provide comprehensive support and redress for national and foreign victims of human rights violations. In particular, the language defining “victims,” “indirect victims,” and a “violation of human rights” includes families of disappeared migrants among those eligible for protections under the Law and its remedies, requires effective and thorough investigations, and prosecution of responsible actors and reparations. Civil society organizations and families of migrants, however, claim to have experienced serious obstacles with how the Law is implemented in practice.

One of the main problems raised by civil society organizations is that very few people have been able to obtain “victim” status under the Law.²⁷⁷ This is a particular challenge for Central American migrants and their families, who are unable to travel to Mexico to submit applications and follow through with the application procedure.²⁷⁸ Furthermore, for most families of the disappeared the process of completing and submitting applications for obtaining victim recognition is time-consuming and insurmountably difficult.²⁷⁹ The complicated application process has meant it is practically impossible for Central American claimants to access the benefits provided by the Victims Law.

Another key challenge identified by members of Mexican civil society is the lack of cooperation between state and federal governments in carrying out the General Victims Law’s provisions.²⁸⁰ The Law requires federal and state governments to cooperate to ensure that victims obtain unobstructed access to all the benefits and rights the Law provides.²⁸¹ However, according

²⁷⁷ Interview with Jorge Andrade, Co-Founder, Collective Ustedes Somos Nosotros, in Mex. City, Mex. (Oct. 23, 2015) [*Andrade Interview*]; Garcia Interview, *supra* note 1933; Xicotencatl Interview, *supra* note 76.

²⁷⁸ Garcia Interview, *Id.*

²⁷⁹ Xicotencatl Interview, *supra* note 76.

²⁸⁰ Xicotencatl Interview, *Id.*

²⁸¹ Ley General de Víctimas, *supra* note 123, at art. 5.

to families and organizations representing them, such cooperation is essentially non-existent.²⁸² For example, the Law's provision of educational scholarships for victims does not function as intended and instead, for the few recognized victims, individual case-by-case negotiations are conducted with schools to provide the promised education benefits.²⁸³ This same type of case-by-case negotiation is used to obtain medical and psychological treatment for victims.²⁸⁴ These selective negotiations limit victims' ability to access all the rights guaranteed by the General Victims Law, and have left many of them without their guaranteed remedy.²⁸⁵

FJEDD reports that families find it easier to obtain remedies when the disappeared migrant has been killed and the goal is to search for a body or remains. In these cases, the General Victims Law appears to operate in a more efficient and accessible manner. When the goal is to locate a disappeared migrant who might still be alive, the General Victims Law mechanism fails for the most part to facilitate the search process and obtain redress for families outside of Mexico.²⁸⁶ Despite the promise of the General Victims Law, it has not so far delivered effective investigations, prosecutions, and remedies to the families of disappeared migrants.

2. CNDH

Similar to the problems encountered in the implementation of the General Victims Law, the CNDH also faces implementation challenges in addressing the disappearance of migrants in Mexico. Any person within Mexican territory may file a complaint with the CNDH, whether she or he is a national, foreigner, or lacks official identification such as an identification card or passport. Any person in Mexico who believes his or her human rights were violated by federal

²⁸² Garcia Interview, *supra* note 193.

²⁸³ *Id.*

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.*

employees or an administrative agency, or has knowledge of such a violation, can present a claim.²⁸⁷ Once a complaint is filed, CNDH has an obligation to investigate the claim.²⁸⁸

The CNDH, however, is only authorized to address human rights violations when an administrative agency or a federal employee is involved.²⁸⁹ Thus, the victim must prove that a federal employee's acts or omissions were involved in the disappearance.²⁹⁰ Families of the disappeared migrants do not know much, if anything, about events surrounding the disappearance, including who the responsible actor might be. CNDH is thus not a recourse for many of the families of disappeared migrants because they cannot show government responsibility.

Also, similar to the General Victims Law, accessing the CNDH requires families to travel to Mexico to submit a complaint.²⁹¹ The CNDH can only process complaints filed by individuals within the territory of Mexico. Even if the complaint is made by email or phone, the complainant must present him or herself at a CNDH office or mail in a signed complaint within three days after the initial complaint.²⁹² Since many, if not most, migrant families lack the financial means to travel to Mexico, the CNDH is not a meaningful option.

Aside from the problems of access, the CNDH offers limited remedies. The CNDH could recommend that the agency or federal department conduct a more thorough investigation for the disappeared person.²⁹³ It could also recommend procedures to follow for future cases, or recommend further legal actions that the family could pursue.²⁹⁴ However, these recommendations

²⁸⁷ *Id.*

²⁸⁸ Preguntas Frecuentes, *supra* note 253.

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ Garcia Interview, *supra* note 193.

²⁹⁴ *Atención a Migrantes*, COMISIÓN NACIONAL DE DERECHOS HUMANOS, <https://www.cndh.org.mx/index.php/programa/9/atencion-migrantes>.

are slow and indirect, and do not provide the immediate and substantial relief that the families are seeking.

Families and NGO's also raised the concern that some of the measures the CNDH employs to protect migrants actually exacerbate risks to their safety. For example, in 2009, Casa Migrante Saltillo, a migrant shelter, petitioned and obtained precautionary measures from the CNDH for its human rights defenders.²⁹⁵ One of the measures was the ordering of a municipal police car to be parked outside the shelter to provide continuous protection. Shortly after the police car was parked outside, a migrant entered the shelter and told the staff that one of the policemen in the car had participated in torturing him.²⁹⁶ Similar reports have been made when the ostensibly protective measures were implemented by municipal and local authorities, and have increased the distrust migrants and civil society organizations have of the authorities.²⁹⁷ Migrants and their families view the CNDH with skepticism and fear based on their general lack of trust in the government, coupled with the experience that CNDH relies on government cooperation to be effective.

Finally, according to civil society organizations, the CNDH is highly inefficient.²⁹⁸ They expressed disillusionment and frustration about CNDH's remedies as either useless or ineffectively carried out.²⁹⁹ The General Director of Casa Migrante Saltillo reported that it was common to see the police car that had been ordered by CNDH parked in front of the shelter with flat tires and no radio communication devices. This meant that their presence did not really add to the shelter's safety or sense of safety.³⁰⁰ Another example was the experience of the Juan Gerardi Human Rights Center, an organization that works with migrants in Coahuila. A representative from the Center

²⁹⁵ Garcia Interview, *supra* note 193.

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ *Id.*; Andrade Interview, *supra* note 277; Xicotencatl Interview, *supra* note 76.

²⁹⁹ Xicotencatl Interview, *Id.*

³⁰⁰ *Id.*

reported that the CNDH had ordered a set of reinforced doors and window panels to be placed around the Center for protection pursuant to precautionary measures.³⁰¹ In the first installation, the doors and window panes were placed backwards; in the second, they were fitted wrong; and only after the third try were they placed properly.³⁰² Substantial time passed between each installation, during which the Center had to apply constant pressure to get the measures fulfilled.³⁰³ Overall, while the CNDH issues various recommendations and solutions that could be helpful in addressing the disappearance of migrants, the institution must improve its effectiveness by strengthening implementation and compliance with its decisions if it is to fulfill its mission.

3. The MAE

Each year, very few of the disappearances of thousands of migrants are reported to the MAE.³⁰⁴ In 2019 alone, there were an estimated 1,363 enforced disappearances in Mexico; ten times more than the number of cases the MAE had accepted by then. In 2017, 68 cases were reported to the MAE: 21 cases from El Salvador, 20 from Honduras, 19 from Guatemala, and 8 from Colombia, Brazil, Ecuador, and other countries. As of 2019, at least 107 cases were submitted to the MAE from Central America.³⁰⁵ By 2019, the MAE should have been investigating at least 1,363 cases, but it lacked, and continues to lack, the capacity to handle such a large volume of cases.

³⁰¹ Interview with Centro de Derechos Humanos Juan Gerardi A.C., in Torreón, Coahuila, Mex. (Oct. 21, 2015) [*Gerardi Interview*].

³⁰² Gerardi Interview, *Id.*

³⁰³ *Id.*

³⁰⁴ *Informe Anual de Actividades de la Fiscalía Especializada en Materia de Derechos Humanos.*

FISCALIA GENERAL DE LA REPUBLICA, (2019), <https://www.animalpolitico.com/wp-content/uploads/2020/01/INFORME-DERECOS-HUMANOS.pdf>.

³⁰⁵ Fundacion para la Justicia y el Estado Democratico de Derecho, Los Crimines contra Migrantes Desaparecidos: Recomendaciones para la Busqueda, Identificacion, Acceso a la Justicia y No Repeticion, Reunion de las familias de victimas en Mexico, con la Alta Comisionada de Naciones Unidas Michelle Bachelet, (2019), https://www.fundacionjusticia.org/wp-content/uploads/2019/04/VERSI%C3%93N-FINAL_Justicia-y-migrantes_Bachelet_05.04.2019.pdf. (FJEDD Bachelet Report).

Although the MAE has received complaints from families in the Northern Triangle countries about disappeared relatives, it has had various implementation challenges. When the MAE was first implemented, it was operating only from the Mexican embassy in Guatemala City.³⁰⁶ Furthermore, if the FGR's Special Prosecution for the Search of Disappeared Persons [Fiscalía Especializada de Búsqueda de Personas Desaparecidas ("FEBPD")] is an example of the likely success of the two new migrant-related units, the results are not promising. According to an organization focused on the disappearance of family members in Mexico, the FEBPD has received 734 requests for identification since its inception, none of which has been put through a remains database or yielded a single identification.³⁰⁷

The establishment of the MAE was greeted with celebration from migrant victims, family victims, the international community, and the Mexican government itself. It is currently the most developed legal framework to address enforced disappearances at a regional level. However, when the time came to put the MAE in action, the Mexican government seemed to lose the political momentum and willingness to push the MAE's agenda forward. State authorities in Mexico and other countries, including the consulates from the states involved in the region, do not have clear, established roles to make the MAE function effectively. As noted, it is difficult if not impossible for most victims and their families to access the MAE, and the lack of internal and inter-state coordination is a major weakness. The MAE can only be successful if all relevant actors, including

³⁰⁶ ICRC Interview in Honduras, *supra* note 272.

³⁰⁷ *Movimiento por Nuestros Desaparecidos en México Denuncia Falta de Recursos y Capacidades Institucionales de la Fiscalía Especializada de Búsqueda de Personas Desaparecidas*, FUNDAR CENTRO DE ANÁLISIS E INVESTIGACIÓN (May 17, 2016), <http://fundar.org.mx/movimiento-por-nuestros-desaparecidos-en-mexico-denuncia-falta-de-recursos-y-capacidades-institucionales-de-la-fiscalia-especializada-de-busqueda-de-personas-desaparecidas/>. (The FGR established the FEBPD in June 2013 to address the serious national problem with disappearances. Much like the two newer units, the FEBPD's mandate included mechanisms for investigation, searches, and the prosecution of those found responsible. The FEBPD was given an initial budget of around \$40 million in 2014, which was reduced to \$18 million in 2019).

the state authorities in Mexico and the other countries in the region, have clearly-established roles and adequately-resourced offices.³⁰⁸

The MAE and the General Law of Victims provides hope for a more coordinated regional response led by Mexico, through which migrants take the longest routes, and where most disappearances occur. Only a regional response can address what is a *regional* crisis. “If migration crosses borders, so should justice.”³⁰⁹ However, while the General Law of Victims and MAE are proof of Mexico’s efforts and willingness to abide by its international obligations under the CPED, the MAE is slow and bureaucratic. It suffers from an “overload and poor distribution of activities,.. insufficient personnel to meet its planned activities, and lack of coordination between the PGR and the consulates and embassies.”³¹⁰ Family victims often have no way of accessing the MAE, as many are unable to obtain a visa to travel to Mexico. Several other families are not even aware that the MAE is an option.³¹¹

The MAE also falls short on its promise to investigate disappearances. Investigations are not thorough and do not include or involve consultation with families during the process. The MAE does not coordinate with relevant and critical institutions such as the National Search Commission. Designated authorities should carry out investigations at the same time as identification and return of remains, but in practice investigations often stop at the discovery of remains--which may or may not correspond to the individual subject of the search. At the moment,

³⁰⁸ FJEDD Bachelet Report, *supra* note 305.

³⁰⁹ Fundación para la Justicia y El Estado Democrático de Derecho, Equipo de Estudios Comunitarios y Acción Psicosocial, Asociación de Familiares de Migrantes Desaparecidos de Guatemala, Mesa Nacional para las Migraciones en Guatemala, *Informe Dirigido a la Comisión Interamericana de Derechos Humanos con Motive de Su Visita in loco a Guatemala de 31 de julio a 4 de agosto de 2017*, 9.

³¹⁰ FJEDD and Trial International Report, *supra* note 124.

³¹¹ *Id.* at ¶ 98.

families in Central America and the Caribbean can only turn to FGR offices in Guatemala, as the FGR has not established offices in the rest of the region.³¹²

4. Issuance of Humanitarian Visas

To obtain the necessary visa for travel covered by the *Comisión Ejecutiva de Atención a Víctimas* (Executive Commission for the Attention to Victims) (“CEAV”), families are required to present a request for assistance from Mexico’s Public Ministry and show that their request would offer “relief to some specific ministerial task.”³¹³ The purpose of these visas appears to be to benefit the state ministries rather than victims, which means they will not be available for most families who apply for them. Visa applications are another huge barrier for families outside of Mexico. The application process itself is slow and bureaucratic. Furthermore, even when the visa is granted, travel expenses are not covered, making travel impossible for families who cannot afford the cost.³¹⁴

The Mexican National Institute of Migration has indicated that there is a “lack of willingness” by consulates abroad “to regulate” the processing of humanitarian visas, and expediting them is impossible.³¹⁵ Instead, family members have to arrive in Mexico and then request a change of their visitor status, which is another problem for most families. In 2017, when a number of families and their representatives sought to change their visa status through the Institute of Migration in Mexico, they were told to leave because the request to change their visa status was ‘not possible’.³¹⁶ Some Mexican consular offices interpret humanitarian visas to apply only to direct victims, and not to their family members, which makes no sense in the context of

³¹² *Id.*

³¹³ *Id.*, at ¶ 98.

³¹⁴ *Id.*

³¹⁵ *Id.* at ¶ 102.

³¹⁶ *Id.*

disappearances and forecloses access to the MAE.³¹⁷ Overall, the processing of issuing humanitarian visas for families to travel to Mexico appears to suffer from lack of coordination, political will, and funding for travel expenses.

5. Unit of Investigation for Crimes Committed Against Migrant Persons

The Unidad suffers from similar limitations as the MAE: insufficient technical capacity to address complex matters; excessive delays in investigations; lack of coordination with other federal entities; excessive bureaucracy in coordinating legal process with other countries; lack of diligence from investigators and their assistants; and insufficient allocation of human and economic resources.³¹⁸ In addition, the Unidad has only 16 agents allocated to it from the Public Ministry, and a very inadequate budget of \$1,000,000, making it almost impossible to *promptly and effectively* investigate all crimes committed against migrants, including enforced disappearances. Accordingly, the Unidad is unable to provide effective results in cases that implicate grave violations of human rights.³¹⁹

6. Reporting Challenges

Families need to be able to report a disappearance or a crime to trigger the initial step-- an investigation. Victims and their families are reluctant to report a disappearance or commission of a crime in Mexico for a number of reasons, including their lack of trust in state officials, an inaccessible or unclear reporting process, and fear of reprisals from criminal organizations.³²⁰ Family members who wish to report a disappearance and initiate an investigation claim that state authorities often engage in responsibility-shifting. If it is unclear where a person disappeared, state authorities claim the responsibility to investigate is with another state or with the federal

³¹⁷ *Id.*

³¹⁸ FJEDD and Trial International Report, *supra* note 124.

³¹⁹ *Id.*

³²⁰ IACHR Migrant Report, *supra* note 149, at ¶¶ 147, 166.

government.³²¹ Human Rights Watch has documented another problem with official responses to families' attempts to file claims: their tendency to blame the victims of a disappearance for being involved in nefarious activity. Sometimes officials have even instructed family members to conduct searches on their own.³²²

Central American migrants face other obstacles in Mexico if they want to report a crime or disappearance. Migrants making their way through Mexico are unlikely to report a crime perpetrated against themselves or those travelling with them because their irregular status makes them vulnerable to detention and deportation.³²³ Migrants are less likely to voluntarily approach authorities, much less request their assistance, because of the many reports of violence inflicted on migrants by state authorities themselves. Additionally, the process of reporting a crime and filing a complaint takes time, a luxury that migrants—in transit with limited resources—do not have.

The reporting process for migrants' families in other countries is even more complicated.³²⁴ Some families have gone to their countries' foreign ministries to report disappearances, and state that officials note the reports but often fail to register them as formal complaints that would trigger an investigation.³²⁵ Before Mexico's MAE was in place, a non-Mexican from Central America would need to obtain a visa, travel to Mexico, and then find the proper place to report a missing person to the Mexican authorities. This process is nearly always prohibitively expensive, complicated or dangerous. In response to their frustration with the lack of an effective reporting or investigation mechanism, groups of mothers and grandmothers from Honduras, El Salvador,

³²¹ Interview with Fuerzas Unidas por Nuestros Desaparecidos en Coahuila, in Coahuila, Mex. (October 21, 2015).

³²² *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, HUMAN RIGHTS WATCH (Feb. 2013), <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>.

³²³ Xicotencatl Interview, *supra* note 76.

³²⁴ Skype Interview with Tirza Flores Lanza, Comité de Familiares de Migrantes Desaparecidos del Progreso (“COFAMIPRO”), El Progreso, Honduras (Nov. 2015).

³²⁵ *Id.*

Guatemala and Nicaragua have been banding together for the last eighteen years in caravans, the *Caravanas de Búsqueda*, traveling through Mexico in search of their missing family members.³²⁶

E. Conclusions and Recommendations for Mexico

While Mexico is party to international and regional agreements protecting migrants from disappearance, and has instituted domestic mechanisms for investigating disappearances, the unfortunate reality is that migrant disappearances, including enforced disappearances, continue to rise in Mexico, and victims and their families do not have access to adequate remedies. A lack of due diligence on the part of Mexican authorities to investigate, prosecute and punish gross human rights violations has left victims and their families with the perception that the authorities tolerate or are even complicit in the violations, which contributes to a climate of pervasive impunity.³²⁷

To combat enforced disappearances and provide justice for victims and their families, Mexico—in cooperation with the countries of origin and destination of the migrants and with the participation of victims and civil society—must enhance its efforts to prevent and investigate the disappearances of migrants, criminally prosecute those responsible, and properly protect informants, experts, witnesses, and defenders. To this end, urgent action must be taken in two main areas: (1) investigation of disappeared migrants on Mexican territory, and (2) prevention of future enforced disappearances of migrants in Mexico.

1. *Mexico must promptly, thoroughly and effectively investigate the disappearances of migrants in its territory.*

1.1. Domestic Investigation of Disappearances

³²⁶ *Central American Mothers Search for Children Who Disappeared Along Migration Route to U.S.*, DEMOCRACY NOW (Dec. 8, 2015), https://www.democracynow.org/2015/12/8/headlines/central_american_mothers_search_for_children_who_disappeared_along_migration_route_to_us.

³²⁷ IACHR Mexico Report, *supra* note 235, at ¶ 495.

- a. Mexico must implement measures to ensure all relevant federal and state authorities conduct robust and effective investigations of migrant disappearances; provide victims' family members with regular and up-to-date information on the progress of the investigation; and provide families with full access to the case files. Investigations should be handled only by public officials who are highly trained and experienced in cases related to disappearances and crimes related to them, and skilled in treating victims of discrimination and violence against migrants.
- b. The Mexican federal government is responsible for ensuring, either directly or through the proper local authorities, that the rights of all persons subject to its jurisdiction—which includes migrants—are protected and guaranteed, even though the federated states may have criminal jurisdiction over many of these crimes. Moreover, the federal government has the resources and specialized capabilities which are necessary for these cases to be fully addressed.
- c. All levels of government in Mexico must coordinate and cooperate with each other to thoroughly investigate migrant disappearances in its territory. Collaboration among authorities at the federal, state, and municipal levels must be more streamlined. Federal, state and municipal governments must partner closely with families and civil society organizations advocating for them to ensure that those responsible for crimes committed against migrants are held fully accountable and harm is redressed. The current attitude of suspicion and disrespect by many officials towards families seeking justice must change, and families must be fully integrated in the entire process.

1.2. International Cooperation to Investigate Migrant Disappearances

- a. Mexico should endeavor to enhance the MAE and require participation by and collaboration between all affected states, and must guarantee: (a) the search for missing migrants and identification and restitution in cases in which remains are found; (b) ante mortem information-gathering and entry into the Ante-Mortem/Post-Mortem Database; and (c) that the families of disappeared persons, regardless of their place of residence, are able to obtain information and participate in the investigations and search for disappeared persons.³²⁸
- b. Mexico, in concert with other affected states, should reinforce and promote the MAE to enable aggrieved migrants and their family members to have effective access to justice, irrespective of their immigration status or their location.
- c. Mexico must increase the resources available for the Unidad and the MAE, and clearly establish the roles of each official involved in these institutions.
- d. Mexico must also adopt all further measures necessary to ensure that the MAE is accessible to and effective in assisting the families of disappeared migrants, by sending ‘MAE Representatives’ to each of the Northern Triangle countries and the United States. These representatives should be responsible for meeting with families of disappeared migrants directly, forwarding any new reports of disappearances to the MAE in Mexico, coordinating with state officials to ensure that all disappearances are being accounted for and properly investigated, and keeping track of reported disappearances – those solved and pending – to be publicly reported annually.

³²⁸ Concluding Observations on the Report Submitted by Mexico, Comm. on Enforced Disappearances, ¶¶ 23-24, U.N. Doc. CED/C/MEX/CO1 (Mar. 5, 2015).

- e. Mexico should cooperate effectively with other countries in the region to obtain and keep an accurate and current count of the numbers of migrants who have disappeared in its territory, to be publicly reported annually.
- f. Mexico should also cooperate with other countries in the region to make sure that families in other countries have adequate access to the MAE to report disappearances or follow up with a pending investigation.
- g. Mexico should also recognize that there is no statute of limitations for reported disappearances, and therefore all families, regardless of where they reside, who wish to follow up on a reported disappearance that occurred a significant amount of time ago should be able to do so and request a reopening or continuation of the investigation.

1.3. Preservation and Identification of Remains

- a. Mexico must continue to fund and support the work of the Forensic Commission for the Identification of Remains to investigate and identify bodies and remains found along the routes known to be used by migrants.³²⁹
- b. When remains and/or bodies are found that have been provisionally identified as those of migrants, the unidentified remains should be properly preserved. Remains that are still being held by the Forensic Medical Services should not be cremated or sent to mass graves. Remains already in mass graves must be protected from any further tampering until positive identification can be made.³³⁰

³²⁹ IACHR Mexico Report, *supra* note 235, at ¶ 224-225.

³³⁰ *Id.* at ¶ 177.

- c. Mexico should use the Forensic Commission to facilitate the exchange of forensic information on the unidentified remains of migrants who have disappeared in Mexico with the forensic databases of disappeared migrants that have been developed throughout the region, like those of El Salvador, Guatemala, Honduras, the State of Chiapas, and others that might be created.
- d. This databank must be integrated with a similar regional mechanism that would expand the sharing of forensic information among the countries of Central and North America. Both mechanisms must include the participation of civil society organizations in their management.³³¹

2. *Mexico must adopt all necessary measures to prevent enforced disappearances of migrants in its territory.*

2.1. Reformation of Plan Merida and Programa Frontera Sur

- a. Mexico should revisit its commitments under Plan Merida and Plan Frontera Sur to ensure they are consistent with its obligations to fully protect and ensure the human rights of migrants in its territory. Mexico should reject any and all foreign funding that is tied to requiring Mexico to undermine its human rights obligations towards migrants. Moreover, Mexico should refuse to enforce the refugee and migration policies of foreign states in Mexico's territory, and it must reject such policies when they conflict with Mexico's international and constitutional human rights obligations.

2.2. Training of Government Officers and Officials

- a. Mexico must address the systemic complaints about the conduct of government officials, particularly INM officials, such as those of human rights violations,

³³¹ *Id.* at ¶ 224-225.

corruption, and impunity. Specifically, Mexico must combat corruption and promote accountability by state officials through monitoring and investigation, conducted by competent government institutions. Such investigations must include the possibility of administrative, disciplinary or criminal sanctions against local, state and federal police or any other official found to be responsible for the commission of crimes and human rights violations against migrants. Penalties must be rigorously enforced against officials who violate their obligations under the law.

- b. Mexico must take all measures necessary to prevent and combat any form of racial discrimination and xenophobia by and within the government, and protect migrants against acts of violence carried out against them, whether by private individuals or officials of the State.
- c. Mexico must make resources available to ensure adequate and regular training and instruction for those charged with responding to violent crimes against migrants. Additionally, Mexico should design and strengthen training programs for INM agents, officers of the court and police at all levels of government, to provide instruction on combatting discrimination and violence against migrants, to ensure these are treated as serious human rights violations.

VI. HONDURAS

Honduras is home to the majority of migrants who have disappeared in Mexico; within only five months in 2019, an estimated 741 Honduran migrants were reported missing.³³² Honduras faces many other pressing issues, particularly poverty, government corruption, and one

³³² *Honduras registra 741 migrantes desaparecidos, 18 % de ellos mujeres*, DEPARTAMENTO 19, supra note 3.

of the highest homicide rates in the world--all of which detract from issues facing Honduran migrants abroad.³³³ When the government does address migrants' rights, its focus has primarily been on unaccompanied minors deported back to Honduras.³³⁴ Families of missing migrants are forced to wait years for answers about their loved ones, if they receive any at all.³³⁵ Moreover, Honduras has been under more pressure recently to curtail out-migration and facilitate deportations of its nationals from the U.S. under the Trump administration's new agreement with Honduras, by which the U.S. will send asylum-seekers to Honduras rather than allowing them into the U.S. As a country with "one of the highest murder rates in the world," Honduras is not a safe country for asylum-seekers.³³⁶ By re-directing migrants to seek asylum in a country with such high murder rates, the U.S. and Honduras are exposing more migrants to violence, including enforced disappearances.

A. Factors Causing Hondurans to Emigrate

An estimated 70,000—100,000 Hondurans migrate irregularly through Mexico annually. Poverty and the lack of opportunity for decent employment, threats and extortion by organized crime and gangs, and the dispossession of land for indigenous and Afro-descendant peoples are

³³³ Honduras is the second poorest country in Central America. See *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html> (last visited Aug. 17, 2020). Honduras ranks 146 on Transparency International's Corruption Perceptions Index. See TRANSPARENCY INT'L, <https://www.transparency.org/en/countries/honduras> (last visited Aug. 17, 2020). In 2014, Honduras had the highest homicide rate in the world; El Salvador took the top spot in 2015. See Intentional homicides (per 100,000 people), WORLD BANK, <https://data.worldbank.org/indicator/VC.IHR.PSRC.P5>. See also *Why El Salvador Became the Hemisphere's Murder Capital*, WASH. POST, Jan. 5, 2016, <https://www.washingtonpost.com/news/worldviews/wp/2016/01/05/why-el-salvador-became-the-hemispheres-murder-capital/>.

³³⁴ See *Vigente Ley del Migrante en Honduras*, EL HERALDO, Sep. 3, 2014, <https://www.elheraldo.hn/pais/744485-214/vigente-ley-del-migrante-en-honduras>.

³³⁵ Concluding Observations Honduras 2018, *supra* note 16.

³³⁶ Daniella Silva, *U.S. Signs Asylum Deal with Honduras that Could Force Migrants to Seek Relief There*, NBC NEWS, Sept. 25, 2019, <https://www.nbcnews.com/news/us-news/u-s-signs-asylum-deal-honduras-could-force-migrants-see-n1058766>.

the main factors causing thousands of Hondurans to leave their country every year. These problems stem from the corruption and impunity prevalent in the country.³³⁷

1. Historic Factors Contributing to Emigration from Honduras

The root causes of mass migration from Honduras stem from Honduras' volatile political-economic history. Honduras' natural resources were exploited almost immediately after its independence from Spanish colonial rule in 1821. When the United Fruit Company came into Honduras at the turn of the 20th century, the Honduran government gave it tax concessions to develop the land for banana production.³³⁸ Property rights over the lands granted to United Fruit were heavily contested, and the company clashed with local communities claiming ownership.³³⁹ As in neighboring Northern Triangle countries, the company bought off, threatened, and manipulated the Honduran government by seizing the lands of peasants who resisted their property claims.³⁴⁰

The presence of United Fruit in Honduras was a turning point for the region in 1954, when the company conspired with the U.S. to overthrow Guatemalan president Jacobo Arbenz, who had attempted to nationalize unused lands held by United Fruit.³⁴¹ The U.S. government supported the government's quelling of workers' and peasants' protests through systematic assassinations and state terror to guarantee profits and "stability" for banana corporations in the region.³⁴² The CIA used Honduras as a base to train forces for the Guatemalan coup, which the Honduran government

³³⁷ See HUMAN MOBILITY PASTORAL, <https://movilidadhumana.com/?lang=en> (last visited January 15, 2021). (Pastoral de Movilidad Humana is a religious organization that provides humanitarian assistance to migrants and refugees).

³³⁸ Peter Chapman, *BANANAS: HOW THE UNITED FRUIT COMPANY SHAPED THE WORLD* 36 (ebook) (2014).

³³⁹ *Id.* at 42.

³⁴⁰ Dana Frank, *BANANERAS: WOMEN TRANSFORMING THE BANANA UNIONS OF LATIN AMERICA* 10 (2005) [hereinafter *Frank, BANANERAS*]

³⁴¹ *Id.*; ROBERT HOLDEN, *ARMIES WITHOUT NATIONS* 329 (2004).

³⁴² Frank, *BANANERAS*, *supra* note 340, at 11.

permitted because it did not want to be overthrown.³⁴³ Again in the 1980's, President Ronald Reagan ordered Honduras to permit the establishment of a U.S. military base in the country to facilitate U.S. operations against the communist Sandinista government in Nicaragua.³⁴⁴

In the twentieth and twenty-first centuries, other transnational corporations (“TNC’s”) and the U.S. government have continued to intervene in Central America’s affairs. Honduras’ weak economy has led to heavy foreign debt. As part of structural adjustment programs to pay back loans to the International Monetary Fund and the World Bank, the Honduran government has been forced to cut state-funded social services and reduce resources benefiting the domestic economy in favor of exporting agriculture and *maquiladora*-style industrial development (similar to sweatshops). Honduras has undermined its domestic laws to benefit foreign investment at the expense of its own citizens, primarily through free trade agreements, such as the Dominican Republic-Central American Free Trade Agreement (“CAFTA-DR”).³⁴⁵ TNC’s, with the complicity of the Honduran government, continue to disenfranchise large segments of the Honduran population, whether deliberately or simply without concern for the consequences. Meanwhile, the benefits of several programs under the CAFTA-DR have remained concentrated in the hands of a few wealthy locals.³⁴⁶

³⁴³ *Id.* at 11.

³⁴⁴ *Id.*

³⁴⁵ Dominican Republic-Central American Free Trade Agreement, Aug. 5, 2004, <https://ustr.gov/trade-agreements/free-trade-agreements/cafta-dr-dominican-republic-central-america-fta/final-text>.

³⁴⁶ *Raiesa Ali*, Income Inequality and Poverty: A Comparison of Brazil and Honduras, COUNCIL ON HEMISPHERIC AFF., July 1, 2015, <https://www.coha.org/income-inequality-and-poverty-a-comparison-of-brazil-and-honduras/>. (“Honduras has one of the worst income inequality gaps in the world, which is directly linked to increased homicide rates in the country.”) In 2018, Honduras’s GINI coefficient was 52.1, a high GINI coefficient indicating very high levels of income inequality. *See* GINI Index (World Bank estimate) - Honduras, THE WORLD BANK, <https://data.worldbank.org/indicator/SI.POV.GINI?view=chart&locations=HN>.

2. Current Reasons for Emigration from Honduras

The *maquiladoras*, or *maquilas*, typically owned by TNC's, contribute to Honduras' high level of poverty, through denial of living wages to its workers.³⁴⁷ Although *maquilas* are credited with an increase in the number of available jobs, the *maquila* economy has also brought unequal growth, worsening conditions in already poor rural regions and rural-to-urban migration.³⁴⁸ According to the World Bank, 48.3% of Hondurans lived in poverty in 2018.³⁴⁹ Although Honduras has passed a number of labor laws to protect *maquila* workers, there is little to no incentive for employers to comply with these laws.³⁵⁰ A 2019 Gallup Poll reported that 53% of Hondurans were willing to immigrate (very probable or somewhat probable) to another country in search of better employment opportunities.³⁵¹ Multiple sources list the economic crisis as the primary reason why people leave Honduras for the U.S.³⁵² As a result, migrants such as Mersa Yamira Mayorga and Olga, whose families were interviewed for this report, left their homes in search of better economic opportunities for their families, and then disappeared. Their disappearances have had severe emotional and economic consequences on their families. Olga's

³⁴⁷ In 2007, the Honduran government approved an executive decree that allows the *maquilas* in five departments in the southern part of the country to pay their workers 28.34 lempiras (\$1.50) less than the minimum wage per day. See Acuerdo Ejecutivo No. STSS 041-07, LA GAC. HOND., Mar. 17, 2007.

³⁴⁸ Günseli Berik, *Gender Aspects of Trade*, in TRADE AND EMPLOYMENT FROM MYTHS TO FACTS 183-184, (Marion Jansen et al. eds., 2011), https://www.ilo.org/employment/areas/trade-and-employment/WCMS_162297/lang--en/index.htm. COHA APP Report, *supra* note 105.

³⁴⁹ Honduras Overview, WORLD BANK GROUP, <https://www.worldbank.org/en/country/honduras/overview> (last visited Nov. 19, 2020).

³⁵⁰ AFL-CIO, *Trade, Violence and Migration: The Broken Promises to Honduran Workers* 12 (2014) <https://aflcio.org/sites/default/files/2017-03/Honduras.PDF>.

³⁵¹ *Cid Gallup: La mitad de encuestados emigraría de Honduras*, <https://www.laprensa.hn/honduras/1286504-410/-cid-gallup-desempleo-encuestados-emigrar-honduras-eeuu>. In 2016: *El 56% de los hondureños Están dispuestos a emigrar*, LA PRENSA, May 18, 2016, <https://www.laprensa.hn/honduras/960932-410/el-56-de-los-hondure%C3%B1os-est%C3%A1n-dispuestos-a-emigrar>.

³⁵² *Economía es causa principal de inmigración de Honduras a EUA, según sondeo*, EL ECONOMISTA, Feb. 10, 2016, <https://www.eleconomista.net/actualidad/Economia-es-causa-principal-de-inmigracion-de-Honduras-a-EUA-segun-sondeo-20160210-0084.html>; *Impacto De Deportaciones Masivas a Honduras se Podría Mitigar con Políticas Económicas Eficientes*, RADIO PROGRESO, Feb. 24, 2017, <https://wp.radioprogreso.hn.net/impacto-de-deportaciones-masivas-a-honduras-se-podria-mitigar-con-politicas-economicas-eficientes-fosdeh/>.

mother has had to care for her five grandchildren—Olga’s children-- since her daughter disappeared. Mersa’s mother has not heard from her daughter in over ten years.³⁵³

A century after the first tax incentives to foreign companies, Hondurans who identify as indigenous and/or are of Afro-descent continue to struggle to keep their land and territory. Energy projects, as well as extractive, agro-industrial, tourist and infrastructure projects are established on indigenous community lands without respect for international standards or prior consultation (let alone consent).³⁵⁴ In many cases, a project is disclosed or the communities are consulted only when the state has already granted the company the license.³⁵⁵ Instead of providing relief for these communities, the Honduran government exacerbates the problem, approving laws that forcibly displace them. As an example, the Honduran government approved the Law on Employment and Economic Development Zones, forcibly displacing 24 Garífuna communities, who were not consulted about projects on their lands, and opposed their relocation.³⁵⁶ These indigenous communities already suffered two resettlement processes in the preceding decades.³⁵⁷

Hurricane Mitch in 1998 caused further displacement from Honduras.³⁵⁸ The hurricane devastated the country, killing about 5,600 people and displacing over a million.³⁵⁹ It devastated

³⁵³ Interview with Family Members, in El Progreso, Honduras (Mar. 3, 2017) [hereinafter *Family Interviews*]. Mersa Yamira Mayorga left her home 13 years ago to give her children better opportunities in life. She had a job in Honduras but as a single mother, she was not earning enough to pay for her three children’s schooling. Mersa left Honduras to try to reach the U.S. to get work that paid enough to support her family. Mersa spoke to her mother, Leticia, every Sunday while she worked in Mexico for a year and a half, trying to earn enough to get to the U.S. After Mersa told her mother she was ready to try to cross the border, months passed before they spoke again. When Mersa finally got in touch, she told her mother that the Zetas cartel had caught her, and that was the last time Leticia heard from her daughter. That was over 10 years before this interview.

³⁵⁴ Victoria Tauli Corpuz (Special Rapporteur on the rights of indigenous peoples), *Addendum to the Report on the Mission to Honduras* ¶ 45, U.N. Doc. A/HRC/33/42/Add.2 (July 21, 2016) [*Corpuz Report*].

³⁵⁵ *Id.*

³⁵⁶ *Id.* at ¶ 56.

³⁵⁷ *Id.*

³⁵⁸ See Interview with Sister Lydia, Scalabrinian Sisters, in Tegucigalpa, Honduras (Mar. 2, 2017) [*Sister Lydia Interview*]; see also ICRC Interview in Honduras, *supra* note 272; UNHCR Interview, *supra* note 85.

³⁵⁹ See *The World Factbook*, CENTRAL INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/ho.html> (last visited Aug. 17, 2020); *Honduras: The 20th Century*, BRITANNICA ENCYCLOPEDIA, <https://www.britannica.com/place/Honduras/The-20th-century>.

the already-fragile economy and infrastructure, causing widespread misery and unemployment.³⁶⁰
A record number of Hondurans left the country in its aftermath.³⁶¹

In 2009, the democratically-elected president Manuel Zelaya was ousted in a military coup for moving forward with a national referendum that would have allowed him to revise the Constitution and serve a second presidential term.³⁶² Many years post-coup, allegations of political corruption and state complicity in violence and criminal acts are widespread.³⁶³

Along with its chronic poverty and instability, Honduras' strategic location for drug traffickers has made the country a target for the expansion of Mexican drug cartels and local gangs.³⁶⁴ According to the Minister of Security, an annual average of 300 tons of cocaine cross the borders of Honduras.³⁶⁵ Internal and external forcible displacement has risen dramatically in and from Honduras as a result of increased organized crime and the violence that accompanies it.³⁶⁶ In an environment of weak law enforcement, gangs have become so merciless, and their control so widespread, that ordinary people have bleak choices: comply with gang demands, flee or die. In 2015, Honduras had a homicide rate of 60 deaths per 100,000.³⁶⁷ Such violence has caused families prolonged suffering as their relatives flee from danger and disappear. The IHRC team interviewed

³⁶⁰ *Id.*

³⁶¹ See Sister Lydia Interview, *supra* note 358; UNHCR Interview, *supra* note 85.

³⁶² *Honduras: The 21st Century*, BRITANNICA ENCYCLOPEDIA, <https://www.britannica.com/place/Honduras/The-21st-century>.

³⁶³ *The Eye of the Storm*, THE ECONOMIST, Jun. 16, 2012, <https://www.economist.com/the-americas/2012/06/16/the-eye-of-the-storm>.

³⁶⁴ Martínez, *supra* note 86, at XIII.

³⁶⁵ *Id.* at 40-41.

³⁶⁶ UNHCR Interview, *supra* note 85; see also *Characterization of Internal Displacement in Honduras* 9, INTER-AGENCY COMM. FOR THE PROTECTION OF PERSONS DISPLACED BY VIOLENCE, Nov. 2015, http://sedis.gob.hn/sites/default/files/desplazamiento/Caract.Desplazam.Interno_ENG.pdf.

³⁶⁷ See Ayestas Interview, *supra* note 66. See also OBSERVATORIO DE LA VIOLENCIA, *Boletín Nacional, Edición No.40, Febrero 2016, Enero - Diciembre 2015*, <https://iudpas.unah.edu.hn/observatorio-de-la-violencia/boletines-del-observatorio-2/boletines-nacionales>. Compare with Table 16: Rate: Number of Crimes per 100,000 Inhabitants by Population Group, 2015, FBI: UCR, <https://ucr.fbi.gov/crime-in-the-u.s/2015/crime-in-the-u.s.-2015/tables/table-16> (in 2015, the U.S. had a homicide rate of 5.0 per 100,000 inhabitants).

Wilma about her son, Jesus. Jesus fled Honduras when he and his family received death threats from a gang after he refused to give tattoos to members of the gang. By the time of the interview, Wilma had not heard from Jesus in more than six years.³⁶⁸

While gangs are responsible for much of the violence, Honduran security forces have also engaged in killings and other human rights crimes with impunity. According to non-governmental organizations, the police force, military police, and armed forces-- the very entities established to protect the population-- themselves contribute to the atmosphere of insecurity through violence and collusion with organized criminal groups.³⁶⁹ There are widespread allegations of political corruption and state complicity in violence and other criminal acts.³⁷⁰ Families and civil society organizations claim that policemen, judges and politicians are more likely to be corrupt than honest.³⁷¹

Due to its failure to respond effectively, and to allegations of corruption and ties with organized crime, the Honduran National Police no longer enjoys public trust.³⁷² The National Police is closely tied to drug cartels, which are protected by many politicians, judges and

³⁶⁸ Family Interviews, *supra* note 353. Wilma's son, Jesus, was a gifted artist, who used his talent to earn money as a tattoo artist. At one point, a man came to him requesting a challenging tattoo of a mother with a newborn child. The man had been unable to find a professional tattoo artist willing to do it. When Wilma's son was done with the tattoo, the man was extremely pleased with the results. Soon after, Wilma's son began to get requests from other men, seeking "cover ups" of other tattoos. When he learned that these were gang members, including a drug trafficker known to have killed people, he refused to do the work. When the gang members did not get what they wanted, they threatened him, saying that they would come to his home, and kill his family. Knowing he could not rely on the police for help, Jesus tried hiding at the home of a relative. Hiding and fear led to depression. Once this became too difficult to bear, he decided to leave Honduras. The last time Wilma spoke to Jesus was in May 2011, when he reassured her that he had made it to Monterrey, and was staying in a home there while he waited to find someone to help him cross the border. Wilma believes Jesus' decision to refuse services to gang members cost him his life.

³⁶⁹ Casa Alianza Interview, *supra* note 100. See also *Situation of Human Rights in Honduras*, INTER-AM. COMM'N ON HUMAN RIGHTS ¶ 76 (2016), <http://www.oas.org/en/iachr/reports/pdfs/Honduras-en-2015.pdf> [*IACHR Honduras Report*].

³⁷⁰ IACHR Honduras Report, *supra* note 369.

³⁷¹ *Id.*, at ¶¶ 30, 36, 107.

³⁷² IACHR Honduras Report, *supra* note 369, at ¶ 9; David Gagne, *¿Puede Honduras manejar el enorme número de casos de corrupción policial?*, INSIGHT CRIME, Sept. 23, 2016, <https://es.insightcrime.org/noticias/noticias-del-dia/puede-honduras-manejar-el-enorme-numero-de-casos-de-corrupcion-policial/>.

prosecutors.³⁷³ Human rights organizations as well as Honduran law enforcement and military officials verified that authorities commit crimes ranging from murder to extortion to car theft.³⁷⁴ “Even drug operations are often run by police, with complicity of their bosses who drive luxury cars and live outside their means.”³⁷⁵ A member of the government's own police cleanup commission recently estimated that only 30 percent of the police are “rescuable.”³⁷⁶

Honduras has made some attempts to combat the high levels of impunity. The Honduras Military Police Act empowers judges and prosecutors with supposedly clean records to hear criminal proceedings against military police personnel.³⁷⁷ However, often times, these individuals preside over criminal proceedings against military police personnel with whom they have or continue to collaborate. In its 2018 Concluding Observations on Honduras, the Committee on Enforced Disappearances expressed concern that Honduras is unable to guarantee “independence and impartiality in investigations” against military police personnel accused of participating in an enforced disappearance.³⁷⁸ In another attempt to combat impunity, President Juan Orlando Hernandez announced in January 2018 that the mandate for the Special Commission for Police Reform Restructuring (“the Commission”) would extend to January 2019. The Commission investigated more than 10,000 police officers, of which more than 5,000 were removed from their positions.³⁷⁹ By June 2018, the Commission submitted more than 1,300 cases to the Attorney General’s Office requesting further investigations of these officers and their potential involvement

³⁷³ Frances Robles, *Honduras Becomes Murder Capital of the World*, MIAMI HERALD, Jan. 23, 2012, <https://www.miamiherald.com/latest-news/article1939373.html>.

³⁷⁴ *Id.*

³⁷⁵ *Id.*

³⁷⁶ Frank Foreign Affairs, *supra* note 99.

³⁷⁷ Concluding Observations Honduras 2018, *supra* note 16.

³⁷⁸ *Id.*

³⁷⁹ *Un oficial acusado de narco sigue con salario de la Policia*, LA PRENSA, Sept. 17, 2018, <https://www.laprensa.hn/honduras/1217205-410/policia-acusado-narco-salario-honduras-comision-depuradora->.

in criminal activities. Nevertheless, several officers remained in the police force despite having been purportedly removed for participating in criminal activity. In September 2018, a police officer was accused of drug trafficking and yet continued receiving his police salary.³⁸⁰ In October 2018, an officer whom the Commission had promoted to deputy police commissioner and then became head of the police, was arrested for engaging in criminal activity.³⁸¹ While the Commission is a positive development, the Honduran government still faces high levels of corruption, and widespread distrust of the National Police persists.³⁸²

Since the coup, dozens of campesino activists participating in land struggles in the Aguán Valley have been killed at the hands of the Honduran police.³⁸³ Furthermore, according to the Director of the Observatory on Violence, 87% of murders remain unpunished.³⁸⁴ The Inter-American Commission on Human Rights has found that impunity for crimes is the result of ineffectiveness and the institutional weakness of Honduran agencies in charge of investigating and prosecuting these crimes; their failure to meet international standards in carrying out effective investigations; and high levels of corruption and the influence of criminal organizations in the security forces and the judiciary.³⁸⁵

In November 2014 Guatemala, Honduras, El Salvador, and the U.S. created and implemented the Alliance for Prosperity Plan in the Northern Triangle of Central America, a five-

³⁸⁰ *Id.*

³⁸¹ HUMAN RIGHTS WATCH, COUNTRY CHAPTER WORLD REPORT, HONDURAS EVENTS OF 2018 (2019), <https://www.hrw.org/world-report/2019/country-chapters/honduras>.

³⁸² Cat Rainsford, *Honduras Police Purge May Be Derailed by Alternative Agenda*, INSIGHT CRIME, July 26, 2019, <https://www.insightcrime.org/news/brief/honduras-police-purge-derailed-alternative-agenda/>.

³⁸³ Dana Frank, *In Honduras, a Mess Made in the U.S.* (Op Ed), N.Y. TIMES, Jan. 27, 2012, at A27, <https://www.nytimes.com/2012/01/27/opinion/in-honduras-a-mess-helped-by-the-us.html>.

³⁸⁴ Corruption rate reduced 9% from 96% in 2013 to 87% in 2019. See Ayestas Interview, *supra* note 66. See also Impunidad Honduras, ASOCIACIÓN PARA UNA SOCIEDAD MÁS JUSTA, <https://asjhonduras.com/webhn/sobre-asj/>; *Nivel de impunidad reduce un 9% según informe de la APJ*, ONCE NOTICIAS, June 5, 2019, <https://www.oncenoticias.hn/impunidad-reduce-informe-de-la-apj/>.

³⁸⁵ IACHR Honduras Report, *supra* note 369, at ¶ 210.

year joint regional plan.³⁸⁶ The goal of the program was to reduce migrants’ incentives to leave their countries by addressing the root causes of migration from the Northern Triangle.³⁸⁷ Much of the funding was for development assistance, such as strengthening government institutions, encouraging civil society engagement and oversight, improving the quality of basic education and increasing access to formal schooling for at-risk youth.³⁸⁸ These programs, however, were given only short-term funding, and when funding was no longer available, the programs ended. Honduras “reportedly allocated \$3.8 billion” from 2016 to 2019 to “foster economic growth, improve security conditions, strengthen government institutions, and increase opportunities for the region’s citizens.”³⁸⁹ These initiatives “may take several years to bear fruit,” and could initially increase migration, as individuals in deep poverty who did not have the financial resources to migrate, may be able to access short-term resources to leave the country.³⁹⁰ However, most of the funds have been allocated to security measures rather than economic development. Additional resources spent on ‘security’ may also make conditions worse as Guatemala, Honduras, and El Salvador face “multiple corruption scandals and use heavy-handed tactics to combat crime and violence.”³⁹¹ The allocation of funds to address security measures also increases further corruption.³⁹² Moreover, the Honduran government has no real incentive to stem the problem of migration; remittances from migrant workers abroad are the largest source of foreign exchange for Honduras.³⁹³ As of October

³⁸⁶ COHA APP Report, *supra* note 105.

³⁸⁷ *Id.*

³⁸⁸ PETER J. MEYER, CONG. RESEARCH SERV., R34027, HONDURAS: BACKGROUND AND U.S. RELATIONS 12 (2016).

³⁸⁹ *Id.* at 19.

³⁹⁰ *Id.*

³⁹¹ COHA APP Report, *supra* note 105.

³⁹² *Id.*

³⁹³ Interview with COFAMIPRO, Red Jesuita con Migrantes Centroamerica y Nortamerica, and Equipo de Reflexion, Investigacion y Comunicacion (ERIC), in *El Progreso*, Honduras (Mar. 3, 2017) [hereinafter *Friday Morning Interview*]. See also Meyer, *Mexico’s Other Border*, *supra* note 93, at 13.

2019, remittances to Honduras reached \$5.283 billion, which is 21.4% of Honduras's GDP (compared to \$3.9 billion in remittance inflows to Honduras in 2016).³⁹⁴

B. Honduran Law

Honduras is party to various international conventions that could protect Honduran migrants who may be victims of enforced disappearance abroad. The government is required to establish and enforce domestic laws that protect this vulnerable population. Although Honduras has passed laws addressing migrant issues, none directly addresses migrants who disappear abroad. Furthermore, the Penal Code definition of enforced disappearances does not address the possibility of enforced disappearances of Hondurans abroad.³⁹⁵

The Honduran Civil Code does not recognize missing persons, making it difficult for families to initiate a search for their relatives.³⁹⁶ Family members report that when they have approached the Office of Public Ministry (the state prosecutor's office) asking the office to search for their disappeared relative abroad, they have been rebuffed. If the person did not go missing within its jurisdiction (that is, the territory of Honduras), the Office claims it cannot do anything.³⁹⁷ The only positive obligation under Honduran law relating to the search of migrants who have disappeared abroad is "to send an official request to the corresponding embassy or consulate."³⁹⁸

³⁹⁴ Annual Remittances Data (updated as of Oct. 2019), Migration and Remittances Brief, Sept. 26, 2019, <https://www.worldbank.org/en/topic/labormarkets/brief/migration-and-remittances>; Manuel Orozco, *Remittances to Latin America and the Caribbean in 2016* 4, THE INTER-AM. DIALOGUE, Feb. 10, 2017, <http://www.thedialogue.org/wp-content/uploads/2017/02/Remittances-2016-FINAL-DRAFT.pdf>.

³⁹⁵ CODIGO PENAL [CP] art. 333-A (Hond.) (2017).

³⁹⁶ CODIGO CIVIL [CC] art. 83 (Hond.).

<http://www.poderjudicial.gob.hn/CEDIJ/Leyes/Documents/CodigoCivil2017.pdf>.

³⁹⁷ Family Interviews, *supra* note 353.

³⁹⁸ Secretaría de Relaciones Exteriores, Manual de Procesos y Procedimientos, Dirección General de Asuntos Consulares y Política Migratoria (June 6, 2013), https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND_INT_CMW_ICS_HND_20032_S.pdf

Honduras' domestic obligations towards disappeared migrants and their families, and a description of the gaps in Honduras' laws and implementation of the laws designed to protect Honduran migrants abroad, are discussed below.

1. Definitions

The most important laws governing disappearances are those relating to protection of migrants, missing persons, and enforced disappearances. Under the Honduran Civil Code, a person who has disappeared is not considered “missing”, but merely “absent”.³⁹⁹ An “absent” person is presumed dead after five years have passed from the last communication with them.⁴⁰⁰ There are some exceptions to this provision that permit a shorter time period, including situations where there is evidence of imminent risk of death due to violence.⁴⁰¹ This is a change to the original civil code, which required a period of ten years to declare an “absent” person dead.⁴⁰²

Under the Honduran Penal Code, individuals are guilty of the crime of enforced disappearance if they: “[act] with the authorization, support or acquiescence of one or more public officials or employees... [to] limit or deny one or more individuals the exercise of constitutional guarantees and the relevant procedural safeguards, provided that any of the following circumstances exist: 1) [the authorities refuse to provide information and to recognize the deprivation of liberty of an individual and 2) [they conceal or deny the whereabouts of the detained person(s)].”⁴⁰³ This definition is consistent with the CFDP and CPED definitions of the term. The

³⁹⁹ CODIGO CIVIL, *supra* note 396, at art. 83.

⁴⁰⁰ *Id.*

⁴⁰¹ *Id.*

⁴⁰² See CODIGO CIVIL, *supra* note 396, at art. 83; Alejandro Espinoza, *Jurídicamente Vivos*, LA PRENSA (Aug. 26, 2014).

⁴⁰³ *Id.* The Honduran Constitution guarantees the following rights that may be affected by an enforced disappearance: the inviolability of life (Art. 65); physical, social and moral integrity and dignity (Art. 68); prohibition on torture (Art. 68); prohibition on detention or imprisonment in places not determined by the law (Art. 85); and the right of habeas corpus (Art. 182.1). Constitución de la Republica de Honduras [Cn.] arts. 65, 68, 85, 182.1, Jan. 11, 1982, https://www.constituteproject.org/constitution/Honduras_2013.pdf?lang=en.

treaty definitions specify that enforced disappearances occur where the government (or a “public official”) is either assisting (“authorizing or supporting”) or tolerating (“acquiescing”) the disappearance of any individual. Moreover, Honduras implemented some of the recommendations from the Committee on Enforced Disappearances’ Concluding Observations on Honduras, published on July 4, 2018.⁴⁰⁴ As a result, Honduras’s new Penal Code (“new Code”), issued in 2019, listed enforced disappearance as a separate crime and a crime against humanity. The new Code also added mitigating and aggravating circumstances for the crime in order to conform to article 7(2) of CPED. In addition, the new Code removed provisions permitting authorities to decline bringing criminal proceedings in any enforced disappearance case.⁴⁰⁵

The new Code also addresses the issue of Honduras’s jurisdiction abroad. Article 9(3) in permits Honduras to exercise jurisdiction over crimes committed abroad when the conditions established in the international treaties that Honduras ratified are met. Furthermore, Honduras has jurisdiction over perpetrators found in Honduras and in territories where Honduras may exercise jurisdiction.⁴⁰⁶ The new Code reaffirms that Honduras has the legal authority to exercise jurisdiction over enforced disappearances that occur abroad, as the CPED permits.

2. Law on Protection of Migrants

In 2014, the Honduran government passed the *Ley de La Protección de los Hondureños Migrantes y sus Familias* (Law on the Protection of Honduran Migrants and their Families) (“Honduran Migrant Law”) in response to the unprecedented levels of unaccompanied child

⁴⁰⁴ Concluding Observations Honduras 2018, *supra* note 16.

⁴⁰⁵ CODIGO PENAL [CP] art. 140 (Hond.) (2019).

⁴⁰⁶ CODIGO PENAL [CP] art. 9 (Hond.) (2019).

migrants leaving Honduras. The Law addresses the needs of Hondurans who are abroad, particularly those in vulnerable situations.⁴⁰⁷

The Law aims to protect Honduran migrants abroad, regardless of their status, including protection of their constitutional and human rights, in accordance with the treaties and other international instruments to which Honduras is a party.⁴⁰⁸ Honduran consulates are required to ensure that they are accessible to Honduran migrants at all times; attend to Honduran migrants who have been detained, deprived of their liberty, hospitalized, or are in other dire situations; to counsel them regarding their human rights and advise them on labor, criminal, civil, migratory and administrative matters.⁴⁰⁹ Consulates are also required to provide assistance for repatriation to Honduras.⁴¹⁰

To address these needs, Honduras has opened consulates in McAllen, Texas and in Saltillo, Mexico, and more consulates are expected to open in Mexico.⁴¹¹ These are strategically located to assist Honduran migrants in places where they have reported suffering the most human rights violations.⁴¹² The Law guarantees Hondurans abroad the right to file claims, a right protected by the Honduran Constitution, including with the *Comisionado Nacional de los Derechos Humanos*

⁴⁰⁷ Ley de Protección de los Hondureños Migrantes y sus Familias, 33,356 LA GACETA, Feb. 15, 2014, https://portalunico.iaip.gob.hn/portal/ver_documento.php?uid=MTU3OTg5ODkzNDc2MzQ4NzEyNDYxOTg3MjMOMg [hereinafter *Honduran Migrant Protection Law*]. The Law states that it covers Honduran nationals who are outside the national territory, whether temporarily or permanently; Honduran nationals who are temporarily displaced abroad or those who are “in transit” through another country, either migrating or returning to Honduras; Honduran nationals who return to Honduras to determine their permanent residence; and the relatives of those who fall into these categories. See also COD. PEN. art. 9.

⁴⁰⁸ COD. PEN. art. 18 (1-3).

⁴⁰⁹ *Id.* at art. 18 (2).

⁴¹⁰ *Id.* at art. 18 (1-3).

⁴¹¹ SECRETARIA DE DERECHOS HUMANOS, JUSTICIA, GOBERNACIÓN Y DESCENTRALIZACIÓN, Informe de Avances en la Implementación de la Política Pública y del Plan Nacional de Acción en Derechos Humanos en el marco de los Derechos Humanos de las Personas Migrantes (2014), at 4.

https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ADR_HND_23858_S.pdf [hereinafter *PPHR 2014 Update*].

⁴¹² *Id.* at 4-5.

(National Commission for Human Rights) (“CONADEH”).⁴¹³ The Law also requires that the government take steps to discourage clandestine or irregular migration, through public dissemination of information on the dangers and difficulties that migrants face in transitory countries and destinations.⁴¹⁴

Finally, the Honduran Migrant Law (article 29) also created the *Fondo de Solidaridad con el Migrante Hondureño* (Fund for Solidarity with the Honduran Migrant) (“FOSMIH”) to benefit Honduran migrants and their families. The Fund has an annual budget of more than \$5 million.⁴¹⁵ These funds are to provide financial assistance to families of Hondurans who have died abroad and to Hondurans in situations of distress who wish to return to Honduras. The funds are also used for the centers receiving Hondurans when they have been deported back to the country.⁴¹⁶ FOSMIH is the only mechanism through which Hondurans may recover the remains of their relatives found abroad, and reparations for the death of a migrant relative. In February 2018, the Honduran government enacted Decree No. 34559, “Sección B,” (“Sección B”) clarifying the rules under FOSMIH. Under Title I, Chapter II of Sección B, the fund “shall exclusively serve to attend Honduran migrants and their families...in the following cases: (c) provide help to Hondurans deprived of liberty due to migration or crime with need of protection in the exterior,” and (e) repatriation of bodies of Hondurans who died abroad and whose family do not have the resources to do so,” as well as for other cases not related to disappearances.⁴¹⁷

⁴¹³ Honduran Migrant Protection Law, *supra* note 407, at art. 7.

⁴¹⁴ *Id.* art. 18 (16).

⁴¹⁵ *Id.* art. 29.

⁴¹⁶ *Id.*

⁴¹⁷ Sección B: Reglamento del Fondo de Solidaridad con el Migrante Hondureño (FOSMIH), 34,559 LA GACETA, Feb. 3, 2018 [hereinafter *Sección B*].

3. Human Rights Policy and Missing Migrants Registry

Through the country's Human Rights Policy and Plan ("the Plan"), the Honduran *Secretaría de Relaciones Exteriores de Honduras* (Ministry of Foreign Affairs and International Cooperation) ("SRE") has developed a registry of migrants who have gone missing on the migratory route to the United States.⁴¹⁸ The SRE also receives applications from families on different matters regarding the protection of migrants, such as requests for the repatriation of bodies.⁴¹⁹

One of the stated goals of the Plan is to "support and strengthen the investigations of missing Honduran migrants on the migratory route to the United States to promulgate the right to truth, reparation and assistance to the relatives of the victims."⁴²⁰ The government has provided some support for the caravans searching for migrants on the migratory route to the United States, and claims that it assists "in the search for truth, reparations and assistance to the victims' families."⁴²¹ In early 2019, the Honduras Ministry of Human Rights gave a report on its progress on the registry of disappeared persons to delegations from Guatemala and El Salvador.⁴²²

4. Law of the National Registry of Missing or Disappeared Persons

On June 5, 2018, the Honduras National Congress enacted the Law of the National Registry of Data of Missing or Disappeared Persons ("National Registry Law").⁴²³ Among the primary

⁴¹⁸ PPHR 2014 Update, *supra* note 411, at 3.

⁴¹⁹ *Id.*

⁴²⁰ *Id.* at 3.

⁴²¹ Mothers and other relatives from Honduras, El Salvador, Guatemala and Nicaragua have banded together to form caravans that travel through Mexico in search of their missing family members. *See infra* Ch. V (D)(6). *See also* PPHR 2014 Update, *supra* note 411, at 3.

⁴²² SECRETARIA DE DERECHOS HUMANOS, A nivel regional Honduras presenta avances en materia de registro de personas desaparecidas, Jan. 30, 2019, <https://www.sedh.gob.hn/noticias3/222-a-nivel-regional-honduras-presenta-avances-en-materia-de-registro-de-personas-desaparecidas>. At the Ministry meeting with the delegations, officials listed the objectives as harmonizing and unifying information in the registry, determining the institutions that could participate in the registry, and identifying and searching for persons nationally and internationally. At the end of the meeting, the representatives of the Secretary of State acknowledged the recommendations issued for Honduras by the Committee Against Enforced Disappearances, which had suggested that Honduras create a national registry with data of persons missing or disappeared.

⁴²³ Exposición de motivos, Ley del Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, June 5, 2018 [*Ley del Registro Nacional de Datos*].

objectives laid out in the National Registry Law is the need to address the problem of family members who report a disappeared or missing relative, but then have to submit the same information multiple times, even to the same authorities. As noted in the law’s preamble, bureaucratic frustrations re-victimize the families. The National Registry Law sets up a framework to “establish a mechanism that permits the organization and concentration of information in an electronic database regarding missing or disappeared persons.”⁴²⁴ The law points out the absence of a “unified, consolidated, and refined registry,” including an “adequate registry of deceased persons who are not identified” and “complete registries from detention centers, hospitals, and other places where a disappeared person may be found.”⁴²⁵ The Law responds to problems that have been identified by the Committee on Enforced Disappearances in its 2018 Concluding Observations on Honduras.⁴²⁶ The National Registry is to be designed, administered, and operated by the Secretary of State in the Office of Human Rights with the help of the National Center of Information, fulfilling the provisions in the Law of Protection for Personal Data. The National Registry is to function on a 24/7, 365-day basis, and to be kept public. The law also establishes a phone service for solicitations for the National Registry, and encourages regional cooperation.⁴²⁷

Approximately four months after the National Registry Law’s enactment, the National Congress requested an opinion by the Secretary of State regarding the National Registry’s implementation. The opinion lays out general observations and recommendations, with a focus on redefining ‘disappearances.’ The opinion suggests that the law be changed to the “Law of the National Registry of data of enforced disappearances and disappearances of special circumstances

⁴²⁴ *Id.*

⁴²⁵ *Id.*

⁴²⁶ Concluding Observations Honduras 2018, *supra* note 16.

⁴²⁷ Ley del Registro Nacional de Datos, *supra* note 423, at art. 4 (8).

and missing.”⁴²⁸ This suggestion charges the state to take responsibility for all disappearances, not just enforced ones. The opinion also addresses the issue of extraterritorial jurisdiction, and points out the CED’s recommendation to establish a consolidated registry in all cases of enforced disappearances that occurred within the national territory or where the victims are Honduran nationals who disappeared abroad. However, much of the focus in this opinion is on redefining “disappearances,” and not on jurisdiction. Nonetheless, the National Registry Law and the follow-up opinion by the Secretary of State to the National Congress shows that Honduras has been making greater efforts to address the crisis of disappearances in a range of contexts.

5. Transnational Agreements

In 2014, Honduran President Juan Orlando Hernandez and President Enrique Peña Nieto of Mexico signed the Declaration of Comayagua, which was intended to reinforce political ties between both countries on issues including trade, investment, tourism, and culture.⁴²⁹ Based on this Declaration, the Ministries of Foreign Affairs of both countries signed a Memorandum of Understanding to work together to identify the bodies of migrants found in mass graves in Mexico.⁴³⁰ The Agreement established mechanisms for “mutual support and a permanent exchange of information between Mexican and Honduran government agencies on undocumented Hondurans who died in Mexico on their way to the United States.”⁴³¹

Honduras has recently entered into agreements with the U.S. regarding migration, but not specifically on migrant disappearances. For example, in 2019, Honduras signed the Asylum

⁴²⁸ Response from Honduran National Congress to Opinion Request, *Opinion sobre Observaciones de Control de Convencionalidad Juridica al Proyecto de Decreto sobre La Ley del Registro de Datos de Personas Extraviadas o Desaparecidas*, No. 459-2018/CN, Tegucigalpa, Honduras, Oct. 22, 2018.

⁴²⁹ Official visit by President of Honduras Juan Orlando Hernández Alvarado, Gobierno de Mexico, Blog, <https://www.gob.mx/epn/en/articulos/official-visit-by-president-of-honduras-juan-orlando-hernandez-alvarado>.

⁴³⁰ *Honduras y México firman memorando para identificar restos de migrantes*, LA PRENSA, Apr. 8, 2014, <https://www.laprensa.hn/migrantes/hondurenosenmexico/638945-98/honduras-y-m%C3%A9xico-firman-memorando-para-identificar-restos-de-migrantes>.

⁴³¹ *Id.*

Cooperative Agreement (“ACA”), Border Security Arrangement, Biometrics Data Sharing Program Arrangement, and agreements relating to temporary agricultural and non-agricultural workers programs.⁴³²

In 2012, the Honduran government signed the Inter-Institutional Cooperation Agreement for the Creation of Mechanisms for the Exchange of Information on Missing Migrants and Unidentified Bodies, with the EAAF and the *Foro Nacional para la Migración en Honduras* (National Forum on Migration in Honduras) (“FONAMIH”) to “exchange information to identify missing migrants among the unidentified bodies of migrants in morgues, municipal cemeteries, and other places located in Mexico, the United States, and/or in Central American countries.”⁴³³ The Agreement created a forensic database, which is administered by government agencies and civil society organizations.⁴³⁴ The database consists of data on missing migrants, such as the date of last contact and DNA samples taken from family members.⁴³⁵

C. Efforts to Address Migrant Disappearances

1. Family Collectives

The issue of migrant disappearances abroad has received insufficient attention from the Honduran government thus far in light of the large numbers of Hondurans who have disappeared.⁴³⁶ Family collectives—groups of mothers, grandmothers, and relatives of missing

⁴³² Fact Sheet: DHS Agreements with Guatemala, Honduras, and El Salvador, *supra* note 126.

⁴³³ Convenio de Cooperación Interinstitucional Para la Creación de Mecanismos de Intercambio de Información Sobre Migrantes No Localizados y Cuerpos No Identificados (Interinstitutional Cooperation Agreement for the Creation of Mechanisms for the Exchange of Information on Non-Localized Migrants and Unidentified Bodies), Art. I, https://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ADR_HND_23856_S.pdf (last visited Aug. 28, 2020).

⁴³⁴ *Id.* at art. IV.

⁴³⁵ Convenio de Cooperación Interinstitucional, *supra* note 433, at Art. III. *See also* ICRC Interview in Honduras, *supra* note 272; Interview with Jose Suazo, President, Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras (“COFAMICENH”), in La Paz, Honduras (Feb. 26, 2017) [hereinafter *COFAMICENH Interview*].

⁴³⁶ Ayestas Interview, *supra* note 66.

individuals—are responsible for much of the work that has been done on the issue. They have been responsible for creating databases of their missing loved ones and searching for missing persons along the migratory route.⁴³⁷ The family collectives interviewed for this report in Honduras, COFAMICENH and COFAMIPRO, collect their own data.⁴³⁸ COFAMIPRO described the survey of missing persons they conducted by house-to-house interviews, asking families if they have a missing relative.⁴³⁹ Since this is a private initiative, which cannot be carried out in every community in Honduras, the database is inevitably incomplete. COFAMIPRO also receives data from family members of missing persons who voluntarily come to them for support.⁴⁴⁰ COFAMICENH collects data in a similar way: either family members approach the collective to register a missing person, or COFAMICENH members travel to different towns to determine whether locals know of missing persons.⁴⁴¹ These databases contain the names of missing relatives, and provide guides for family collective members who travel to Mexico searching for the missing.⁴⁴² COFAMICENH had a list of 32 people from their community in La Paz; COFAMIPRO reported 592 or more people.⁴⁴³ In the absence of a comprehensive data base, no one knows the exact number of Hondurans migrants who have disappeared. However, when asked why the data from the family collectives was not used to compile such a list, family members said that the government never sought this information from the collectives.⁴⁴⁴

⁴³⁷ COFAMICENH Interview, *supra* note 435; Friday Morning Interview, *supra* note 393.

⁴³⁸ A number of family collectives have been formed to help family members who have loved ones who are missing abroad. They are: el Comité de familiares de Camasca; el Comité de Familiares de Migrantes de Cedros; el Comité de Familiares de Migrantes de Choluteca; el Comité de Familiares de Colomocagua; el Comité de Familiares de Namacigüe, el Comité de Familiares La Guadalupe; el Comité de Familiares de Las Ánimas; el Comité de Familiares de Goascorán, el Comité de Familiares de Migrantes de Nacaome; and el Comité de Familiares de Tegucigalpa (Red COMIFA).

⁴³⁹ Friday Morning Interview, *supra* note 393.

⁴⁴⁰ *Id.*

⁴⁴¹ COFAMICENH Interview, *supra* note 435.

⁴⁴² Family Interviews, *supra* note 353.

⁴⁴³ COFAMICENH Interview, *supra* note 435. *See also* Friday Morning Interview, *supra* note 393.

⁴⁴⁴ COFAMICENH Interview, *supra* note 435.

COFAMIPRO described how relatives search for their missing loved ones.⁴⁴⁵ The COFAMIPRO leadership chooses individuals within the organization who can make the difficult search trips to Mexico based on their physical condition and age, among other factors.⁴⁴⁶ The searches are coined “Caravans of Mothers,” although siblings and fathers often go as well.⁴⁴⁷ The caravans follow the migratory routes through Mexico, searching migrant shelters, hospitals and jails for missing loved ones.⁴⁴⁸ These searches are often not fruitful. Still, the searches bring attention to the problem, and give relatives the opportunity to engage in active information-seeking. One mother described her experience searching for her missing daughter in Mexico: “I cried in the caravan. Even though I felt she was alive, I cried seeing all those migrants. We went to the jails, we went to the brothels. I saw all those migrants suffering, using drugs, and I felt for them.”⁴⁴⁹

The family collectives also provide free legal and “socio-psychological” support to the families, many of whom are left with children to provide for and no income.⁴⁵⁰ One mother credits COFAMIPRO with helping her keep custody of her seven grandchildren, as well as helping one of them obtain an education beyond the third grade.⁴⁵¹ Another mother described the benefit of the organization’s work to her: “I have received a lot of psychological support. I thought I was going crazy, and I thought I would die. And they gave me all the support. Now I have recovered all my strength.”⁴⁵²

⁴⁴⁵ Family Interviews, *supra* note 353.

⁴⁴⁶ *Id.*

⁴⁴⁷ *Id.* The terms “caravanas de madres” (*caravan of mothers*) and “caravanas de busqueda” (*search caravans*) were used interchangeably in the interviews in Honduras.

⁴⁴⁸ *Id.*

⁴⁴⁹ Family Interviews, *supra* note 353.

⁴⁵⁰ *Id.*

⁴⁵¹ *Id.*

⁴⁵² *Id.*

2. International Organizations and Non-Governmental Organizations

Some international organizations (“IOs”) and non-governmental organizations (“NGOs”) also advocate for and are raising awareness about the problem of disappeared migrants. In 2014, the ICRC in Honduras created a Working Group on disappeared migrants.⁴⁵³ This Working Group was an attempt by the ICRC to bring together all the actors working on the issue of migrant disappearances, including COFAMIPRO and COFAMICENH.⁴⁵⁴ NGOs involved in the working group include: the ICRC; the Scalabrinian Sisters; FJEDD; and the EAAF.⁴⁵⁵ The government agencies involved with issues of migration and migrants, as well as missing persons, include: the Honduran Ministry of Foreign Affairs; the Director of Investigative Police; the National Police; the Ministry of Human Rights and Justice; Ombudsman from the National Commission of Human Rights; the Attorney General’s Office; the MAE dealing with migration from the Mexican PGR; and the *Registro Nacional de Personas* (the National Registry of People).⁴⁵⁶ The Working Group’s objectives are to: (1) optimize the search for missing migrants; (2) create a registry of missing persons; and (3) identify an official and safe route both for migrants to follow and for family members to search for missing relatives.⁴⁵⁷

The Registry is of particular importance. As noted earlier, the family collectives have been independently creating registries of missing loved ones.⁴⁵⁸ The ICRC has created a Unified Registry Form (the “Form”), through which family members and others can document their

⁴⁵³ ICRC Interview in Honduras, *supra* note 272.

⁴⁵⁴ *Id.*

⁴⁵⁵ See SUORE MISSIONARIE DI SAN CARLO BORROMEO, SCALABRINIANE, <http://www.scalabriniane.org/> (last visited December 15, 2020). (The Scalabrinian Sisters are a Congregation of Sisters founded in 1895. Their founding mission, is to aid migrants. In Honduras, the Scalabrinian Sisters assist returned migrants).

⁴⁵⁶ ICRC Interview in Honduras, *supra* note 272.

⁴⁵⁷ *Id.* ICRC creating an “official” route for migrants to follow is controversial, given the undocumented status of Hondurans migrating through or into another country. The ICRC gives the rationale for providing this route as based on a general acceptance that people will continue to migrate from Honduras in droves, owing to the push factors and regardless of danger. The publicizing of an official route is intended to make the journey safer for migrants.

⁴⁵⁸ COFAMICENH Interview, *supra* note 435; Family Interviews, *supra* note 353.

missing loved ones.⁴⁵⁹ The ICRC has also held trainings for family collectives about how to fill out the Form, and reported that the family collectives are utilizing it to record missing migrants in the Registry.⁴⁶⁰

NGOs pushed for the creation of the Honduran Migrant Law. Prior to 2010, the Scalabrinian Sisters, a Catholic Order founded to help migrants that has been active in Honduras since 1991, along with the family collectives and FONAMIH, advocated for a migrant protection law similar to the Mexico Victims' Law.⁴⁶¹ Ultimately, the law that was passed in 2013—the Honduran Migrant Law—was not nearly as expansive as advocates hoped, but did include a fund for the families, the FOSMIH, as mentioned above. The Scalabrinian Sisters cited their main disappointment with the law as the lack of protections given to returned Hondurans domestically, since the Law focuses on protecting Hondurans abroad.⁴⁶²

3. National mechanisms and the push for regional cooperation

In response to the Committee of Migrant Workers' recommendations in 2016, Honduras established the Mesa de Migrantes Desaparecidos in 2018 ("Mesa") to operationalize State compliance with four recommendations given by the Committee. One of the major themes covered by the Mesa was the disappearances of Honduran migrants. By September 2018, the Mesa, in collaboration with the Argentine Forensic Team, documented more than 496 cases of disappearances brought by 460 families. The Mesa also identified thirty-seven remains in total by September 2018, five of which belonged to disappeared Honduran migrants. Furthermore, out of the 37 remains found, seven were located in the United States and eleven in Mexico. Through the Mesa's efforts, 46 migrants were found alive. The Mesa is also working with the Regional

⁴⁵⁹ ICRC Interview in Honduras, *supra* note 272.

⁴⁶⁰ *Id.*

⁴⁶¹ Sister Lydia Interview, *supra* note 358.

⁴⁶² *Id.*

Conference of Migration to exchange best practices and increase cooperation among the member states to gather information.⁴⁶³

These efforts demonstrate that there has been more attention in Honduras to disappearances in recent years. However, Honduras cannot do this alone. The UN's Committee on Enforced Disappearances, Honduras's Ministry of Foreign Affairs and Honduran civil society organizations have been calling for more and closer regional cooperation.⁴⁶⁴

D. Challenges and Gaps in Addressing Migrant Disappearances

Honduras, like Mexico, has a responsibility to enforce its own domestic law and the regional and international treaties that it has ratified. Treaties form part of Honduras' domestic law as soon as they are ratified.⁴⁶⁵ In cases of conflict between the domestic law and treaties and/or conventions, the treaties and conventions prevail.

1. Honduran Law

While the Honduran Penal Code provides a definition of enforced disappearance, the new code does not fully conform to the CPED. First, the definition of enforced disappearance in the new Code is limited. Instead of specifying the activities that lead to enforced disappearances such as “the arrest, detention, abduction, or any other form of deprivation of liberty,” as listed in the definition under the CPED, the new Code simply lists “deprivation of liberty.”⁴⁶⁶ Second, the code does not impose its “most severe penalty” to the crime of enforced disappearance, as recommended

⁴⁶³ SECRETARIA DE DERECHOS HUMANOS, Informe sobre la situación de los derechos humanos en Honduras 2018, May 2019, <https://www.sedh.gob.hn/odh/publicaciones/informes/267-informe-sobre-la-situacion-de-los-derechos-humanos-en-honduras-2018/file>.

⁴⁶⁴ Ministerio Publico integra Mesa de trabajo para la búsqueda de personas desaparecidas, Ministerio Publico, Mar. 27, 2019, <https://www.mp.hn/index.php/author-login/132-marzo2019/4047-ministerio-publico-integra-mesa-de-trabajo-para-la-busqueda-de-personas-desaparecidas> (“The agreements and reinforcement of the mechanisms to locate persons and the timely attention given to their families in the entire region will permit the creation of a unified registry in the search of disappeared persons”).

⁴⁶⁵ Constitución de la Republica de Honduras, supra note 403 (“International treaties entered into by Honduras with other States form part of the domestic law as soon as they enter into force.”).

⁴⁶⁶ Compare CODIGO PENAL (2017), supra note 395, at art. 333-A with CPED, at art. 2.

by the Committee in 2018.⁴⁶⁷ Third, under article 7(2) of CPED, mitigating circumstances should apply to penalties when those implicated in an enforced disappearance case (1) bring the disappeared person forward alive, (2) make it possible to clarify cases of enforced disappearance, or (3) identify perpetrators of an enforced disappearance. The new Code omits the third mitigating circumstance listed by the CPED mentioned above (identification of perpetrators). Moreover, the new Code does not contain specific provisions governing prosecutions of officials when they are implicated in an enforced disappearance and should be held criminally responsible. The Code adds that a penalty of 20-25 years should apply when civil servants are involved in an enforced disappearance, but does not describe the underlying criminal acts or the elements of the crime(s) to be prosecuted.⁴⁶⁸

The language regarding extraterritorial jurisdiction in article 9(3) of the new Penal Code is permissive as opposed to mandatory. Article 9(3) repeats Article 9(1)(c) of the CPED, rather than mandating Honduran authorities to exercise jurisdiction over disappearances abroad. The addition of this discretionary extraterritorial jurisdictional provision is a step in the right direction, but it is not enough. While consistent with the CPED, such permissive language will not prompt Honduran authorities to exercise jurisdiction over enforced disappearances abroad and require them to extend diplomatic efforts with their foreign counterparts to investigate. Authorities are informed that they *may* exercise jurisdiction, and will not be penalized for refusing to do so.

⁴⁶⁷ Concluding Observations Honduras 2018, *supra* note 16.

⁴⁶⁸ Concluding Observations Honduras 2018, *supra* note 16. *Compare* CPED, art. 6(1)(b) (holding criminally responsible a superior who (i) “knew, or consciously disregarded information which clearly indicated, that subordinates under his or her effective authority and control were committing or about to commit a crime of enforced disappearance; (ii) exercised effective responsibility for and control over activities which were concerned with the crime of enforced disappearance; and (iii) failed to take all necessary and reasonable measures within his or her power to prevent or repress the commission of an enforced disappearance or to submit the matter to the competent authorities for investigation and prosecution”), *with* COD. PEN. art. 9 (Hond. 2019) (when the crime is carried out by a civil servant...the penalty for that actor is 20 to 25 years, which is more than the penalty for non-civil servants [15-20 years]).

Title II, Chapter II, Article 24 of Sección B which clarifies the functioning of FOSMIH, permits the distribution of some funds to families whose relative disappeared and were found dead abroad. In such cases, the family may be eligible for a socioeconomic assessment to receive funds only when “*the deceased* was reported as disappeared or missing for a minimum of five years before discovery,” or “the case was duly documented through a search and forensic recognition process.”⁴⁶⁹ Again, the family can only recover funds if the relative is found *deceased*. Furthermore, the relative must have been disappeared or missing for a minimum of five years, meaning that the family has to wait five years to be eligible to obtain funds from FOSMIH, which is a long time for families facing severe economic and psychological stress, particularly if the deceased loved one was the primary breadwinner.

Consequently, under the 2014 Honduran Migrant Law, a family suffering from the disappearance of a relative who has not been located is not eligible to receive reparations from FOSMIH. Honduran families who do not know the fate or whereabouts of their disappeared relative are therefore left without adequate reparations, which under the CPED is a violation of states’ obligations. A few months after Sección B was enacted, the Committee on Enforced Disappearance expressed concern “that domestic law does not provide for a system of full reparation.”⁴⁷⁰ Additionally, Sección B lays out the procedures for the repatriation of remains, but lacks a provision requiring the handling of remains and return to the families to be done in a *respectful manner*.

⁴⁶⁹ Sección B, *supra* note 417, at Tit. I, c. 2, art. 24 (emphasis added in text).

⁴⁷⁰ Concluding Observations Honduras, *supra* note 16, at ¶ 36. *See also* Casa Alianza Interview, *supra* note 386 (“The [money from FOSMIH], instead of going to the people who it is meant for, stays in the hands of the politicians... The public only sees about 30% of the money that is meant for us. There are big gaps in terms of the protection law and how [the law] is applied.”).

2. Government

Broadly, when a family member of a disappeared person wants to initiate an investigation, they have three options: (1) file a complaint or claim through the Honduran National Police, which may then lodge a missing person's claim with INTERPOL; (2) file a claim with the Ministry of Foreign Affairs; and/or (3) file a claim in Mexico with the PGR, which provides the family member immediate access to the MAE.⁴⁷¹

While it is encouraging that these options exist, interviewees for this report claimed the options are unclear, and doubted their effectiveness. Families routinely seek help from the family collectives, which assist individuals in filling out the relevant form and direct them to one or more of the three options to report a disappeared family member.⁴⁷² Each one of these options, however, suffers from deficiencies.

First, filing a disappeared person report with the Ministry of Foreign Affairs often results in delay and lack of response.⁴⁷³ A member of COFAMICENH stated that it took 18 months after making a request to the Ministry of Foreign Affairs to receive the bodies of their relatives.⁴⁷⁴ Family collectives reported in interviews that they need a much more accessible and responsive process to facilitate communication between the families and the Ministry. Although CONADEH could be a link between the families and the Ministry, the family collectives claimed they have little confidence in the agency's work, based on lack of response from CONADEH to prior requests.⁴⁷⁵ During his interview, Jose Suazo, whose brother Mauricio was among the 48 migrants whose torsos were found in Caderyeta, Nuevo Leon, described the difficulties in getting

⁴⁷¹ HOND. CONST. art. 18 (Hond. 1983); ICRC Interview in Honduras, *supra* note 272; for details, see *infra* Ch. V(C)(4).

⁴⁷² HOND. CONST. art. 18 (Hond. 1983); ICRC Interview in Honduras, *supra* note 272.

⁴⁷³ COFAMICENH Interview, *supra* note 435.

⁴⁷⁴ *Id.*

⁴⁷⁵ *Id.*; Interview with Ricardo Lopez, Attorney, Comisionado Nacional de los Derechos Humanos ("CONADEH"), in Tegucigalpa, Honduras (Mar. 2, 2017) [*CONADEH Interview*].

Mauricio's body returned to his family. Mauricio's body was found 200 kilometers from the border with McAllen, Texas. The Suazo family gave their DNA to the EAAF, which was a positive match with one of the torsos found in Cadereyta. In December 2012, they notified the Honduran Secretary of External Relations ("La Cancilleria"), requesting the repatriation of their brother's body. The Honduran government reassured the families that they would address the request promptly. However, it took 27 months after Mauricio's murder for his body to be repatriated. The family received it on June 22, 2014.⁴⁷⁶

Not all of the families have been as "fortunate" as the Suazos. Families have reported receiving remains that do not correspond to their missing family member. One family was waiting for the remains of a male family member and they received the torso of a female; another family was waiting for the body of their young son and received the remains of an old man.⁴⁷⁷ Over five years later, the Suazos only have their brother's torso. They are still fighting the Mexican government to get the rest of his remains.⁴⁷⁸ Additionally, none of the families have received any reparations from the Mexican or the Honduran governments.⁴⁷⁹

Second, reporting a disappeared migrant through INTERPOL also presents significant problems. In order to file a report with INTERPOL, the family member must first file a report with the National Police of Honduras.⁴⁸⁰ The National Police must conclude that the reported person is not within Honduran territory before it will transfer the investigation to INTERPOL.⁴⁸¹ This process can cause significant delay in the investigation for families who already know that the disappeared person is not within Honduran territory. The problem is exacerbated by lack of trust

⁴⁷⁶ COFAMICENH Interview, *supra* note 435.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.*

⁴⁸⁰ ICRC Interview in Honduras, *supra* note 272.

⁴⁸¹ *Id.*

in the National Police.⁴⁸² Another major deterrent is that families know, or are warned, that if a migrant is located in a foreign country, government authorities will turn them over to migration authorities, who will arrest, possibly detain and deport the individual to Honduras.⁴⁸³

ICRC noted that going through the National Police presents two major difficulties.⁴⁸⁴ First, as noted, Hondurans do not trust the National Police.⁴⁸⁵ According to Migdonia Ayestas, the Director of the Observatorio de la Violencia (“Observatory of Violence”) in Honduras, the National Police were themselves “part of the problem, not the solution.”⁴⁸⁶ They “were trafficking drugs... and got rich illicitly.”⁴⁸⁷ The National Police has been restructured in the last few years, and thousands of officers have been removed and criminally prosecuted. However, the independent human rights organization, Observatorio de la Violencia, reported that the restructuring program has not been adequate to combat impunity, and most Hondurans remain skeptical of the police.⁴⁸⁸

Second, the National Police are only required to file a missing person’s claim with INTERPOL after they definitively determine that the person is not in Honduras, which can take a long time.⁴⁸⁹ Filing a claim with the Ministry of Foreign Affairs can also be a lengthy process, and the family collectives did not report a single success through that route.⁴⁹⁰ The final option is the Mexican PGR. The ICRC claimed to be optimistic that the Mexican PGR would prove to be a

⁴⁸² See *Mexico’s Disappeared: The Enduring Cost of a Crisis Ignored*, HUMAN RIGHTS WATCH 35 (2013), <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>.

⁴⁸³ Family Interviews, *supra* note 353.

⁴⁸⁴ ICRC Interview in Honduras, *supra* note 272.

⁴⁸⁵ *Id.*

⁴⁸⁶ El Observatorio de la Violencia is an independent organization that gathers, analyzes, and releases statistics about violent crime. See Ayestas Interview, *supra* note 66.

⁴⁸⁷ See Ayestas Interview, *supra* note 66.

⁴⁸⁸ *Id.*

⁴⁸⁹ ICRC Interview in Honduras, *supra* note 272.

⁴⁹⁰ *Id.* See COFAMICENH Interview, *supra* note 435; Family Interviews, *supra* note 353.

more productive process.⁴⁹¹ However, as with other non-Mexicans, Honduran families are often unable to obtain visas to travel to Mexico, let alone bear the cost to travel there, especially since most individuals who migrate are from poor families. Families also complain that they are not allowed access to reports of the investigations conducted in Mexico from their country of origin. “The PGR has shown itself to be particularly closed to exploring alternatives where families do not have to travel to Mexico to see documents, reports or evidence of their investigations.”⁴⁹² There is no electronic database from which the families could access ‘follow-up’ information outside of Mexico, particularly not from their homes. Moreover, no law requires that an accessible database be established. This means that family members have to travel in person to Mexico City if they want to see reports or evidence of the investigations or find out what progress has been made in searching for their loved ones. Legal organizations working on behalf of the family collectives have had to bring actions requesting access to reports of the investigations. The majority of the affected families are unable to participate in investigations carried out by the Mexican PGR to locate their relatives.⁴⁹³

One of the government’s major steps was passing the Honduran Migrant Law and the FOSMIH Fund, as noted.⁴⁹⁴ The Fund has facilitated the repatriation of 64 Hondurans, and has purchased surgical equipment.⁴⁹⁵ In spite of this, both the *Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras* (“COFAMICENH”) and the *Comité de Familiares de Migrantes Desaparecidos del Progreso* (“COFAMIPRO”)—two groups of relatives of missing Hondurans—reported major hurdles in obtaining money from the fund. Among the requirements

⁴⁹¹ ICRC Interview in Honduras, *supra* note 272.

⁴⁹² El Acceso A La Justicia Para Personas Migrantes En México: Un derecho que existe sólo en el papel, July 2017, at 34, <http://fundar.org.mx/mexico/pdf/Accesoalajusticia2017.pdf>

⁴⁹³ El Acceso A La Justicia Para Personas Migrantes En México, *supra* note 492.

⁴⁹⁴ See *infra* Ch. VI (B)(2).

⁴⁹⁵ Initial Report of Honduras due in 2006, Comm. on the Protection of the Rights of All Migrant Workers and Members of Their Families, ¶ 10, U.N. Doc. CMW/C/HND/1 (Apr. 28, 2016).

to obtain compensation from the fund or to have the government pay for the costs of returning bodies or remains, is for the victim's family to undergo a socio-economic assessment to ensure that they are actually in need of assistance.⁴⁹⁶ There are two ways this can be completed: through the local mayor, or through CONADEH.⁴⁹⁷

CONADEH is a body within the *Consejo Nacional Para La Protección al Hondureño Migrante* (National Council for the Protection of Honduran Migrants) (“CONAPROHM”).⁴⁹⁸ CONADEH staff explained that individuals can submit claims to demand investigations into the disappearance of their family member.⁴⁹⁹ Once claims are filed with CONADEH, the information is included in the national database.⁵⁰⁰ Claims can be filed via phone, email, in person at one of their offices—CONADEH has offices in all eighteen departments of Honduras—or with CONADEH's mobile omnibus, which carries out field visits to communities in different areas of the country.⁵⁰¹

Despite these claims, no family collective seemed to know much about the functions of CONADEH. None of the families or organizations interviewed believed that they could apply directly to CONADEH.⁵⁰² One of the family collectives did not mention CONADEH at all as a means to make claims and another said their members had submitted claims through CONADEH

⁴⁹⁶ Friday Morning Interview, *supra* note 393.

⁴⁹⁷ COFAMICENH Interview, *supra* note 435; CONADEH Interview, *supra* note 475.

⁴⁹⁸ CONADEH was the only government agency that agreed to an interview with the IHRC research team in Honduras. CONADEH Interview, *supra* note 475.

⁴⁹⁹ CONADEH Interview, *supra* note 475.

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.* See also Casa Alianza Interview, *supra* note 100 (“The problem is that the leadership from the government is very weak because it has lost credibility. Because political will is almost nonexistent. Many institutions become politicized. So instead of having a very well- prepared psychologist, you have a political activist in that position. I think we all have a political heart. But the humanitarian work you do should be above any political party you are a part of. You should have the best qualified people, it does not matter if they are atheist or Muslim. You have to give society the best. [To fix this,] we must work with the people, train them, prepare them.”).

and heard nothing.⁵⁰³ Thus, the CONADEH claims process does not appear to be effective or has not been made accessible to the families.

As for applying through the local mayors to qualify for the income assessment, family collectives reported that this is entirely discretionary in the mayors' offices. Local mayors decide on their own whether they want to verify that families meet the economic criteria to allow families to get government assistance; there does not seem to be a requirement that mayors facilitate the process of obtaining funds.⁵⁰⁴ All the families interviewed were poverty-stricken and should easily have met the economic requirements to qualify for the fund. CONADEH also admitted that Honduran law does not provide much by way of legal options for disappeared migrants and their families.⁵⁰⁵ Ricardo Lopez, a lawyer with CONADEH, said that the agency is involved in an ongoing review of domestic migration law that may lead to improvements in protections for migrants' and their families' rights.⁵⁰⁶

3. Lack of Coordination Between Honduras and Mexico

Honduras and Mexico are required by various agreements and their treaty obligations under the CPED and the CFDP to cooperate in order to address enforced disappearances. Nevertheless, each of the three options for families to report missing relatives are flawed, mostly as a result of the lack of inter-governmental cooperation between the two countries.

According to Mexico's National Institute for Statistics and Geography, there were over 64,000 Mexicans kidnapped in 2016, but this number does not include migrants, and there is no

⁵⁰³ COFAMICENH Interview, *supra* note 435; Friday Morning Interview, *supra* note 493. *See also* Casa Alianza Interview, *supra* note 100 (“Ideally, the government would be the leader [of the Working Group] and give orders to the CSOs, but if there is not a strong leadership from the government, then all of the CSOs work on their own.”).

⁵⁰⁴ COFAMICENH Interview, *supra* note 435.

⁵⁰⁵ CONADEH Interview, *supra* note 475.

⁵⁰⁶ *Id.*

official number available for migrants disappeared in Mexico.⁵⁰⁷ Although there is widespread agreement that a method of maintaining a comprehensive list of Hondurans in Mexico is urgently needed, the families prefer that such a list be compiled by non-governmental organizations (such as the ICRC), as they do not trust the Honduran or Mexican governments.⁵⁰⁸ Such a list would significantly advance investigative processes.⁵⁰⁹ However, as FJEDD notes, a database alone is not enough of a guarantee for the search and investigation; there must be a protocol for follow-up and a method of guaranteeing the integrity of information used during investigations.⁵¹⁰

The lack of inter-government coordination is exacerbated by overlapping and confusing investigative jurisdictions between and among the relevant Mexican authorities that causes responsibility-shifting and investigative inertia.⁵¹¹ Despite the strides that the Mexican federal government has taken in addressing the issue of enforced disappearances of migrants, various state governments have refused to acknowledge the fact that migrants have disappeared in their territory.⁵¹² The Honduran government is also reluctant to fully address the problem for a variety of reasons.⁵¹³ Experts and NGO's report that when there is little at stake for them politically, the Honduran government will make virtually no effort to help the families of migrants.⁵¹⁴ Since most migrants' families are poor, marginalized and lack political clout, they do not have a strong voice in forcing change through the political process.

⁵⁰⁷ *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública 2016 7*, INSTITUTO NACIONAL DE ESTADÍSTICA Y GEOGRAFÍA, (Sept. 2016), https://www.inegi.org.mx/saladeprensa/boletines/2016/especiales/especiales2016_09_04.pdf.

⁵⁰⁸ See COFAMICENH Interview, *supra* note 435; Family Interviews, *supra* note 353; and Casa Alianza Interview, *supra* note 100.

⁵⁰⁹ FJEDD Report, *supra* note 173, at 15.

⁵¹⁰ *Id.*

⁵¹¹ See *infra* Ch. V(D) (3)-(4).

⁵¹² Interview with Federico Garza Ramos, Titular de la Unidad de Derechos Humanos del Ejecutivo, in Saltillo, Mexico (Oct. 20, 2015).

⁵¹³ See Friday Morning Interview, *supra* note 493; Family Interviews, *supra* note 353; and COFAMICENH Interview, *supra* note 435.

⁵¹⁴ Friday Morning Interview, *supra* note 493.

The ICRC, among other international organizations working on the issue, claimed that it faces significant limits when dealing with government agencies. For example, the ICRC requested that the PGR join the working group, but the PGR—obviously an essential actor-- has not accepted the invitation.⁵¹⁵ Despite its role as facilitator of the Working Group, the ICRC has been unable to push government actors to carry out commitments they agreed to during the Working Group meetings.⁵¹⁶

As Ubaldo Herrera, Director of Programs of Casa Alianza, notes: “Civil society organizations come to the [Working Group] meetings and bring many of the problems to the table. We can all agree we need to do something but the problem is making these agreements operational. I can sit at the table and agree with you on something, but that does not mean anything is going to happen in the field...”⁵¹⁷

E. Conclusions and Recommendations for Honduras

1. Honduras should establish and fully implement a comprehensive legal framework to protect the rights of Hondurans who have disappeared.

1.1. Honduras must ensure that its definition of “enforced disappearance” is consistent with the CPED definition, and make a serious effort to satisfy the rights of missing migrants by asserting jurisdiction over disappearances abroad in close cooperation with its foreign counterparts.

1.2. Honduras should have consistent definitions of “missing,” “disappeared,” and “forcibly disappeared” in its Civil and Penal Codes, at both local and national levels,

⁵¹⁵ ICRC Interview in Honduras, *supra* note 272.

⁵¹⁶ *Id.* The ICRC stated that the ICRC can only ask government actors to confirm the tasks they agreed to at the working group meetings.

⁵¹⁷ Casa Alianza Interview, *supra* note 100 (“Ideally, the government would be the leader [of the Working Group] and give orders to the CSOs, but if there is not a strong leadership from the government, then all of the CSOs work on their own.”).

in accordance with the CPED definition and the MAE. Honduras must reform the Civil Code definition of a missing person to align with the definition of a disappearance according to CPED and CFDP. Declaring a person “absent” does not trigger the same duties to investigate as labeling the person “missing.” This small change would allow many more families to initiate searches to find their loved ones.

1.3. The Honduran Migrant Law must require more positive duties from the Honduran government to find disappeared migrants abroad. The Honduran government must cooperate with other regional actors to ensure that everything is being done to investigate the disappearances of its citizens abroad, and that the families of disappeared migrants receive the answers that they so desperately seek.

2. *Honduras should work closely with families of the disappeared and NGOs representing the to increase access to claims processes and improve investigations of disappearances.*

2.1. Honduras must establish clear institutional routes for the filing of a claim, including designating specific government officials responsible for handling disappearances. Honduran state institutions that normally receive reports of disappearances, such as the National Police and the national prosecutor’s office, must immediately launch an investigation once a report is filed, and send the reported case or notice of disappearance to the MAE representative or to the MAE directly, as well as to INTERPOL.

2.2. Honduran authorities should make all necessary and reasonable efforts to ensure that communities with little to no access to the National Police, national prosecutor’s office, or the MAE country representative have the opportunity to easily report a disappearance without bureaucratic obstacles.

- 2.3. As recommended by NGOs, Honduran state officials could work with them to set up tents in remote areas or send officials on a rotating basis to remote areas for one or two entire work days, announcing these visits through public media ahead of time. Written materials about the process of filing claims should be available in indigenous languages, and officials visiting indigenous communities should ensure they are accompanied by translators.
- 2.4. A translator should always be readily available in the National Police, national prosecutor's office and the MAE representative's office.
- 2.5. Honduran authorities should work closely with NGOs to create and send out written materials, such as pamphlets, to communities with little access to the National Police, national prosecutor's office, or the MAE representative.
- 2.6. No matter how outreach is conducted, the most important requirement is for Honduras to establish a clear institutional route for filing claims that is available to everyone in the country. Honduras should not place statutes of limitations on the length of time a person has been missing to pursue an investigation.
- 2.7. The Honduran authority receiving a reported disappearance must inform the family of the right to report to the MAE. If the family prefers that the MAE handle the case, the corresponding authority should transmit the reported case and all details to the MAE, either through the MAE representative or directly to the MAE. If the family prefers that the state handle the case, the corresponding authority must notify the MAE, add the report to the consolidated database of disappeared migrants, and inform the MAE that the state will be pursuing the investigation, as approved by the family.

- 2.8. The Honduran government must be more transparent with NGOs throughout the process.
- 2.9. There must be a simple and effective way for families to file claims against government entities responsible for disappearances, for failure to act, for failing to turn over remains in timely fashion, and to compensate the families for government involvement in criminal activity.

3. *Honduras should more effectively cooperate with the Mexican Government, specifically the MAE, to investigate forced disappearances of Honduran migrants in Mexico.*

- 3.1. Under the CFDP, Honduras has an obligation to demand that the Mexican government investigate the disappearances of Honduran nationals in Mexican territory.
- 3.2. The Honduran government should communicate with the corresponding MAE representative and family victims at least every six months to report on the progress of any investigation, prosecution, or repatriation of the disappearance cases it is handling.
- 3.3. Honduras should ensure that all family members are fully informed of their rights to participate in all stages of the criminal proceedings, provide testimony, and obtain adequate reparations. Government authorities should remove the barriers that families currently face to realizing these rights.
- 3.4. The Honduran government must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and identification of remains.

- 3.5. Honduras' National Prosecutor's office should establish an 'Enforced Disappearances' unit, considering the large number of outstanding cases. This unit would be responsible for communicating with the Honduras MAE representative, and providing updates at least every six months to MAE representative on cases that the unit is handling.
- 3.6. To aid in the investigations by the MAE, Honduras must submit each reported disappearance to the MAE through its in-country representative or directly to the MAE. The MAE should maintain a consolidated database together with the EAAF.
- 3.7. Similarly, CONADEH and the Mexican CNDH must establish a protocol to coordinate work and investigations on migrant disappearances.

4. *Honduras should take all action necessary to ensure the proper handling of migrant remains in a respectful and dignified manner.*

- 4.1. Honduran authorities must guarantee the chain of custody for human remains and dispose of unclaimed and unidentified remains in a dignified and respectful manner.
- 4.2. Honduras must ensure that access to reparations is not contingent upon finding of remains or declaration of death.
- 4.3. Honduras must also incorporate international forensic protocols for human rights investigations into its domestic criminal procedures.

5. *Honduras should take all action necessary to fully address the issues that cause Hondurans to emigrate, while also recognizing the right to migrate.*

- 5.1. Everyone has the right to migrate and to remain home. Both these rights are recognized in human rights law, including the American Declaration and American Convention on Human Rights, and are not only guaranteed to the wealthy. States of the Americas should not undermine these rights or discourage migration, but

facilitate them by refusing to agree to policies that deter freedom of movement. Honduras, like the other Northern Triangle countries, must also guarantee economic and social development and protection against violence so that their citizens are not forced to migrate to live in safety and dignity.

5.2. As such, the Honduran government must address the root causes that propel migrants to leave Honduras in the first place. To accomplish this, the Honduran government must be serious about removing corrupt figures from office and reduce the high rate of impunity.

5.3. Honduras must implement reforms that tackle the issue of poverty, which has led to the rise of gangs, violence, and insecurity. Honduras has received assistance from the U.S. through the Alliance for Prosperity Plan for this very purpose. The Honduran government should refuse to condition this or other foreign aid on undermining the protection of its citizens, and should refuse austerity measures from the World Bank and the IMF that limit its ability to tackle the serious problems that are forcing its citizens to migrate.

VII. GUATEMALA

Although like their Honduran and Salvadoran compatriots, Guatemalan migrants disappear in significant numbers after leaving the country for the United States,⁵¹⁸ the number of disappeared Guatemalan migrants is unknown and difficult to ascertain.⁵¹⁹ Like other Central American countries, Guatemala faces extreme challenges in collecting data on migrant disappearances because there is no clear, functioning mechanism for reporting disappearances.⁵²⁰

The Guatemalan government has also failed to focus on the problem of disappearances of migrants inside of Guatemala.⁵²¹ Families of disappeared migrants have lost hope in the government's willingness or ability to find their loved ones, partly because of the government's refusal to take responsibility for the problem. Guatemala also suffers from a legacy of mistrust in the government that has persisted since its devastating civil war, which lasted from 1960 to 1996.⁵²² Many of the families of the disappeared are living in dire conditions in Guatemala, and the lack of government support to find their loved ones makes these families vulnerable to a wide array of physical and psychosocial harms.⁵²³

⁵¹⁸ Open Society Found., *Undeniable Atrocities: Confronting Crimes against Humanity in Mexico*, June 27, 2016, <http://www.refworld.org/docid/5799f7d64.html>.

⁵¹⁹ In 2018, *Mesa Nacional para las Migraciones* (MENAMIG) estimated that based on filed claims and unofficial reports at least 393 Guatemalans had disappeared in that year alone. *Menamig estima 393 migrantes guatemaltecos desaparecidos*, LA HORA, Aug. 25, 2018, <https://lahora.gt/menamig-estima-393-migrantes-guatemaltecos-desaparecidos/>.

⁵²⁰ Interview with Eduardo Woltke, Psychologist, Equipo de Estudios Comunitarios y Accion Psicossocial, in Guatemala City, Guat. (Nov. 16, 2017) [*Interview with ECAP*].

⁵²¹ *Id.*

⁵²² U.N. High Commissioner for Refugees (UNHCR), *Eligibility Guidelines for Assessing the International Protection Needs of asylum-seekers from Guatemala*, 6, HCR/EG/GTM/18/01 (Jan. 2018).

⁵²³ Interview with ECAP, *supra* note 520, at 1.

A. Factors Causing Guatemalans to Migrate

1. Historic Factors Contributing to Emigration from Guatemala

Guatemala's governmental, economic, and social structure is still deeply affected by the 36-year civil war that ravaged the country for much of the latter half of the twentieth century, and by the government's subsequent failure to provide adequate reparations to victims. The Guatemalan *Comisión para el Esclarecimiento Histórico* (Commission for Historical Clarification) ("CEH"), created to clarify and identify causes of the war's rampant human rights violations, estimated that over 200,000 were killed or disappeared as a result of the conflict.⁵²⁴ The CEH noted, "[v]ictims included men, women and children of all social strata: workers, professionals, church members, politicians, peasants, students and academics; in ethnic terms, the vast majority were indigenous Mayans."⁵²⁵ Some Mayan people supported leftist guerilla groups as the last hope for redressing the economic and political marginalization of their indigenous communities. The State used this tenuous link between Mayans and the guerillas to paint all Mayans as criminals and disproportionately and brutally targeted indigenous communities during the conflict.⁵²⁶ The CEH found that eighty-five percent of the human rights violations that occurred from 1978 to 1984 were attributable to the Army.⁵²⁷ The conflict finally ended on December 29, 1996, with the *Acuerdo de Paz Firme y Duradera* ("Agreement on a Firm and Lasting Peace").⁵²⁸

⁵²⁴ Commission for Historical Clarification, *Guatemala Memory of Silence Report of the Commission for Historical Clarification Conclusions and Recommendations*, 17 (Feb. 26, 1999), <https://assets.documentcloud.org/documents/357870/guatemala-memory-of-silence-the-commission-for.pdf> [hereinafter *Commission for Historical Clarification*].

⁵²⁵ The term "Mayan" is an umbrella category. Collective identities as "Mayans" do not necessarily reflect the way individuals think of themselves. Self-identity for most Mayans is tied to the local community or language group. The indigenous community in Guatemala comprises 22 different cultures, including K'iche', Kaqchikel, Mam, Q'eqchi' and Matan; *Id.* at 20.

⁵²⁶ *Id.* at 27; Guatemala, THE CTR. FOR JUSTICE AND ACCOUNTABILITY, <https://cja.org/where-we-work/guatemala> (last visited Jan. 14, 2021).

⁵²⁷ Commission for Historical Clarification, *supra* note 524, at 34.

⁵²⁸ Agreement on a Firm and Lasting Peace, Dec. 29, 1996, Guat.-Unidad revolucionaria nacional guatemalteca (URNG), UN Doc. A/51/796/SI/1997/114, Annex II, 36ILM 258 (1997).

The economic and social costs of the war have been profound. The CEH estimated, “taking only the 10-year period between 1980 and 1989, the total direct quantifiable costs were equivalent to zero production in Guatemala for almost 15 months, equal to 121% of the 1990 Gross Domestic Product (GDP).”⁵²⁹ The country has not completely recovered from this economic blow, and it is still working to recover from the social upheaval of the conflict. In 2005, the Guatemalan *Programa Nacional de Resarcimiento* (National Reparations Program) (“PNR”) was created to compensate victims’ families with \$3,000 (US) per victim.⁵³⁰ Mayan communities have criticized the PNR because “the current program is purely economic; it doesn’t provide justice to the families.”⁵³¹ Families have requested complete reparations, which would include housing, healthcare, paved roads, bilingual education, psychological services for post-traumatic stress disorder, and an apology from the government. But the government has not been responsive to these requests.⁵³² The government’s failure to provide adequate reparations, as well as its role in the killing and disappearances of hundreds of thousands of Guatemalans, has created a deep distrust in the government.

2. Current Causes of Migration

a. *Persistence of Violence and Corruption*

The civil war left Guatemala in economic and social disorder. Organized criminal groups have taken advantage of corruption at every level of the government, and are now able to act with complete impunity, amassing wealth by using networks established during the civil war.⁵³³

⁵²⁹ Commission for Historical Clarification, *supra* note 524, at 32.

⁵³⁰ Andrew Wood, *Guatemalan Reparations Program for Civil War Victims’ Families About More Than Compensation*, JURIST, Feb. 8, 2009, <http://www.jurist.org/hotline/2009/02/guatemalan-reparations-program-for.php>.

⁵³¹ *Id.* at ¶ 4.

⁵³² *Id.* at ¶ 5.

⁵³³ WOLA Advocacy for Human Rights, *The International Commission Against Impunity in Guatemala, A WOLA Report on the CICIG Experience*, the Washington Office of Latin America, 5, (June 2015),

Organized crime and violence have caused migration out of Guatemala and internal displacement within the country.⁵³⁴ The United Nations High Commissioner for Human Rights reported 3,558 violent deaths in Guatemala, including the deaths of 430 women in 2019.⁵³⁵

The most vulnerable populations—women, children, sexual minorities, and indigenous groups—face additional violence. Guatemala has very high rates of violence against women. From 1 January to 17 October of 2019, the Office of the Attorney General received 43,271 complaints of violence against women, including 285 complaints of femicide.⁵³⁶ Women interviewed by the UN refugee agency, the United Nations High Commissioner for Refugees, described life-threatening and degrading forms of domestic violence, including repeated rapes, sexual assaults, and violent physical abuse, and stated that they had no choice but to flee because they did not receive protection from authorities in Guatemala.⁵³⁷

Many Guatemalan children, particularly indigenous children, are subject to exploitation, including forced labor.⁵³⁸ Children are also exploited for migration because some Guatemalans believe that arriving in the United States with children will guarantee them successful entry into the country.⁵³⁹ “Discrimination against individuals of diverse sexual orientation and/or gender identity is reportedly widespread in Guatemala and such persons have reportedly been targeted for

https://www.wola.org/sites/default/files/Citizen%20Security/2015/WOLA_CICIG_ENG_FNL_extra%20page.pdf [WOLA Advocacy for Human Rights].

⁵³⁴ U.N. Human Rights Council, *Activities of the Office of the United Nations High Commissioner for Human Rights in Guatemala*, 12, A/HRC/40/3/Add.1. (Jan. 28, 2019).

⁵³⁵ U.N. Human Rights Council, *Situation of Human Rights in Guatemala*, 49, A/HRC/43/3/Add.1 (Jan. 17, 2020). [Human Rights Council 2020].

⁵³⁶ *Id.*

⁵³⁷ U.N. High Commissioner for Refugees (UNHCR), *UNHCR Submission on Guatemala: UPR 28th Session*, ¶ 6, (March 2017), <https://www.refworld.org/docid/5a12ae190.html>.

⁵³⁸ Anastasia Moloney, *Guatemala Rescues 22 Children from Forced Labor: Police*, REUTERS, THOMSON REUTERS, June 1, 2017, www.reuters.com/article/us-guatemala-child-labour/guatemala-rescues-22-children-from-forced-labor-police-idUSKBN18S5XO.

⁵³⁹ Interview with ECAP, *supra* note 520, at 7.

abuse, attacks and murder by gangs and other sectors of society, including by the police and other public authorities.”⁵⁴⁰

Migrants are a particularly vulnerable group and are often victims of extortion and abuse on the road.⁵⁴¹ For example, a representative of the Guatemalan nonprofit organization *Equipo de Estudios Comunitarios y Accion Psicosocial* (“ECAP”) witnessed the national police taking money from Guatemalan and other migrants near the border.⁵⁴² Similarly, a representative of the nonprofit organization *Mesa Nacional para las Migraciones* (“MENAMIG”) reported that the national police often take away and destroy the documents of Guatemalan migrants leaving the country, or even detain them, unless the migrants give them money.⁵⁴³ MENAMIG also reports that “coyotes” sometimes put migrants at risk by changing their names, or do not allow them to make phone calls.⁵⁴⁴ For these reasons, some migrants cannot communicate with their families when they are in danger.⁵⁴⁵

b. Systemic Poverty and Inequality

Guatemalans suffer from pervasive poverty in a highly stratified and unequal society. Forty-eight percent of Guatemalan children are chronically malnourished, with eighty percent of indigenous children affected by chronic malnutrition.⁵⁴⁶ Around three million Guatemalans lack access to safe drinking water and six million do not have access to sanitation services.⁵⁴⁷ Access

⁵⁴⁰ U.N. High Commissioner for Refugees, *supra* note 537, at 49.

⁵⁴¹ Interview with ECAP, *supra* note 520, at 10.

⁵⁴² *Id.*

⁵⁴³ Interview with Carmen Solis, Office Coordinator, Mesa Nacional para las Migraciones, in Guatemala City, Guat., at 11 (Nov. 15, 2017) [*Interview with MENAMIG*].

⁵⁴⁴ *Id.* at 8.

⁵⁴⁵ *Id.*

⁵⁴⁶ Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Guatemala 2017*, ¶ 41, OEA/Ser.L/V/II. Doc. 208/17 (Dec. 31, 2017) [*IACHR 2017*].

⁵⁴⁷ *Id.* at 32-33.

to medicine is inadequate, and access to medical specialists is difficult.⁵⁴⁸ The average schooling is 6.4 years for all children, and only 4.8 years for indigenous children.⁵⁴⁹ On average, indigenous girls attend school for only three years. In 2017, 400,000 Guatemalan children were not enrolled in primary school, and 678,000 adolescents did not have access to secondary education.⁵⁵⁰

Poverty rates remain high, especially among indigenous groups: nearly four out of five indigenous people live in poverty.⁵⁵¹ Inequalities in land ownership, access to water, housing, and access to jobs contribute to poverty in Guatemala.⁵⁵² Fifty percent of Guatemalans lack adequate housing. Seventy percent of the Guatemalan labor force is unemployed— eighty-five percent in rural areas.⁵⁵³

The primary cause of poverty in Guatemala, particularly for indigenous populations, is unequal distribution of land and other resources.⁵⁵⁴ On indigenous lands, energy extraction projects (including on indigenous sacred lands) have degraded the environment and increased violence within indigenous communities. The government often sides with or supports corporations in disputes over land and resource projects, leaving inhabitants and protestors unprotected from violence and intimidation by these corporations.⁵⁵⁵ When corporations force indigenous groups off their land, the Guatemalan courts do not provide any legal protection. In addition, the sexual assault of women in particular sectors, such as mine work, is common.⁵⁵⁶

⁵⁴⁸ Interview with Rosmery Yax & Susana Urbina, Attorney and Social Worker, Fundación para la Justicia y el Estado Democrático de Derecho, at 13 (Nov. 15, 2017) [*Interview with FJEDD: Rosmery Yax and Susana Urbina*].

⁵⁴⁹ IACHR 2017, *supra* note 546, at ¶ 43.

⁵⁵⁰ *Id.*

⁵⁵¹ *Id.* at 40.

⁵⁵² *Id.* at 32-33.

⁵⁵³ *Id.*

⁵⁵⁴ Minority Rights Group International (MRGI), *World Directory of Minorities and Indigenous Peoples - Guatemala*, (Jan. 2018), <http://www.refworld.org/docid/4954ce19c.html> [*Minority Rights Group International*]. For example, the report notes that “in the north of Huehuetenango, several hydroelectric and mining projects have been undertaken, despite the opposition of the Mayan inhabitants.”

⁵⁵⁵ *Id.*

⁵⁵⁶ *Id.*

Indigenous groups in Guatemala also suffer other forms of social inequality. Despite a legal requirement,⁵⁵⁷ the government's unwillingness to fund indigenous language education significantly impedes access to adequate education.⁵⁵⁸ There is no law protecting indigenous authorities, their norms, procedures, and decisions. Indigenous communities use their own traditional informal legal systems, resolving about forty percent of their conflicts through these traditional systems.⁵⁵⁹ In 2015, the Guatemalan government created a specialized unit within the prosecutor's office to accept discrimination complaints, but the unit has only five staff members and is not effective at pursuing complaints through the court system.⁵⁶⁰ In addition, "the two government agencies in charge of preventing and addressing ethnic discrimination, the Indigenous Women's Public Defender Office and the Presidential Commission against Racism and Discrimination, lack the financial and human resources to perform their duties."⁵⁶¹ Finally, indigenous groups are severely underrepresented in government positions.⁵⁶² Because of the systemic marginalization of indigenous peoples from political, social and economic life, these communities have largely remained mired in poverty, contributing to disproportionate numbers of indigenous people migrating out of Guatemala.

B. Guatemalan Law

Like the other Northern Triangle countries, Guatemalan domestic laws provide some legal protection for families of disappeared migrants. While the laws are not as robust as they could be, the Guatemalan Constitution, Penal Code, the new Migrant Code and the Immediate Search for Missing Women Law do offer a legal foundation to protect migrants and their families.

⁵⁵⁷ Ley de idiomas nacionales [Law of National Languages], Decreto del Congreso [Congressional Decree] No. 19-2003 (2003) (Guat.).

⁵⁵⁸ Minority Rights Group International, *supra* note 554.

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.* at ¶ 33.

⁵⁶² Minority Rights Group International, *supra* note 554.

1. Constitution

The Guatemalan Constitution guarantees certain human rights relevant to migrants and their families. The Constitution protects the rights to freedom of movement, to due process, to petition the government to investigate, and receive replies from the government to citizens' petitions.⁵⁶³ In spite of the constitutionally protected right to migrate, however, migrants are increasingly forced to use irregular routes to travel and cross borders because of the tightening of migration policies and hardening of borders.⁵⁶⁴ These irregular routes increase migrants' risks of encountering violence and harsh environmental conditions. Ultimately, these irregular routes increase the risks of disappearance.⁵⁶⁵

Guatemalans have a Constitutional right to submit petitions to the relevant authorities, which are required to process and resolve them according to the law. Under the Constitution, government authorities are also required to provide answers, reports or other documents pertaining to citizens' petitions.⁵⁶⁶ The *Procurador de los Derechos Humanos* ("Prosecutor for Human Rights") ("PDH") also has a duty to investigate administrative actions that are detrimental to the public interest.⁵⁶⁷ These Constitutional rights spell out the obligations of the government to its citizens who are victims of violence, including when they migrate. The families of disappeared

⁵⁶³ CONSTITUCIÓN POLÍTICA REFORMANDA POR ACUERDO LEGISLATIVO NO. 18-93, Nov. 17, 1993, tit. 2, chap. 1. [hereinafter GUATEMALAN CONSTITUTION]. In addition, Art.3 guarantees and protects human life and Art. 26 guarantees the freedom of movement.

⁵⁶⁴ Comité Internacional de la Cruz Roja (ICRC), *Los Migrantes Desaparecidos y Sus Familiares: Recomendaciones del CICR para los Responsables de Formular Políticas*, 11, (Oct. 3, 2017), <https://www.icrc.org/es/publication/migrantes-desaparecidos-familiares-recomendaciones-cicr-politicas>.

⁵⁶⁵ *Id.*

⁵⁶⁶ GUATEMALAN CONSTITUTION, *supra* note 563, at art. 28.

⁵⁶⁷ *Id.* at art. 275.

migrants have a constitutional right to petition administrative agencies, such as the PDH and the Public Ministry for information, and to demand an investigation and official reports.⁵⁶⁸

In addition, the Constitution guarantees due process for persons arrested or detained.⁵⁶⁹ In theory this should protect migrants entering Guatemala from arbitrary arrests and detention. However, Guatemalan government officials often consider migrants as criminals, and, according to NGO's, do not afford them or their families due process.⁵⁷⁰

2. Penal Code

The Guatemalan Penal Code offers some protection to migrants and their families by penalizing those who commit acts of violence against migrants. The Penal Code mandates severe penalties for kidnapping.⁵⁷¹ In addition, the Penal Code mandates extremely long prison sentences and even the death penalty for authorities who are involved in depriving an individual of liberty, who refuse to disclose an individual's whereabouts known to them, or who fail to provide information about a detainee. The law punishes state actors for ordering, authorizing, supporting or assisting in such crimes.⁵⁷² The Penal Code sanctions civil servants or public employees who abuse their official functions or commit arbitrary or illegal acts to the detriment of the administration or individuals.⁵⁷³ However, while these provisions constitute important protections for migrants and their families, without a proper mechanism to report and investigate disappearances, these protections in the Penal Code have not been helpful for the families of migrants who have disappeared.

⁵⁶⁸ The *Procurador de los Derechos Humanos* (Prosecutor for Human Rights) ("PDH") is an auxiliary institution of the public administration and of autonomous tribunals; its principal goals are to see to the strict fulfillment of the laws of the country. For further information, see <https://www.pdh.org.gt/>.

⁵⁶⁹ GUATEMALAN CONSTITUTION, *supra* note 563, at art. 6.

⁵⁷⁰ Interview with MENAMIG, *supra* note 543, at 4-6.

⁵⁷¹ CÓDIGO PENAL DE GUATEMALA [GUATEMALAN PENAL CODE], Decreto del Congreso [Congressional Decree] No. 17-73, tit. IV, ch. I (Guat.).

⁵⁷² *Id.* at arts. 201, 203.

⁵⁷³ *Id.* at art. 418.

3. Immediate Search for Missing Women Law

The Guatemalan government has taken special interest in protecting women. In 2016, it passed la Ley de Búsqueda Inmediata de Mujeres Desaparecidas (“Immediate Search for Missing Women Law”).⁵⁷⁴ This law was brought about through intense civil society advocacy, and was a result of both domestic and international concern over the extreme violence against women in Guatemala. The law defines a missing woman as one whose whereabouts are unknown and for whom a complaint has been lodged, and establishes a comprehensive registry for missing women.⁵⁷⁵ The law requires that the search for missing women be treated with urgency, and calls for administrative cooperation to investigate the disappearances.⁵⁷⁶ In August of 2018, the Public Ministry launched the Isabel-Claudina Alert, a national alert system for finding disappeared women through the Immediate Search for Missing Women Law.⁵⁷⁷

Although this law is not aimed specifically at migrants, its provisions do offer protections for Guatemalan migrant women. According to the law, the *Ministerio de Relaciones Exteriores* (“Ministry of Foreign Affairs”) (“MINEX”)⁵⁷⁸ must coordinate with foreign authorities in the search for all missing women, including those who have willingly left Guatemala.⁵⁷⁹ When a missing woman is located outside the country, MINEX must facilitate travel documents or documents necessary to file for asylum, provide legal assistance through its consulates, and provide health and psychological services that ensure the wellbeing of the located woman.⁵⁸⁰

⁵⁷⁴ Ley de Búsqueda Inmediata de Mujeres Desaparecidas [Immediate Search for Missing Women Law], Decreto del Congreso [Congressional Decree] No. 9-2016 (2016) (Guat.) [hereinafter Immediate Search for Missing Women].

⁵⁷⁵ *Id.* at art. III.

⁵⁷⁶ *Id.* at art. II, IV-VI.

⁵⁷⁷ *Isabel y Claudina: Dos historias de dolor detrás de una alerta*, República, Aug. 6, 2018, <https://republica.gt/2018/08/06/isabel-y-claudina-dos-historias-de-dolor-detras-de-una-alerta/>.

⁵⁷⁸ *Ministerio de Relaciones Exteriores* (“Ministry of Foreign Affairs”) (“MINEX”) is the executive office responsible for conducting international relations for Guatemala. For further information, *see* <https://www.minex.gob.gt/>.

⁵⁷⁹ Immediate Search for Missing Women, *supra* note 574, at art. XVIII.

⁵⁸⁰ *Id.* at art. XIX.

4. Guatemalan Migration Code of 2016

The Migration Code of 2016 was also instigated by pressure from Guatemalan civil society and international publicity about the rights of migrants.⁵⁸¹ Although civil society was heavily involved in creating the new Migration Code, towards the end of the drafting process, the government shut out civil society and added provisions criminalizing migrants at the suggestion of the United States.⁵⁸² Despite the restrictive provisions that were added, the Migration Code does offer more extended protections than the prior law. For example, it establishes: 1) inter-governmental cooperation on issues relating to the search, prosecution and prevention of crimes relating to migration; 2) cooperation between government and international bodies on certain issues; 3) education and awareness programs; 4) assistance and support for the families of missing migrants; and 5) a reporting mechanism.⁵⁸³

The Migration Code entered into force on 1 May 2017, but its by-laws have not yet been adopted.⁵⁸⁴ Civil society representatives have expressed optimism that the new Migration Code will provide the protection that migrants and their families desperately need, but until the regulations are fully implemented, the law's effectiveness remains to be seen.

⁵⁸¹ Código de Migración [Migration Code], Decreto del Congreso [Congressional Decree] No. 44-2016 (2016) (Guat.) [hereinafter Migration Code].

⁵⁸² Interview with ECAP, *supra* note 520, at 8-9.

⁵⁸³ *See* Migration Code, *supra* note 581, at arts. 2-60, 153-161, 198-203 (Articles 2-50 set out rights for migrants from other countries in Guatemala. Article 160-161 establishes an independent entity, the Guatemalan Migration Institute, to generate awareness about the prevention of migration and handle reporting. Article 153 states the Migration Institute can establish agreements and mechanisms and engage in inter-institutional cooperation. Chapter V lays out the procedures to be followed when the family of a disappeared migrant files a missing migrant report).

⁵⁸⁴ Human Rights Council 2020 at 547; U.N. International Convention on Protection of the Rights of All Migrant Workers and Members of their Families, *Concluding observations on the second periodic report of Guatemala*, 7, CMW/C/GTM/CO/2.

C. Efforts to Address Migrant Disappearances

1. Identification of Missing Persons

Guatemalan law contains inconsistent definitions of a disappeared person. In general, government institutions, such as the prosecutor's office, define a disappeared migrant as someone who has lost all contact with his or her family members during the migratory route.⁵⁸⁵ In practice, however institutions have developed two categories of such persons: "not located" and "disappeared."⁵⁸⁶ "Not located" is a catch-all definition for Guatemalans who are missing.⁵⁸⁷ The State does not define a missing person as "disappeared" until there is hard evidence that a person has indeed been disappeared.⁵⁸⁸ For example, if a witness saw a person taken off a bus, then government institutions are required to define the person as "disappeared."⁵⁸⁹ NGO's representing migrant families have been urging the government to legislate to ensure a single definition in the laws so that all missing persons fit under the definition of "disappeared," and to eliminate the definition of "not located" in order to shift the burden back to the government.⁵⁹⁰

2. The Work of the CICIG

The *Comisión Internacional contra la Impunidad en Guatemala* (International Commission Against Impunity in Guatemala) ("CICIG") is an independent international entity for the prosecution of corrupt officials, including officials in migration offices and officials connected to human trafficking. CICIG was first proposed by civil society in 2002 because of threats made by military intelligence networks against officials involved in investigations of crimes committed

⁵⁸⁵ Interview with Hon. Augusto Jordán Rodas Andrade, Head Prosecutor for Human Rights, Procuraduría de Derechos Humanos, in Guatemala City, Guat., 6-7 (Nov. 16, 2017) [*Interview with PDH*].

⁵⁸⁶ Interview with ECAP, *supra* note 520, at 3; Interview with MENAMIG, *supra* note 543, at 3-5.

⁵⁸⁷ Interview with MENAMIG, *Id.*, at 3-5.

⁵⁸⁸ *Id.*

⁵⁸⁹ *Id.*

⁵⁹⁰ *Id.*

during the civil war.⁵⁹¹ The United Nations helped establish the independent prosecutory office, but it was not well-received by the Guatemalan government.⁵⁹² CICIG began to work in 2008, with a mandate to investigate and dismantle organized domestic crimes, and to strengthen the criminal justice system through capacity-building in Guatemala.⁵⁹³

Since its inception, the CICIG successfully arrested and prosecuted criminals and corrupt officials who previously had been deemed “untouchable.”⁵⁹⁴ CICIG has also initiated substantial criminal justice reforms.⁵⁹⁵ More importantly, the CICIG assisted in bringing cases involving illegal migration and forced disappearances.⁵⁹⁶ On January 12, 2018, the CICIG exposed 39 administrative officials working with human traffickers responsible for passport forgery.⁵⁹⁷

In August 2017, President Morales expelled the head of the CICIG, Ivan Velasquez, for investigating the President for corrupt campaign finance. The Inter-American Commission observed that the decision to expel the head of the CICIG casts doubt on the Guatemalan government’s commitment to fight corruption.⁵⁹⁸ In August of 2018, President Morales decided not to renew CICIG beyond September 3 of 2019, claiming that the Commission does not act in accordance with Guatemalan law and frequently abuses its investigatory powers.⁵⁹⁹

⁵⁹¹ Open Society Found., *Against the Odds CICIG in Guatemala*, 3, (Mar. 2016), <https://www.opensocietyfoundations.org/sites/default/files/against-odds-cicig-guatemala-20160321.pdf>. [hereinafter *Open Society Fund.*]

⁵⁹² *Id.* at 4.

⁵⁹³ *Id.*

⁵⁹⁴ Human Rights Watch, *Running Out the Clock: How Guatemala’s Courts Could Doom the Fight against Impunity*, 1 (Nov. 12, 2017), <http://www.refworld.org/docid/5a0ad4e84.html>. One of CICIG’s most publicized cases was its 2015 “La Linea Case,” in which former President Otto Perez Molina and Vice President Roxana Baldetti were charged with organizing a customs fraud scheme in which import companies would bribe customs officers instead of paying the higher official customs duties.

⁵⁹⁵ Open Society Found., *supra* note 591, at 104-108.

⁵⁹⁶ *Id.* at 76 (mentioning that the CICIG has transferred cases to the Public Prosecutor).

⁵⁹⁷ Press Release, Comision Internacional contra la Impunidad en Guatemala (International Commission Against Impunity in Guatemala CICIG), Attorney General Guatemala and CICIG: Migration Case, (Mar. 29, 2018), <http://www.cicig.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=890&cntnt01returnid=68>.

⁵⁹⁸ IACHR 2017, *supra* note 546, ¶59.

⁵⁹⁹ *Guatemala not renewing mandate of U.N. anti-corruption body*, REUTERS, Aug. 31, 2018,

D. Challenges and Gaps in Addressing Migrant Disappearances

1. Reporting Migrant Disappearances

For many families, the biggest barrier to an investigation into the disappearance of a loved one is the initial step of reporting it to the authorities. When a family seeks to report a disappearance, they must first determine where to report, and overcome economic and linguistic barriers to filing. Families also report facing mistreatment from government officials, failure of the various government entities to share reports and related information, and barriers to legal representation to assist them in maneuvering a non-transparent process.⁶⁰⁰ Together, these challenges obstruct families from reporting migrant disappearances, which in turn impedes or entirely precludes a thorough investigation.

a. *Where to Report Disappearances*

Disappearances currently can be reported to MINEX,⁶⁰¹ the *Ministerio Público* (“Public Ministry”),⁶⁰² or the PDH,⁶⁰³ which has a migrant advocates unit.⁶⁰⁴ Additionally, families can report disappearances directly in Mexico,⁶⁰⁵ or they can file a complaint in Guatemala by using the MAE.⁶⁰⁶ While the Public Ministry has promoted this range of options as maximizing access for people who live in rural areas,⁶⁰⁷ in practice, it only creates confusion. Because there is no

<https://www.reuters.com/article/us-guatemala-corruption/guatemala-not-renewing-mandate-of-u-n-anti-corruption-body-idUSKCN1LG2KC>.

⁶⁰⁰ Interview with ECAP, *supra* note 520, at 4; Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 6.

⁶⁰¹ MINEX, *supra* note 578.

⁶⁰² The Ministerio Público (“Public Ministry”) is the office charged with criminal prosecution. For further information, see <https://www.mp.gob.gt/>.

⁶⁰³ PDH, *supra* note 568.

⁶⁰⁴ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, EVALUACIÓN SOBRE LA SITUACIÓN DE LAS FAMILIAS DE PERSONAS MIGRANTES DESAPARECIDAS: EL SALVADOR, GUATEMALA, HONDURAS Y MÉXICO 14 (2014); see also Interview with Soraya Lopez, Attorney, Guatemalan Public Ministry, in Guatemala City, Guat., at 13 (Nov. 15, 2017) [Interview with Pub. Ministry]; Interview with PDH, *supra* note 585, at 11.

⁶⁰⁵ Interview with Pub. Ministry, *Id.*

⁶⁰⁶ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 13. The Mechanism is described in more detail in the Mexico section of this report.

⁶⁰⁷ Interview with Pub. Ministry, *supra* note 604, at 13.

single designated agency where individuals can get assistance with a disappearance,⁶⁰⁸ there is no clear institutional route for filing a complaint or report.⁶⁰⁹ Families may not be aware of all of their options for reporting a disappearance,⁶¹⁰ and many families do not know what obligations the various entities have with respect to receiving and processing these reports.⁶¹¹

At times, these offices appear to take advantage of the absence of a single clearly defined reporting route as a way to pass off the responsibility for handling these cases to another entity. There may also be genuine uncertainty within the government as to which office has the responsibility to accept reports in these cases. Sometimes these offices have directed families to other government entities, resulting in families going in circles without receiving any assistance.⁶¹² For example, a Public Ministry official explained that people *can* report a disappearance to the Public Ministry, but the necessary information is often in Mexico or the United States, implying that families should initiate an investigation directly in these countries.⁶¹³ At other times, families who reported to one office and did not receive a response concluded on their own that a different office might be more helpful.⁶¹⁴ Although the Migration Code of 2016 mandates the creation of a designated route in Guatemala for reporting disappearances, implementation of this law has been slow.

⁶⁰⁸ *Id.* at 13.

⁶⁰⁹ Interview with ECAP, *supra* note 520, at 4; Interview with MENAMIG, *supra* note 543, at 6.

⁶¹⁰ Interview with PDH, *supra* note 585, at 11 (acknowledging that many people are not aware that they can report a disappearance to the PDH Office).

⁶¹¹ *Id.* at 16.

⁶¹² Interview with Carlos Garcia Perez & Victor Garcia Perez, in Guatemala City, Guat., at 1,9 (Nov. 14, 2017). (The brothers discussed their experiences trying to report the disappearance of another brother after he left Guatemala.)

⁶¹³ Interview with Pub. Ministry, *supra* note 604, at 4.

⁶¹⁴ Interview with Lucia de Macario Perez, in Quetzaltenango, Guat., at 7 (Nov. 14, 2017) at 7, 9-10.

b. Economic and Linguistic Barriers

Even if the reporting options functioned as they were intended, other significant barriers to reporting persist. Families who do not live in urban centers often have to travel long distances to report a disappearance.⁶¹⁵ This is problematic because approximately fifty-one percent of the population of Guatemala lives in rural areas.⁶¹⁶ Travel expenses, along with other costs associated with legal action, are also significant barriers for families.⁶¹⁷ Over half of the residents of Guatemala live in poverty, with a high percentage in extreme poverty, so that many are “unable to successfully register initial complaints [in the justice system generally] owing to costs or legal illiteracy.”⁶¹⁸

For indigenous families making up approximately forty percent of Guatemala’s population,⁶¹⁹ “linguistic and cultural barriers persist” in their interaction with government officials.⁶²⁰ While some steps have been taken to make interpreters available in the legal system, a shortage of interpreters and translators remains a problem.⁶²¹ Organizations working on the issue have noted that MINEX and the Public Ministry have some interpreters, but not in every office, and they do not always make these services available because migrant disappearances are not a priority for these offices.⁶²² A representative of the Public Ministry stated that they have interpreters for “various languages,” but the interpreters are not located in the Public Ministry, so

⁶¹⁵ Inter-American Commission on Human Rights (IACHR), *Situation of Human Rights in Guatemala: Diversity, Inequality and Exclusion 2015*, ¶ 41, OEA/Ser.L/V/II. Doc. 43/15 (Dec. 31, 2015), ¶ 406 (describing barriers to accessing the judicial system in general) [*IACHR 2015*].

⁶¹⁶ INSTITUTO NACIONAL DE ESTADÍSTICA, CARACTERIZACIÓN ESTADÍSTICA REPÚBLICA DE GUATEMALA 2012, at 13 (2013), <https://www.ine.gob.gt/sistema/uploads/2014/02/26/5eTCcFIHERnaNVeUmm3iabXHaKgXtw0C.pdf>.

⁶¹⁷ IACHR 2015, *supra* note 615, at ¶ 406 (describing barriers to accessing the judicial system in general).

⁶¹⁸ *Id.* at ¶ 404.

⁶¹⁹ INSTITUTO NACIONAL DE ESTADÍSTICA, *supra* note 618, at 13.

⁶²⁰ IACHR 2015, *supra* note 615, ¶ 406.

⁶²¹ *Id.* at ¶ 408-09.

⁶²² Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 9; Interview with ECAP, *supra* note 520, at 10.

the Ministry sometimes need to find an interpreter through consulates.⁶²³ With regard to Mayan languages, she asserted that the Public Ministry offices have interpreters throughout Guatemala, but other sources indicated that these interpreters are not consistently available.⁶²⁴

c. Government Insensitivity to Victims

Another problem for families trying to report disappearances and to engage with the investigative process is the lack of sensitivity towards, and even mistreatment of, family members. In general, government officials are not properly trained on how to question families who have come to report a disappearance, and they often do not collect the necessary information or documentation.⁶²⁵

In particular, families claim that MINEX mistreats people who report disappearances. MINEX officials handle reports of migrant disappearances as if “they do not have an obligation to investigate,” and they have been known to archive complaints without following up.⁶²⁶ Their treatment “regularly re-victimizes the family members,” including by blaming the family for letting the disappeared person leave home.⁶²⁷ MINEX generally treats missing migrant reports as a bureaucratic procedure rather than as an issue involving fundamental human rights.⁶²⁸ The majority of families who spoke with the nongovernmental organization MENAMIG, for example, said MINEX did not treat them well, and that they left the office with doubts about the process, because the officials asked them for minimal information and did not explain the steps or follow up with them.⁶²⁹ One family reported that when they went to MINEX, they were told that they

⁶²³ Interview with Pub. Ministry, *supra* note 604, at 8.

⁶²⁴ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 8-9; Interview with ECAP, *supra* note 520, at 9.

⁶²⁵ Interview with ECAP, *Id.*, at 4.

⁶²⁶ *Id.* at 7.

⁶²⁷ *Id.*

⁶²⁸ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 9-10.

⁶²⁹ Interview with MENAMIG, *supra* note 543, at 9.

needed an appointment, so they had to return eight days later.⁶³⁰ Another family said that when the father went to MINEX approximately five months after his son disappeared, the officials there repeatedly reprimanded him for not filing a complaint with them sooner, and even accused him of not being sufficiently concerned about his son.⁶³¹

The Public Ministry, similarly, has a flawed system for receiving complaints. It often files complaints but then takes no action. This is partly because there is no specific prosecutor assigned to handle migrant disappearances.⁶³² Although the Public Ministry adopted a standardized questionnaire for obtaining information from families who report disappearances,⁶³³ personnel are not adequately trained to conduct these interviews, and it is unclear how often they use the questionnaire.⁶³⁴ In addition, in the past, the Public Ministry has not always created individual reports for each disappearance.⁶³⁵

d. Legal Representation

Barriers to reporting are compounded by families' lack of access to legal representation and other support in the process of reporting and investigating a loved one's disappearance. Victims and families have a legal right to representation, but this right is regularly ignored by government officials.⁶³⁶ Although the Public Ministry acknowledges that the government relies on civil society organizations to support victims by providing legal and psychosocial services,⁶³⁷

⁶³⁰ Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612, at 10.

⁶³¹ Interview with Lucia de Macario Perez, *supra* note 614.

⁶³² Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 7-8.

⁶³³ Interview with Pub. Ministry, *supra* note 604, at 13 (noting that this questionnaire was established with the help of the International Committee of the Red Cross).

⁶³⁴ Interview with ECAP, *supra* note 520, at 4.

⁶³⁵ *Id.*

⁶³⁶ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 6.

⁶³⁷ Interview with Pub. Ministry, *supra* note 604, at 5.

MINEX often refuses to allow members of civil society, including attorneys, to enter meetings with family members.⁶³⁸

An attorney for FJEDD explained that entering a claim in the MAE in Guatemala is a complicated process and requires legal assistance.⁶³⁹ She noted that the families have the legal right to submit a complaint to the MAE at any time without an attorney, and the Immigrants Unit for the MAE has the obligation to provide them with an attorney.⁶⁴⁰ Based on extensive experience, however, she believed that the process is too difficult to complete without the assistance of an attorney, and to her knowledge the Unit has never provided an attorney to anyone. FJEDD had filed nineteen cases with the MAE and did not believe that any other attorneys or organizations were filing cases with the MAE in Guatemala.⁶⁴¹

e. Lack of Coordination Between Government Agencies

Finally, a major problem with both the reporting and the investigation process is the lack of coordination and failure to exchange information between government entities within Guatemala.⁶⁴² For the most part “complaints stay where they are received” rather than being distributed to different offices.⁶⁴³ This prevents the offices from performing a multi-institutional, coordinated investigation.⁶⁴⁴ Although the ICRC has been working with the government to address this problem by ensuring that each office records ante-mortem and post-mortem data in a standardized form, this system has not yet been fully implemented, and it is not clear whether these forms are being used systematically by the various offices.⁶⁴⁵ The government is also ostensibly

⁶³⁸ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 6; Interview with MENAMIG, *supra* note 543, at 6.

⁶³⁹ Interview with FJEDD, *supra* note 548, at 6.

⁶⁴⁰ *Id.*

⁶⁴¹ *Id.* at 13.

⁶⁴² Interview with ECAP, *supra* note 520, at 4-5; Interview with MENAMIG, *supra* note 543, at 5.

⁶⁴³ Interview with ECAP, *supra* note 520, at 5.

⁶⁴⁴ *Id.* at 6.

⁶⁴⁵ Interview with Pub. Ministry, *supra* note 604, at 13.

working to create an information-sharing system, but there was no information about what steps have been taken towards this goal apart from the standardized interviewing form.⁶⁴⁶

Another ongoing concern is the failure to coordinate between offices. As part of the implementation of the new Migration Code, a working group was created to draft regulations to implement the law.⁶⁴⁷ This group includes MINEX, the Public Ministry, INACIF,⁶⁴⁸ and the ICRC; however, the PDH, civil society, and the families have been excluded from these meetings.⁶⁴⁹

2. Investigation of Disappearances

The government has a legal duty to adequately investigate the disappearance of a Guatemalan citizen after a report has been filed, even when the disappearance occurs outside of Guatemala.⁶⁵⁰ It is apparent, however, that these investigations are inadequate for several reasons, including lack of coordination between Guatemalan agencies,⁶⁵¹ limited cooperation between Mexico and the Northern Triangle nations, shortcomings in Guatemala's use of forensics, and failure to keep families informed and involved in the process.

a. Transnational Coordination

Investigations of migrant disappearances require involvement from and cooperation between multiple countries. Successful investigations require both intrastate and interstate coordination between institutions, but a lack of clear delineation of the responsibilities of each office can impede such collaboration.⁶⁵² One of the major consistent complaints is that the relevant

⁶⁴⁶ *Id.*

⁶⁴⁷ Interview with FJEDD: Rosmary Yax and Susana Urbina, *supra* note 548, at 10.

⁶⁴⁸ INACIF was founded in 2006 as an independent entity with the responsibility for matters in Guatemala's justice system that require technical scientific expertise. *See* INSTITUTO NACIONAL DE CIENCIAS FORENSES DE GUATEMALA, <http://www.inacif.gob.gt> (last visited Apr. 12, 2018).

⁶⁴⁹ Interview with FJEDD: Rosmary Yax and Susana Urbina, *supra* note 548, at 10.

⁶⁵⁰ The international law governing a state's duty to investigate is described in detail in the Mexico section of this report.

⁶⁵¹ *See infra* Ch.VII (D)(6).

⁶⁵² Interview with MENAMIG, *supra* note 543, at 14.40.

offices often fail to take these investigations seriously and to commit meaningful attention and resources to them.

i. The Public Ministry

The Public Ministry claims that if it learns of a criminal act, it automatically initiates an investigation.⁶⁵³ However, it also takes the view that when the information about the disappeared person is in Mexico or the United States, and not in Guatemalan territory, the Public Ministry's only role is to exchange information with Mexican or United States prosecutors.⁶⁵⁴ Thus, the Public Ministry sees its role as strengthening—rather than spearheading—the investigation, which it considers to be in the hands of Mexican authorities at the PGR (Mexico).⁶⁵⁵ While the Public Ministry has increased its use of scientific and forensic evidence in investigations, in collaboration with INACIF (Guatemala),⁶⁵⁶ it normally takes DNA samples from family members only if the Mexican authorities request it.⁶⁵⁷ If a family member requests that a DNA sample be taken, the prosecutor will document this request, but might or might not have a sample taken to be stored or sent to Mexico.⁶⁵⁸

If Mexican authorities discover an unidentified body, they send information to the Public Ministry, where prosecutors attempt to determine whether the body is a Guatemalan migrant.⁶⁵⁹ To do so, the Public Ministry compares the information to criminal reports, verifies the authenticity of any identity documents found with the body, compares the body's fingerprints to those on record

⁶⁵³ Interview with Pub. Ministry, *supra* note 604, at 7.

⁶⁵⁴ *See id.* at 4-5. Upon receipt of a complaint of a disappearance suspected to have occurred in Mexico, the International Affairs Unit of the Public Ministry can request that the Mexican government begin a search, and can send all of the information and evidence collected from the family to Mexico. It then relies on the Mexican PGR to begin an investigation in Mexico. The prosecutor in Mexico may request information from the prosecutor at the Guatemalan Public Ministry, and the Guatemalan prosecutor then seeks to collect the information and send it back.

⁶⁵⁵ *Id.* at 10.

⁶⁵⁶ IACHR 2015, *supra* note 615, at ¶ 394.

⁶⁵⁷ Interview with Pub. Ministry, *supra* note 604, at 11-12.

⁶⁵⁸ *Id.* at 12-13.

⁶⁵⁹ *Id.* at 15.

with the Public Ministry and civil registration in Guatemala, and sometimes compares genetic samples.⁶⁶⁰ If the body of a deceased migrant is repatriated to Guatemala, however, the Public Ministry assumes that the foreign government has documented everything necessary to complete an investigation, even if no perpetrator was identified, and it makes no additional attempt to document evidence related to the remains.⁶⁶¹

While the Public Ministry claims to continually coordinate with the Mexican PGR on many investigations, it was unable to say how many cases it had coordinated with the PGR or to give any examples of coordination, except for the investigations of the two large massacres in Tamaulipas and Cadereyta, Mexico.⁶⁶² The prosecutor assigned to the case in the Public Ministry normally receives information about the status of the case in Mexico when the PGR requests legal assistance from the Public Ministry.⁶⁶³ The prosecutor can also request information about the progress of the investigation from the PGR to ensure that the investigation is proceeding adequately or that the family is informed, but such requests for information do not appear to be a common occurrence.⁶⁶⁴ In addition, there is no office within the Public Ministry that is dedicated specifically to migrant disappearances,⁶⁶⁵ and cases sometimes get moved between offices and prosecutors with different specializations.⁶⁶⁶ Despite these issues, the Public Ministry maintains that their existing legal tools are adequate, and that they have been able to communicate sufficiently with the authorities in Mexico.⁶⁶⁷

⁶⁶⁰ *Id.*

⁶⁶¹ *Id.* at 17.

⁶⁶² *Id.* at 10.

⁶⁶³ *Id.* at 17.

⁶⁶⁴ *Id.* at 18.

⁶⁶⁵ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 7-8.

⁶⁶⁶ Interview with Pub. Ministry, *supra* note 604, at 13.

⁶⁶⁷ *Id.* at 10-11.

Civil society organizations confirmed the view that the Public Ministry only acts on these transnational investigations when the Mexican PGR tells it to act.⁶⁶⁸ The Public Ministry could use its system of exchanging information with Mexico's PGR to conduct more thorough investigations, even if the investigation includes incidents that occurred in a different State's territory.⁶⁶⁹ It could request action from the Mexican authorities, just as the Mexican authorities request action from it.⁶⁷⁰ The Public Ministry could also, through MINEX, ask the Mexican authorities to prosecute individuals.⁶⁷¹ However, these offices have not taken such actions, a shortcoming that some attribute to their lack of prioritization of migrants' rights, and particularly disappeared migrants.⁶⁷² Thus, the Public Ministry's emphasis that the incidents occurred on another State's territory is an unconvincing justification for its limited role in the investigative process. Public Ministry officials also repeatedly emphasized the relative success of civil society in providing services, such as victim accompaniment and psychosocial support,⁶⁷³ implying that civil society's taking on these services meant that the government did not need to provide them.

ii. MINEX

MINEX should play a central role in transnational investigations of migrant disappearances. When MINEX receives a report of a migrant who has disappeared, it can disseminate this information to Guatemalan consulates throughout Mexico and the United States to initiate a widespread search.⁶⁷⁴ MINEX, through the consulates, can also request records of morgues and prisons, as well as other agencies such as departments of labor in other countries.⁶⁷⁵

⁶⁶⁸ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 8.

⁶⁶⁹ *Id.* at 8.

⁶⁷⁰ *Id.* at 8-9.

⁶⁷¹ *Id.* at 9.

⁶⁷² *Id.*

⁶⁷³ Interview with Pub. Ministry, *supra* note 604, at 5-6, 18.

⁶⁷⁴ *Id.* at 5.

⁶⁷⁵ Interview with MENAMIG, *supra* note 543, at 8.

However, there are no Guatemalan consulates in some parts of Mexico, so the search may be geographically limited.⁶⁷⁶ This system is inadequate because families often have limited information to use for a search.⁶⁷⁷

Families also state that MINEX does not do enough to ensure that sufficient and accurate information is gathered in the investigation process. For example, when a body is identified and returned to a Guatemalan family, MINEX does not always use a forensics team to verify that the body has been correctly identified.⁶⁷⁸ In addition, at times MINEX has allowed bodies to be cremated before they are returned to Guatemala, which leaves the families in doubt about the identification.⁶⁷⁹ Families are rarely afforded direct access to information from Mexican institutions, such as hospitals or prisons, so they are unable to independently investigate when MINEX fails to provide complete information.⁶⁸⁰

iii. The PDH

The PDH has attempted to improve communication, both between Guatemalan institutions and between Guatemala and Mexico. When the PDH receives a report of a disappearance, it also sends it to the consulates to begin the search for the missing person.⁶⁸¹ The Attorney General expressed a desire to enter into contracts with nongovernmental organizations that have a direct presence in Mexico and the United States to improve the search process.⁶⁸² He has also discussed with his counterparts in the other Northern Triangle countries the possibility of creating one inter-

⁶⁷⁶ See Interview with FJEDD: Rosmary Yax and Susana Urbina, *supra* note 548, at 7.

⁶⁷⁷ Interview with MENAMIG, *supra* note 543, at 8. In particular, migrants sometimes give false names to Mexican authorities, often at the instruction of a smuggler, so record searches using real names would yield no results.

⁶⁷⁸ See Interview with MENAMIG, *Id.*, at 9.

⁶⁷⁹ *Id.*

⁶⁸⁰ See Interview with FJEDD: Rosmary Yax and Susana Urbina, *supra* note 548, at 7.

⁶⁸¹ Interview with PDH, *supra* note 585, at 11.

⁶⁸² *Id.*

state reporting mechanism.⁶⁸³ However, the PDH has no real power outside of Guatemala, except to the extent that it can work with MINEX and the consulates, so its functions are limited.⁶⁸⁴

iv. The MAE

Only a very small number of requests for support through Mexico's MAE have been filed concerning Guatemala thus far.⁶⁸⁵ In early 2017, FJEDD filed nineteen cases, the first ones filed in the MAE in Guatemala.⁶⁸⁶ FJEDD filed these initial cases to test the MAE's functioning in Guatemala and to determine whether it would be a useful resource for other families.⁶⁸⁷ As of 2018, these cases had not advanced, despite an original estimate that the process would take three to four months.⁶⁸⁸ For a case to qualify for MAE, the family must give consent, and it must be clear that the disappearance occurred in Mexico.⁶⁸⁹ The family is then given an appointment with the Immigrants Unit, which has a representative in Guatemala.⁶⁹⁰ As noted above, it appears to be impossible to file a complaint with the MAE without the assistance of an attorney, and the MAE has not yet yielded any results.⁶⁹¹

b. Forensics

Guatemala's weak institutional capacity for forensic investigation also requires attention. The Guatemalan National Forensic Institute ("INACIF") handles forensic matters for Guatemala's justice system, but generally acts slowly and is viewed with distrust by the public.⁶⁹² It rarely takes genetic samples from families to aid the search for disappeared relatives.⁶⁹³

⁶⁸³ *Id.* at 14.

⁶⁸⁴ *Id.* at 10-11.

⁶⁸⁵ See Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 11.

⁶⁸⁶ *Id.* at 11-12.

⁶⁸⁷ *Id.*

⁶⁸⁸ *Id.* at 11.

⁶⁸⁹ *Id.* at 13.

⁶⁹⁰ *Id.*

⁶⁹¹ *Id.*

⁶⁹² Interview with ECAP, *supra* note 520, at 11.

⁶⁹³ *Id.*

Much of the progress made in terms of forensics has been through the efforts of civil society. As a result of their advocacy, in 2012 an agreement was signed between PDH, MENAMIG, FJEDD, and EAAF to collaborate on the forensic search for Guatemalan disappeared migrants through EAAF's *Proyecto Frontera*.⁶⁹⁴ Thanks to this limited and now superseded agreement, MINEX operated as a collaborator and gave valuable information for locating missing migrants.⁶⁹⁵

In April 2015, MINEX signed a “technical and scientific cooperation agreement” with the nongovernmental organization Forensic Anthropology Foundation of Guatemala (“FAFG”) to facilitate the search and identification of Guatemalan migrants who disappeared *en route* to the United States.⁶⁹⁶ FAFG uses DNA testing, fingerprints, and other measures, and plans to populate a database with DNA samples from family members to compare with that of unidentified migrants.⁶⁹⁷ MINEX, however, generally has resisted working with civil society.⁶⁹⁸

c. Follow-Up with Families

After a family has filed a complaint with the government, the family has a right to information about the status of its case. The Public Ministry recognizes this right, and its organic law includes provisions covering both direct and “collateral victims.”⁶⁹⁹ The Public Ministry has an Office of Attention to the Victim that purportedly provides psychosocial services to victims, and the Public Ministry states that it is “always open to collaborate with families.”⁷⁰⁰ It also claims that the prosecutor in charge of each investigation is required to inform the family about the progress of the case, and that it is Public Ministry’s practice to contact the family whenever there

⁶⁹⁴ EAAF Proyecto Frontera, *supra* note 4.

⁶⁹⁵ *Id.*

⁶⁹⁶ IACHR 2015, *supra* note 615, at ¶ 394.

⁶⁹⁷ *Id.*

⁶⁹⁸ Interview with ECAP, *supra* note 520, at 11.

⁶⁹⁹ Interview with Pub. Ministry, *supra* note 604, at 7-8.

⁷⁰⁰ *Id.* at 5.

is news of an advance in a case.⁷⁰¹ When the investigation is taking place in Mexico, the Public Ministry can contact prosecutors in Mexico to get information on the case's progress for the family.⁷⁰²

The families and civil society, meanwhile, tell a different story about the information that they receive from the government during the investigation. ECAP and MENAMIG, civil society organizations that work closely with many families of disappeared migrants, both report that the Public Ministry and MINEX rarely provide follow-up information to the families, even when they have updates, and they do not tell the families what to expect.⁷⁰³ The families often have to affirmatively seek out information, and these offices often say that they do not have information and to call back in a few months.⁷⁰⁴

Even the Public Ministry, when asked about procedures for following up with families, referred to the work of civil society to help the families get information from Mexico, to provide psychological support, and to generally maintain contact with them.⁷⁰⁵ The Public Ministry did not seem to consider it problematic that civil society is forced to fill in the gaps left by government officials responsible for ensuring the rights of victims.

Families also claim that when MINEX communicates information to them about investigations it is conducting, it rarely delivers it in a sensitive or humane manner. MINEX sometimes gives sensitive information over the telephone, including notification of death.⁷⁰⁶ MINEX officials often call a family to give or ask for information without first considering

⁷⁰¹ *Id.* at 8.

⁷⁰² *Id.* at 18.

⁷⁰³ Interview with ECAP, *supra* note 520, at 5-6; interview with MENAMIG, *supra* note 543, at 9.

⁷⁰⁴ Interview with ECAP, *Id.*, at 5; Interview with MENAMIG, *Id.*, at 6, 9.

⁷⁰⁵ Interview with Pub. Ministry, *supra* note 604, at 5, 18.

⁷⁰⁶ Interview with MENAMIG, *supra* note 543, at 6; Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 5.

whether the family speaks Spanish and whether an interpreter is needed.⁷⁰⁷ For the victims of the three biggest massacres in Mexico, FJEDD was able to ensure that families were notified of the relative's death in person rather than by a phone call. But these same procedures have not applied when a corpse is discovered in the United States, or the individual was not a massacre victim; many families are not guaranteed the same protections against re-traumatization.⁷⁰⁸

In the past, after a body was identified, Guatemalan families received remains that were cremated by the Mexican authorities without the family's consent.⁷⁰⁹ Receiving cremated remains not only makes the grieving process more difficult,⁷¹⁰ it also interferes with Guatemalan traditions for mourning,⁷¹¹ and means that families cannot be certain that the remains actually belong to their family member, by either visual recognition or DNA testing.⁷¹² MINEX told some families that they would never see their deceased relative again if they did not authorize cremation.⁷¹³ Families have even received sealed coffins, which they were told not to open under threat of punishment.⁷¹⁴ Some families have been given their relative's cremated remains without any documentation or explanation of how identification was performed or the circumstances of the death.⁷¹⁵ Some remains have been returned to families without a death certificate.⁷¹⁶

⁷⁰⁷ Interview with FJEDD, *Id.*, at 9.

⁷⁰⁸ *Id.* at 5-6.

⁷⁰⁹ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 17.

⁷¹⁰ *Id.* at 17.

⁷¹¹ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 4-5; Interview with MENAMIG, *supra* note 543, at 5.

⁷¹² Interview with FJEDD: *Id.*, at 5, 10-11 (describing the cases of at least seven Guatemalan migrants who were discovered in mass graves in San Fernando, Tamaulipas, and whose remains were cremated before being returned to Guatemala in December 2012); Interview with MENAMIG, *supra* note 543, at 9.

⁷¹³ Interview with FJEDD, *Id.*, at 5.

⁷¹⁴ *Id.* at 4.

⁷¹⁵ *Id.* at 11.

⁷¹⁶ *Id.* at 4.

In August 2013, a Forensic Commission was created to identify remains of migrants who were killed in the three major massacres of migrants in Mexico.⁷¹⁷ Since the Commission was created, the notification process has improved for migrants who have been identified in connection with these massacres.⁷¹⁸ Now, when a Guatemalan citizen's corpse has been identified from the three massacres, MINEX is supposed to call the family to tell them that it has information.⁷¹⁹ Its protocol requires arranging a meeting with the family, the Public Ministry, Mexican authorities, and human rights observers or psychological staff, during which the family is told about their relative's identification, as well as information about forensic evidence, where the body was discovered, and the cause of death.⁷²⁰ MINEX is also supposed to give the family documentation of this information, and initiate the repatriation of the body.⁷²¹

Despite this established procedure and the families' right to legal representation, MINEX often attempts to prevent attorneys' access to the meeting where the family is informed of death and when repatriation occurs.⁷²² MINEX sometimes contacts only the family and not their legal representative, or refuses to allow attorneys to enter the meetings, saying it is a private matter.⁷²³ It has also denied entry to ECAP, which provides psychosocial accompaniment to the families, and to PDH officials, who have a mandate to monitor these meetings.⁷²⁴ This process does not apply when bodies are not associated with one of the three major massacres, so other victims' families are even more vulnerable to mistreatment.⁷²⁵

⁷¹⁷ These three massacres include the seventy-two murdered migrants discovered in San Fernando, Tamaulipas, in August of 2010; the one hundred and ninety-three remains discovered in San Fernando, Tamaulipas, in April 2011; and the forty-nine torsos discovered in Cadereyta, Nuevo León, in May 2012. *See id.*, at 14-15.

⁷¹⁸ *Id.* at 6.

⁷¹⁹ *Id.* at 2-3.

⁷²⁰ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 548, at 3.

⁷²¹ *Id.*

⁷²² *Id.* at 6.

⁷²³ *Id.* at 6, 10.

⁷²⁴ *Id.* at 10.

⁷²⁵ *Id.* at 6.

3. Reparations

a. *Current Reparations*

i. Domestic Reparations

In *Velasquez-Rodriguez*, the IACtHR established that the American Convention and the CFDP create obligations on states parties to not only prevent and investigate forced disappearances, but also provide remedies to the victims of forced disappearances.⁷²⁶ The Court in *Velasquez-Rodriguez* further interpreted the obligations under the CFDP to apply to all persons under a State's jurisdiction, including violations against their citizens occurring abroad.⁷²⁷ As a result of these obligations, the Guatemalan government must provide assistance and reparations to the victims of enforced disappearances, which includes their families.⁷²⁸ Although the Guatemalan government provides some financial assistance for the repatriation of Guatemalan migrants, the assistance is minimal and not guaranteed.⁷²⁹

Guatemala's MINEX is the only governmental institution with the budget to provide any sort of reparations for the families of these victims; however, the reparations are limited to the cost of repatriation of the migrant's remains.⁷³⁰ When a Guatemalan citizen dies abroad, a family member may request financial assistance for repatriation of the remains at the closest Guatemalan Consulate.⁷³¹ However, MINEX does not guarantee financial assistance for all repatriation

⁷²⁶ See discussion *infra* Ch. III; *Velásquez-Rodríguez v. Honduras*, *supra* note 51, ¶¶ 166-67, 172, 176-77; Organization of American States, Inter-American Convention on the Forced Disappearance of Persons, June 9, 1994, O.A.S.T.S. No. A-60, 33 I.L.M. 1529.

⁷²⁷ See discussion *infra* Ch. III(B).

⁷²⁸ See Blake Case, 1999 Inter-Am. Ct. H.R. (ser. C) No. 48 ¶ 57 (Jan. 22, 1999)

(holding that the victim's parents and brothers were injured by the victim's disappearance, and are considered victims and beneficiaries of reparations).

⁷²⁹ Interview with ECAP, *supra* note 520, at 6-7; Interview with MENAMIG, *supra* note 543, at 6, 12.

⁷³⁰ Officials from the MINEX were unresponsive to requests for interviews, so information regarding actions taken by the MINEX are largely based on third party accounts, as well as the MINEX official website. Interview with ECAP, *Id.*, at 6-7; Interview with MENAMIG, *Id.*, at 6, 12.

⁷³¹ *Repatriaciones*, GOBIERNO DE LA REPUBLICA DE GUATEMALA: MINISTERIO DE RELACIONES EXTERIORES, http://www.minex.gob.gt/Visor_Pagina.aspx?PaginaID=152 (last visited April 15, 2018).

requests.⁷³² Any family member of a deceased Guatemalan migrant may submit the necessary documents and request repatriation, but the Consulate officials ultimately determine who may qualify for the repatriation fund.⁷³³

Although it is encouraging that MINEX's repatriation fund exists for the families of these deceased migrants, in practice, families claim the fund is inaccessible.⁷³⁴ MENAMIG, which helps families access the repatriation fund, acknowledges that MINEX does have a repatriation fund for families whose relatives die abroad.⁷³⁵ Although MINEX claims to use criteria or guidelines to assess the requests, there are large discrepancies in the approvals.⁷³⁶ For example, some families who requested repatriation assistance were told that MINEX did not have the financial resources to pay for the repatriation of their loved one's remains.⁷³⁷ MINEX officials told them that if the family wanted to receive the remains, they would need to pay \$5,000 for the transportation costs.⁷³⁸ At the same time, NGO's working with families claim that MINEX grants repatriation costs to other families in similar financial situations.⁷³⁹ Given the discrepancies in approvals, some civil society organizations believe that even if guidelines for the repatriation fund do exist, MINEX officials do not follow them.⁷⁴⁰ As a result, many families in financial need are denied access to the fund and struggle to find a way to bring their family members' remains back home.⁷⁴¹

⁷³² Interview with MENAMIG, *supra* note 543, at 6, 12.

⁷³³ Interview with MENAMIG, *Id.*, at 6, 12.

⁷³⁴ *Id.*

⁷³⁵ *Id.* at 6.

⁷³⁶ *Id.*

⁷³⁷ *Id.* at 6, 12.

⁷³⁸ *Id.* at 6.

⁷³⁹ *Id.*

⁷⁴⁰ *Id.*

⁷⁴¹ Interview with MENAMIG, *Id.*, at 6; Interview with Lucia Santos, in Canton Chicavioc, Quetzaltenango, Guat., (Nov. 13, 2017) [*Interview with Lucia Santos*].

Even when MINEX approves a family's financial request for the repatriation of remains, it tends to be insufficient to cover all repatriation costs.⁷⁴² MINEX will usually cover only the airport expenses to transport the individual's remains from their place of death to Guatemala.⁷⁴³ Both ECAP and MENAMIG noted that MINEX does not cover any other costs that come with repatriation of the remains, such as transportation from the airport to their families' home within Guatemala.⁷⁴⁴

Aside from the MINEX repatriation fund, MINEX and the Guatemalan government do not provide any reparations for the families of disappeared or deceased migrants.⁷⁴⁵ The Guatemalan government has failed to establish mechanisms to provide these families with the reparations they require.⁷⁴⁶ Even the government's new Migration Code does not provide any form of reparations or financial assistance to these families.⁷⁴⁷

ii. External Reparations

Given the government's minimal reparations and financial assistance, many of the disappeared migrants' families seek reparations from Mexico through Mexico's General Victims Law.⁷⁴⁸ Before a Guatemalan family can obtain reparations under the Mexican system, they must first submit a complaint in order to obtain "victim" status under the law.⁷⁴⁹ In the event that the "victim" or the family is located in Guatemala, the Guatemalan government must cooperate with the Mexican authorities to assist families in obtaining economic reparations under Mexico's

⁷⁴² Interview with ECAP, *supra* note 520, at 6-7.

⁷⁴³ *Id.*

⁷⁴⁴ Interview with ECAP, *Id.*, at 6-7; Interview with MENAMIG, *supra* note 543, at 6. MINEX's official website claims that approved families will have the funeral services for their loved ones covered by the fund. *See also* Repatriaciones, *supra* note 730.

⁷⁴⁵ Interview with ECAP, *Id.*, at 6-7; Interview with MENAMIG, *Id.*, at 12.

⁷⁴⁶ Interview with ECAP, *Id.*, at 6-7.

⁷⁴⁷ Migration Code, *supra* note 581.

⁷⁴⁸ Ley General De Víctimas, *supra* note 123.

⁷⁴⁹ Interview with FJEDD: Rosmery Yax and Susana Urbina, *supra* note 549, at 14-15; The registration process under the General Victims Law is explained in detail in the Mexico section. *See* discussion *infra* Ch. V(B).

General Victims Law.⁷⁵⁰ Additionally, because victims and families residing in Guatemala are unable to access other benefits like public education and healthcare provided by Mexico, Mexico requires that the Guatemalan government provide them instead.⁷⁵¹

Although the reparations and benefits provided under the General Victim's Law are theoretically very promising for Guatemalan migrants and their families, in practice Guatemalan families face challenges in accessing the reparations and benefits.⁷⁵² One challenge highlighted by members of Guatemalan civil society is that the economic reparations provided under the General Victims Law are not sufficient to cover all of the family's costs.⁷⁵³ After a legal victim classification, Mexican officials will conduct an interview to assess the family's financial situation to determine their economic needs.⁷⁵⁴ However, the Mexican officials assess this based on socio-economic circumstances in Mexico, rather than in Guatemala.⁷⁵⁵ Specifically, FJEDD noted that the officials ignore the socio-economic differences between Mexico and Guatemala in their assessments, such as the differences in cost of living, funeral services, or cultural burial cost.⁷⁵⁶ Nor do Mexican officials consider the economic differences within Guatemala, such as between families living in urban versus rural settings.⁷⁵⁷

Even when the families are awarded economic reparations, the families have difficulties actually obtaining the money.⁷⁵⁸ Mexican officials require that the money be transferred into a

⁷⁵⁰ Interview with FJEDD, *Id.*, at 14; *See* discussion *infra* Ch. (V)(B)(1)(A); CFDP, *supra* note 47, at art. I (the CFDP and the American Convention require Guatemala to cooperate with Mexico “to prevent, punish, and eliminate the forced disappearance of persons”).

⁷⁵¹ Interview with ECAP, *supra* note 520, at 7.

⁷⁵² *Id.*, at 7; Interview with FJEDD, *supra* note 548, at 13-15.

⁷⁵³ Interview with FJEDD, *Id.*, at 5; Interview with ECAP, *supra* note 520, at 6.

⁷⁵⁴ Interview with FJEDD, *Id.*, at 13-15.

⁷⁵⁵ *Id.*

⁷⁵⁶ *Id.* (noting further that officials calculate economic reparations in Mexican currency (“pesos”) instead of the Guatemalan currency (“quetzals”) without accounting for the difference in the value of the two currencies).

⁷⁵⁷ For instance, the funeral and burial costs for families living in rural indigenous communities tend to be higher than for those families living in urban areas.

⁷⁵⁸ *Id.* at 15.

bank account; however, many indigenous families do not have bank accounts, and the Guatemalan government does not offer a system to transfer the money.⁷⁵⁹

Aside from the insufficient economic reparations, Guatemalan civil society also noted that families have difficulty accessing other forms of reparations provided under Mexico's General Victim Law when the families reside in Guatemala.⁷⁶⁰ The Guatemala government struggles to provide families with benefits they would have access to in Mexico.⁷⁶¹

Unlike in Mexico, Guatemala does not provide the general public access to adequate medical services.⁷⁶² For example, FJEDD noted that people often have to line up at 4 am to receive a medical consultation at 8 am.⁷⁶³ Even though the Mexican General Victims Law is a positive step towards providing the reparations and benefits families deserve, without the Guatemalan government's collaboration, they simply are unable to access these reparations.

4. Family Demands

Although every migrant disappearance case has its unique circumstances, the needs and requests of these migrants' families tend to be very similar.⁷⁶⁴ The specific needs and requests converge around four categories:

a. Information and Investigations

According to both Guatemalan civil society and individual families, one of the main requests is simply for the government to demonstrate interest in the disappearances of these

⁷⁵⁹ *Id.* at 15-16.

⁷⁶⁰ *Id.* at 13-14; Interview with ECAP, *supra* note 520, at 7.

⁷⁶¹ Interview with FJEDD, *Id.* at 14-15.

⁷⁶² *Id.* at 14.

⁷⁶³ *Id.*

⁷⁶⁴ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604; Interview with Lucia Santos, *supra* note 741; Interview with Lucia de Macario Perez, *supra* note 614; Interview with ECAP, *supra* note 520, at 7; Interview with MENAMIG, *supra* note 543, at 12.

migrants.⁷⁶⁵ Many families in Guatemala start the search for their missing relative by seeking help from government institutions, such as MINEX or the Public Ministry.⁷⁶⁶ However, the various government institutions fail to take substantial action to investigate the majority of these disappearances or provide help to these families.⁷⁶⁷ Instead, families report instances when officials from both MINEX and the Public Ministry reprimanded families attempting to report their missing relative.⁷⁶⁸ Officials blame the family for their relative's disappearance because they allowed them to illegally migrate.⁷⁶⁹ At most, MINEX and the Public Ministry take the families' statements and claim to create a report for the disappeared migrant, but it is unclear what happens to this information.⁷⁷⁰ Therefore, a primary request is that the Guatemalan government make real efforts to investigate and search for disappeared relatives.⁷⁷¹

Along with investigating the disappearances, the families also want the government to provide them with any available information about the case.⁷⁷² As of 2017, families claimed that in cases with reports filed six to seven years prior, the government had not provided any updates on the search and investigation efforts in the cases.⁷⁷³ The families simply request that the government communicate with them about their relative's case, even if it is negative

⁷⁶⁵ Interview with Lucia Santos, *supra* note 741, at 23; Interview with Lucia de Macario Perez, *supra* note 614, at 4, 7; Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612, at 19-20; Interview with MENAMIG, *supra* note 543, at 12.

⁷⁶⁶ Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 1,9; Interview with Lucia Santos, *Id.* at 12-13; Interview with Lucia de Macario Perez, *Id.* at 7.

⁷⁶⁷ Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 9-11; Interview with Lucia Santos, *Id.* at 12-13.

⁷⁶⁸ Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 9-11.

⁷⁶⁹ Interview with Lucia Santos, *supra* note 741, at 12-13; Interview with Lucia de Macario Perez, *supra* note 614, at 7.

⁷⁷⁰ Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612, at 1,9; Interview with Lucia Santos, *Id.* at 12-15; Interview with Lucia de Macario Perez, *Id.* at 7.

⁷⁷¹ Interview with Lucia Santos, *Id.* at 23; Interview with Lucia de Macario Perez, *Id.* at 4,7; Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 19-20; Interview with MENAMIG, *supra* note 543, at 12.

⁷⁷² Interview with Lucia Santos, *Id.* at 23; Interview with Lucia de Macario Perez, *Id.* at 4,7; Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 19-20; Interview with MENAMIG, *Id.* at 12; ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 13.

⁷⁷³ Interview with Lucia Santos, *Id.* at 12-13, 15; Interview with Lucia de Macario Perez, *Id.* at 15.

information.⁷⁷⁴ Many have accepted that their relative may not be alive; however, to achieve closure, they must be provided with the truth.⁷⁷⁵

b. Healthcare

In addition to the demands for information and investigations, the families also request that the Guatemalan government provide them with access to adequate healthcare, particularly psychological services.⁷⁷⁶ As would be expected, many of these families struggle emotionally and psychologically to cope with the disappearance of a loved one.⁷⁷⁷ It is often harder to cope with not knowing the whereabouts of a relative than with their death, because there is no closure.⁷⁷⁸ The families of disappeared migrants want the government to provide them with access to healthcare services that could help them cope mentally and physically.⁷⁷⁹

The Guatemalan government has failed to provide healthcare assistance to these families, even when they have been recognized as victims under Mexico's General Victims Law.⁷⁸⁰ Many of the families rely on healthcare provided by civil society organizations, specifically for psychological services.⁷⁸¹ For example, ECAP provides psychological counseling and support groups for many of the families of disappeared migrants.⁷⁸² However, civil society cannot provide healthcare to all the families in need; that is the government's responsibility.⁷⁸³

⁷⁷⁴ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 13; Interview with Lucia Santos, *Id.* at 12-13, 15; Interview with Lucia de Macario Perez, *Id.* at 15.

⁷⁷⁵ Interview with MENAMIG *supra* note 543, at 12; ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *Id.* at 13; Interview with Lucia Santos, *Id.* at 12-13, 15.

⁷⁷⁶ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *Id.* at 17-20; Interview with MENAMIG, *Id.* at 12.

⁷⁷⁷ Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612; Interview with Lucia Santos, *supra* note 741.

⁷⁷⁸ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 17-20.

⁷⁷⁹ *Id.*; Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612, at 16, 23-25.

⁷⁸⁰ See discussion *intra* Ch. (V)(B)(1), (V)(D)(1).

⁷⁸¹ Interview with ECAP, *supra* note 520, at 7; Interview with Lucia Santos, *supra* note 741.

⁷⁸² Interview with ECAP, *Id.*; Interview with Lucia Santos, *Id.*; Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612.

⁷⁸³ Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.* at 16, 23-25; Interview with MENAMIG, *supra* note 543, at 12.

c. Education

The families of victims also request that the Guatemalan government provide the children of disappeared migrants with access to adequate education.⁷⁸⁴ Many disappeared migrants have left behind young children.⁷⁸⁵ Since the majority of disappeared migrants are men, many migrants have left children with their mothers or grandmothers.⁷⁸⁶ The vast majority of individuals migrating leave children behind in the hope of providing them with a brighter future, better economic opportunities, and an education.⁷⁸⁷ Unfortunately, the father's disappearance leaves these children and their caregivers in a worse financial situation.⁷⁸⁸ Many of the disappeared migrants were the main financial provider for the children and now the caregivers, usually women, are the sole providers for the family and the children.⁷⁸⁹

For its part, the Guatemalan government has not provided educational assistance to these children.⁷⁹⁰ Even for children classified as victims under the Mexican General Victims Law, the government has failed to provide the scholarships guaranteed to them under the law.⁷⁹¹ Instead the financial burden of the child's education lies with the relatives of the missing migrants, who generally cannot afford the costs of their children's education.⁷⁹²

⁷⁸⁴ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 19-20; Interview with Lucia Santos, *supra* note 741, at 22-23; Interview with Lucia de Macario Perez, *supra* note 614, at 8.

⁷⁸⁵ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *Id.* at 19-20; Interview with Lucia de Macario Perez, *Id.*; Interview with Lucia Santos, *Id.*; Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 613.

⁷⁸⁶ Interview with Lucia de Macario Perez, *Id.*; Interview with Lucia Santos, *Id.*; Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.*

⁷⁸⁷ Interview with Lucia Santos, *Id.*

⁷⁸⁸ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 19-20.

⁷⁸⁹ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *Id.* at 19-20; Interview with Lucia Santos, *supra* note 741, at 22-23; Interview with Lucia de Macario Perez, *supra* note 614, at 8.

⁷⁹⁰ Interview with ECAP, *supra* note 520, at 6-7; Interview with MENAMIG, *supra* note 543, at 12.

⁷⁹¹ Interview with ECAP, *Id.*, at 7.

⁷⁹² Interview with Lucia Santos, *supra* note 741, at 22-23; Interview with Lucia de Macario Perez, note 614, at 8.

d. Economic Assistance

The families of disappeared migrants also request economic assistance from the Guatemalan government.⁷⁹³ As mentioned above, many Guatemalan migrants who are missing or deceased were the main financial providers for their families.⁷⁹⁴ Thus, disappearances are not only hard on the families emotionally and mentally, but also financially. In addition to becoming the sole provider for the families, they are often faced with owing a significant amount of money to the “coyote” hired by their relative.⁷⁹⁵ Usually, families plan for the migrant to pay off the “coyote” with the job they obtain in the United States.⁷⁹⁶ When their relative disappears, the debt becomes their burden.⁷⁹⁷ As a result, some families are forced to sell their homes or possessions.⁷⁹⁸

Some families face additional economic demands from extortion.⁷⁹⁹ Often unknown individuals, who claim to have the family’s missing relative with them, force the families to pay thousands of dollars if they want to see their relative alive again.⁸⁰⁰ Many of the targeted families give into the demands because they hope that their relative is still alive.⁸⁰¹ However, many families report that after sending the money, they never hear from the individuals again, let alone recover their loved ones.⁸⁰² Given all these economic pressures, the families of the both the disappeared

⁷⁹³ Interview with Carlos Garcia Perez & Victor Garcia Perez, *supra* note 612, at 4-5, 15-16, 24; Interview with Lucia Santos, *Id.*, at 22-23; ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 21-22.

⁷⁹⁴ See discussion *intra* Ch. (VII)(D)(1); Interview with Lucia Santos, *Id.*, at 22-23; Interview with Lucia de Macario Perez, *supra* note 614, at 8.

⁷⁹⁵ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 21-22.

⁷⁹⁶ Interview with Lucia Santos, *supra* note 741, at 5.

⁷⁹⁷ Interview with Lucia Santos, *Id.*, at 25-26; ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *supra* note 604, at 21-22.

⁷⁹⁸ ICRC DELEGACIÓN REGIONAL PARA MÉXICO, AMÉRICA CENTRAL Y CUBA, *Id.*, at 21-22; Interview with Lucia Santos, *Id.*, at 25-26.

⁷⁹⁹ Interview with Carlos Garcia Perez & Victor Garcia Perez *supra* note 612, at 4-5.

⁸⁰⁰ *Id.*

⁸⁰¹ *Id.*

⁸⁰² *Id.*

and deceased migrants request economic support from the Guatemala government to ease their financial burdens.⁸⁰³

E. Conclusions and Recommendations for Guatemala

1. Guatemala must create a comprehensive complaint and investigation mechanism for enforced disappearances.

1.1. Guatemala must create a national mechanism for reporting and investigating migrant disappearances in order to meet its obligations under the CFDP. As recommended by Guatemalan civil society, this national mechanism should contain the following:

- a. The Guatemalan government must create a clear route for the families to file a missing persons report for their loved one, at designated governmental institutions, preferably the Public Ministry, MINEX and the Prosecutor. Once a report is filed, the Prosecutor must immediately open an investigation and MINEX must be notified. MINEX must then forward the information and report to the Mexican prosecutor, as well as the Guatemalan consulates in Mexico. The officials at the consulates must contact likely sources to check against the information, like hospitals, migrant hotels, and shelters.
- b. All reports must be kept in a secure and confidential database. Guatemalan officials must systematically update the database with any information they receive on a case.
- c. Guatemala must create one questionnaire or form that all officials must utilize to collect the family's information and create a report. The government must collaborate with ECAP and FJEDD on training all personnel on the

⁸⁰³ Interview with Carlos Garcia Perez & Victor Garcia Perez, *Id.*, at 4-5, 15-16, 24; Interview with Lucia Santos, , *supra* note 741, at 22-23; Interview with Lucia de Macario Perez, *supra* note 614, at 8.

information that must be collected during the interview. In addition, Guatemala must work with civil society organizations to train their personnel on how to conduct ethical interviews of these families in order to avoid re-traumatizing them.

- d. Guatemalan officials in charge of a reported disappearance case must provide the families with regular, intermittent updates on the case and investigation efforts, even if there is no new information available.

- 1.2. The Guatemalan government should sign a new agreement with EAAF, civil society and families of the disappeared in order to create a confidential forensic database and become part of *Proyecto Frontera* – a project that aims to create a Regional Mechanism for the exchange of forensic data on disappeared migrants.

2. *Guatemala should more effectively cooperate with the Mexican Government, specifically the MAE, to investigate forced disappearances of Guatemalan migrants in Mexico.*

- 2.1. Under the CFDP, Guatemala is required to investigate the disappearances of Guatemalan citizens, regardless of whether the citizen disappears in Guatemala or abroad. Therefore, Guatemala must demand that the Mexican government investigate the disappearances of Guatemalan migrants within Mexico's territory.

- 2.2. In addition, the Guatemalan government must take an active role in investigations by coordinating with Mexican authorities in the search and investigation efforts of each disappearance case.

- 2.3. The Guatemalan government should communicate with the MAE representative and family victims at least every six months to report on the progress of any investigation, prosecution, or repatriation of the disappearance cases it is handling.

2.4. Guatemala should ensure that all family members know about their rights to participate in all stages of the criminal proceedings, provide testimony, and obtain adequate reparations as part of judicial remedies, and remove any barriers to exercise of these rights.

2.5. Guatemala should also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and identification of remains.

2.6. To aid in the investigations by the MAE, Guatemala must submit each reported disappearance to the MAE either through its MAE representative or directly to the MAE, which should maintain a consolidated database together with the EAAF.

3. *Guatemala must create a mechanism to facilitate reparations and benefits guaranteed under Mexico's General Victims Law.*

3.1. The Guatemalan government must cooperate with the MAE to ensure families are able to request and receive the benefits promised to them under Mexican law. Such a mechanism should facilitate access to adequate physical and mental healthcare and establish scholarships for children of disappeared migrants, as required under Mexico's law. In addition, the government must ensure that a process or system exists that allows the families to receive the economic reparations granted by the Mexican government, as many families do not have access to bank accounts.

4. *Guatemala must streamline and publicize the criteria for the MINEX repatriation fund.*

4.1. MINEX must establish concrete criteria for the issuance of funds from the repatriation fund. MINEX claims that repatriation funds are made available based on financial need of the victims' families; however, MINEX does not publicize the guidelines or criteria used to make these determinations. In addition, there are many discrepancies

in the approvals issued by MINEX, as similarly situated families are approved and others denied.

4.2. In addition, MINEX must make the criteria available to the public and civil society in order to ensure that MINEX officials adhere to it. Furthermore, MINEX must be transparent about the criteria used to evaluate a family's request for repatriation funds, and families and civil society organizations must be able to appeal a denial.

5. *Guatemala should take all action necessary to fully address the issues that cause Guatemala to emigrate, while also recognizing the right to migrate.*

5.1. Everyone has the right to migrate and to remain home. This recommendation, as noted above, is firmly grounded in human rights law, and applies to everyone, wealthy or poor. All Guatemalans have the right to migrate in safety and dignity. All Guatemalans, however, should also be guaranteed the right to remain home in safety and dignity.

5.2. As such, the Guatemala government must address the root causes that propel migrants to leave Guatemala in the first place.

5.3. Guatemala must implement reforms that tackle the persistence of violence and corruption in the country and systematic inequality.

5.4. Guatemala must implement reforms that tackle the issue of poverty, which has led to the rise of gangs, violence, and insecurity. Guatemala has received assistance from the U.S. through the Alliance for Prosperity Plan for this very purpose. The Guatemalan government should refuse to condition this or other foreign aid on undermining the protection of its citizens, and should refuse austerity measures from the World Bank and the IMF that limit its ability to tackle the serious problems that are forcing its citizens to migrate.

VIII. EL SALVADOR

El Salvador shares legal obligations with its neighbors under domestic and international laws, which require transnational cooperation to protect migrants and provide remedies to victims and their families, including thorough investigations, prosecutions, reparations, and repatriation of remains. In similar fashion as its neighbors, however, the Salvadoran government has failed to fully comply with these obligations towards its citizens who have disappeared on their migrant journey, and to the families of the disappeared.

Salvadoran migrants primarily disappear while emigrating to the United States to flee political repression, violence, and socioeconomic inequality stemming from or exacerbated by the Salvadoran Civil War, which raged from 1980-1992.⁸⁰⁴ El Salvador suffers high levels of gang violence, largely due to U.S. immigration policies that have led to the deportation of thousands of gang members back to the country.⁸⁰⁵ Additionally, neoliberal economic policies maintained before and after the Civil War have led to high rates of unemployment, stark socioeconomic inequality, and lack of economic opportunities, which in turn help drive emigration.⁸⁰⁶

As discussed above, a majority of Central American migrants disappear in Mexico.⁸⁰⁷ The exact number of disappeared migrants in Mexico and the United States is unknown given the nature of irregular migration and the lack of coordination on data collection among governments

⁸⁰⁴ Cecilia Menjivar & Andrea Gomez Cervantes, *El Salvador: Civil War, Natural Disasters, and Gang Violence Drive Migration*, MIGRATION POL'Y INST. (Aug. 29, 2018), <https://www.migrationpolicy.org/article/el-salvador-civil-war-natural-disasters-and-gang-violence-drive-migration>. See also Walter C. Ladwig III, *Influencing Clients in Counterinsurgency: U.S. Involvement in El Salvador's Civil War, 1979-92*, 41 INT'L SECURITY 99, 109 (2016).

⁸⁰⁵ Sonja Wolf & Mara Salvatrucha, *The Most Dangerous Street Gang in the Americas?*, 54 LATIN AM. POL. & SOC'Y 65, 65 (2012). See also *Barrio 18*, INSIGHT CRIME (Feb. 13, 2018), <https://www.insightcrime.org/el-salvador-organized-crime-news/barrio-18-profile-2/>; STEPHANIE LEUTERT, LYNDON B. JOHNSON SCH. PUB. AFF., ORGANIZED CRIME AND CENTRAL AMERICAN MIGRATION IN MEXICO 3 (2018).

⁸⁰⁶ Christine J. Wade, *El Salvador: Contradictions of Neoliberalism and Building Sustainable Peace*, 13 INT'L J. PEACE STUD. 15, 24-29 (2008).

⁸⁰⁷ Interview with International Committee of the Red Cross in El Salvador at 10 (Jan. 22, 2019) [*ICRC Interview in El Salvador*].

along the migrant route.⁸⁰⁸ Similarly, the number of Salvadoran migrants who have disappeared is unclear. Since 2013, the *Ministerio de Relaciones Exteriores* (Ministry of Foreign Affairs) has received 786 reports of Salvadorans missing abroad.⁸⁰⁹ In January 2019, the Ministry of Foreign Affairs had 330 open cases of migrant disappearances. The *Procuraduría para la Defensa de Derechos Humanos* (Human Right’s Ombudsman) (“PDDH”) has 326 cases of disappeared Salvadoran migrants registered in its forensic data bank, which was established in collaboration with the *Comité de Familiares de Migrantes Fallecidos y Desaparecidos El Salvador* (Committee of Relatives of Deceased and Disappeared Migrants of El Salvador) (COFAMIDE), the Ministry of Foreign Affairs, and the EAAF with the hopes of identifying remains of disappeared migrants and returning them to their families.⁸¹⁰ However, these numbers do not accurately represent the actual numbers because there are many families who do not know that these bodies exist and do not report their family members who disappear.

A. Factors Causing Salvadorans to Migrate

Salvadorans emigrate northward to flee the rampant violence, extreme poverty, and systemic inequality that the government has failed to address since the Salvadoran Civil War.⁸¹¹ Disappearances and deaths most frequently occur when migrants travel by irregular means.⁸¹² Mexico’s intensified immigration enforcement diverts migrants from paths with established shelters into isolated paths that are fraught with greater risks.⁸¹³ As a result, migrants are vulnerable

⁸⁰⁸ Interview with GMIES, *supra* note 9.

⁸⁰⁹ Comm. on the Prot. of the Rights of All Migrant Workers and Members of Their Families, *Consideration of Reports Submitted by States Parties Under Article 73 of the Convention - El Salvador*, ¶ 155, U.N. Doc. CMW/C/SLV/2 (Nov. 4, 2013).

⁸¹⁰ Interview with Coordinator of the Department of Migrant Assistance and Forced Displacement, Procuraduría para la Defensa de Derechos Humanos (Jan. 23, 2019) [*Interview with PDDH*].

⁸¹¹ *Migrant Deaths and Disappearances*, MIGRATION DATA PORTAL (last updated Mar. 17, 2020), <https://migrationdataportal.org/themes/migrant-deaths-and-disappearances>.

⁸¹² *Id.*

⁸¹³ Rebecca Galemba et al., *Paradoxes of Protection: Compassionate Repression at the Mexico-Guatemala Border*, 7 J. ON MIGRATION & HUM. SECURITY 62, 66 (2019).

to extortion and abuse by various actors such as gangs, drug cartels, and human traffickers, as well as dangerous prolonged exposure to the natural elements throughout their journeys.⁸¹⁴

1. The Salvadoran Civil War

El Salvador has a history of economic, political, and social turmoil, which has continuously propelled emigration. A particularly devastating period in El Salvador's tumultuous history was the Civil War of 1980-1992, which forced a significant portion of the population to migrate. The Salvadoran Civil War submerged the country in repression and violence, and displaced over 1 million Salvadorans throughout El Salvador, Central America, Mexico, the United States, Canada, and Australia.⁸¹⁵

The Salvadoran Civil War arose primarily due to systemic inequality, political violence, and government corruption perpetuated by the military dictatorship under the influence of agrarian oligarchs in El Salvador in the 1970s.⁸¹⁶ The inequality in El Salvador was so extreme and systemic by 1980 that “the poorest one-fifth of the population controlled just 2 percent of El Salvador's wealth, while the top quintile controlled 66 percent of the country's resources.”⁸¹⁷ The nearly 12-year Civil War was fought between the right-wing Salvadoran government and the Farabundo Marti National Liberation Front (“FMLN”), a leftist guerilla group.⁸¹⁸ The *Comisión de*

⁸¹⁴ Interview with National Civil Police, Representatives from the Migration and Internal Disappearances Departments (Jan. 24, 2019) [*Interview with ES Police*].

⁸¹⁵ Menjívar & Gómez Cervantes, *supra* note 804. See also Adrian J. Bailey & Joshua G. Hane, *Population in Motion: Salvadoran Refugees and Circulation Migration*, 14 BULL. LATIN AM. RES. 171, 171, 180 (1995); Richard C. Jones, *Causes of Salvadoran Migration to the States*, 79 GEOGRAPHICAL REV. 183, 184 (1989).

⁸¹⁶ AMELIA HOOVER GREEN, THE COMMANDERS DILEMMA: VIOLENCE AND RESTRAINT IN WARTIME at 70-71 (2018). See also Steve Hobden, *El Salvador: Civil War, Civil Society, and the State*, 3 CIVIL WARS 106, 113 (2007); Christine J. Wade, *El Salvador: Contradictions of Neoliberalism and Building Sustainable Peace*, 13 INT'L J. PEACE STUD. 15, 19 (2008).

⁸¹⁷ GREEN, *Id.*, at 62.

⁸¹⁸ CARLOS GUILLERMO RAMOS ET AL., BERGHOF FOUND., THE FMLN AND POST-WAR POLITICS IN EL SALVADOR: FROM INCLUDED TO INCLUSIVE ACTOR? 9 (2015), <https://berghof-foundation.org/library/the-fmln-and-post-war-politics-in-el-salvador-from-included-to-inclusive-actor> (explaining that at the end of the Civil War, the FMLN transitioned from a guerilla movement to a political party formally recognized by the government, and has won elections in recent times).

la Verdad para El Salvador (Commission on the Truth for El Salvador), established to investigate serious acts of violence during the Civil War and recommend methods of national reconciliation, received more than 22,000 complaints.⁸¹⁹ The Commission found that 85% of the acts of violence were attributable to State agents, while approximately 5% of violent acts were attributable to the FMLN guerrillas.⁸²⁰ The violent crimes committed by both sides included extrajudicial executions, enforced disappearances, torture, kidnapping, and forcible recruitment.⁸²¹

The number of Salvadoran refugees and internally displaced persons rose to 1.5 million by 1984.⁸²² U.S. involvement through the provision of aid to the Salvadoran government exacerbated the violence of the Civil War. The United States provided six billion dollars in economic and military aid, including helicopter gunships, military advisers, direct training, and combat support.⁸²³ This U.S. intervention doubled the size of the Salvadoran military, intensifying the violence and prolonging the conflict.⁸²⁴ Ultimately, the military and guerrillas were responsible for killing 75,000 Salvadorans, leaving El Salvador in vulnerable social, economic, and political conditions that persist to this day.⁸²⁵

2. Gang Violence

Gang proliferation has been a major consequence of ongoing instability and poverty since the civil conflict.⁸²⁶ Gangs are directly linked to drug trafficking, extortion, threats, rape,

⁸¹⁹ THE COMM. ON THE TRUTH FOR EL SALVADOR, FROM MADNESS TO HOPE: THE 12-YEAR WAR IN EL SALVADOR: REPORT OF THE COMMISSION ON THE TRUTH FOR EL SALVADOR at 35 (1993).

⁸²⁰ *Id.* at 36.

⁸²¹ *Id.*

⁸²² World Peace Foundation, *El Salvador*, MASS ATROCITY ENDINGS (Aug. 7, 2015), <https://sites.tufts.edu/atrocityendings/2015/08/07/el-salvador/>.

⁸²³ Walter C. Ladwig III, *Influencing Clients in Counterinsurgency: U.S. Involvement in El Salvador's Civil War, 1979-92*, 41 INT'L SECURITY 99, 109 (2016). See also GREEN, *supra* note 827.

⁸²⁴ *Id.*

⁸²⁵ *Id.*

⁸²⁶ Jose Miguel Cruz, *Maras and the Politics of Violence in El Salvador*, in GLOBAL GANGS 123, 123 (Jennifer M. Hazen & Dennis Rodgers eds., 2014).

homicides, human smuggling, robbery, internal disappearances and displacement.⁸²⁷ El Salvador has one of the highest homicide rates in the world, at an annual rate of 60.07 per 100,000 inhabitants in 2017, and gangs are largely responsible.⁸²⁸ Gang violence also contributed to 2,929 internal disappearances in 2018.⁸²⁹

Most of the gang violence is perpetuated by the MS-13 (Mara Salvatrucha) and Barrio 18 (Eighteenth Street) gangs, which were formed in Los Angeles, California in the 1980s by youth whose families fled to the United States during the civil war.⁸³⁰ Salvadoran refugee youth grew up in neighborhoods where gang culture proliferated, and formed their own gangs. Many were rounded up for deportation by U.S immigration authorities in the late 1980's and 1990's. Thus, the rise of gang violence in El Salvador directly relates to deportation policies of the United States.⁸³¹ Specifically, after the U.S. passed the Illegal Immigration Reform and Immigrant Responsibility Act in 1995, thousands of gang members were deported to El Salvador.⁸³² In the absence of any social infrastructure to reintegrate these deportees into Salvadoran society, the MS-13 and Barrio 18 gangs resort to crime and violence, and have flourished in the unstable conditions that remained after the Salvadoran Civil War.⁸³³

The Salvadoran government responded to the gang activity in a heavy-handed way, which led to a cycle of ever-escalating violence. In 2003, the Salvadoran government instituted its *mano*

⁸²⁷ Interview with ES Police, *supra* note 814. See also Wolf, *supra* note 805, at 65; Douglas Farah & Kathryn Babineau, *The Evolution of MS-13 in El Salvador and Honduras*, 7 PRISM 58, 64 (2017).

⁸²⁸ U.S. Dep't of State, Bureau of Diplomatic Security, El Salvador 2018 Crime & Safety Report 2 (2018), <https://www.osac.gov/Pages/ContentReportDetails.aspx?cid=24052>. See also CLARE RIBANDO SEELKE, CONG. RSCH. SERV., R43616, EL SALVADOR: BACKGROUND AND U.S. RELATIONS 8 (2020), <https://fas.org/sgp/crs/row/R43616.pdf>.

⁸²⁹ Interview with ES Police, *supra* note 814.

⁸³⁰ Wolf, *supra* note 805, at 65. See also *Barrio 18*, INSIGHT CRIME (Feb. 13, 2018), <https://www.insightcrime.org/el-salvador-organized-crime-news/barrio-18-profile-2/>.

⁸³¹ Cruz, *supra* note 826, at 123.

⁸³² *Id.* at 125, 130.

⁸³³ *Id.* at 127.

dura (“iron fist”) policies, aggressive anti-gang strategies involving massive crackdowns on gang activity of suspected gang members and immediate imprisonment in harsh conditions without due process.⁸³⁴ Though intended to put an end to gang violence, the *mano dura* policies had the effect of strengthening gang networks, as gang members became more aggressive and began to order killings against government agents and the police.⁸³⁵ Gang members continue to reorganize, establish networks, manage extortions, order killings, influence elections, and seek support from other violent groups and organizations, even while imprisoned.⁸³⁶ The Salvadoran government intended to create a culture of fear among the gangs, but its repressive and aggressive policies only served to inflame gang violence in El Salvador.

Government attempts to preempt gang activity by putting gang members on the government payroll have exacerbated the problem and contributed to corruption among government officials as well. In order to reduce the gang violence and homicide rate in El Salvador, former President Mauricio Funes and former Defense Minister David Munguia Payes gave MS-13 leaders \$25 million dollars in 2013 and put notorious gang members on the government payroll.⁸³⁷ This money only served to boost the illicit financial activities of the MS-13. Additionally, the leaders of El Salvador’s two main political parties, the Republican Nationalist Alliance (ARENA) and Farabundo Marti National Liberation Front (FMLN), have negotiated with leaders of the MS-13 to intervene and influence the electoral process in El Salvador.⁸³⁸

⁸³⁴ Mo Hume, *Mano Dura: El Salvador Responds to Gangs*, 17 DEV. PRAC. 739, 739 (2007) (explaining how gang members can be arrested and immediately imprisoned ‘simply for having gang-related tattoos or flashing signs.)

⁸³⁵ Cruz, *supra* note 826, at 136.

⁸³⁶ *Id.* at 136. See also Sonja Wolf, *Introduction*, in THE POLITICS OF GANG CONTROL IN EL SALVADOR 2 (2017).

⁸³⁷ Farah, *supra* note 827, at 61.

⁸³⁸ Interior Minister Aristides Valencia offered the MS-13 leaders \$10 million “to obtain their support during the second round of the 2014 presidential elections.” *Id.* at 62.

3. Economic Factors

El Salvador has one of the lowest GDP growth rates in the Central American region.⁸³⁹ In addition to low GDP growth, the country has public debt that is over 70 percent of its GDP,⁸⁴⁰ and a Gini coefficient⁸⁴¹ of 38.6 percent as of 2018.⁸⁴² As a result, there is little hope for nationwide economic improvement in the foreseeable future, and this stagnation has led to El Salvador becoming one of the countries with the highest economic dependency on migrant remittances.⁸⁴³ In 2018, El Salvador received nearly \$5.5 billion in remittances from Salvadorans abroad, equivalent to about 20 percent of the nation's GDP.⁸⁴⁴ Remittances constitute such a large portion of Salvadoran income that they actually caused a drop in the poverty rate from 39 percent in 2007 to 31 percent in 2016.⁸⁴⁵

Because El Salvador greatly benefits from remittances, the government has little incentive to stop emigration, which in turn reduces any incentive to mitigate the root causes of emigration. Additionally, family members of migrants receiving remittances are often targeted by gangs who know they have money coming from abroad; those family members are then motivated to leave El Salvador and join their relatives abroad.

⁸³⁹ *The World Bank in El Salvador*, THE WORLD BANK, <https://www.worldbank.org/en/country/elsalvador/overview>.

⁸⁴⁰ *Id.*

⁸⁴¹ *Gini Index*, UNITED STATES CENSUS BUREAU, <https://www.census.gov/topics/income-poverty/income-inequality/about/metrics/gini-index.html> (last visited Nov. 29, 2020) (“The Gini index is a summary measure of income inequality. [...] The Gini coefficient ranges from 0 (0%), indicating perfect equality (where everyone receives an equal share), to 1 (100%), perfect inequality (where only one recipient receives all the income)).

⁸⁴² *Gini Index (World Bank Estimate)*, THE WORLD BANK, <https://data.worldbank.org/indicator/SI.POV.GINI?locations=SV>.

⁸⁴³ Mary Kate Naatus, *Remittances and Poverty: A Complex Relationship, Evidence from El Salvador*, 4 ADVANCES MGMT. & APPLIED ECON. 1, 1 (2014).

⁸⁴⁴ Kirk Semple, ‘*It Is Our Fault*’: *El Salvador’s President Takes Blame for Migrant Deaths in Rio Grande*, N.Y. TIMES (July 1, 2019), <https://www.nytimes.com/2019/07/01/world/americas/nayib-bukele-migrant-deaths.html>.

⁸⁴⁵ *The World Bank in El Salvador*, *supra* note 839.

B. Salvadoran Law

El Salvador is a member of both the Organization of American States and the United Nations.⁸⁴⁶ However, unlike the other Northern Triangle countries, the government has not ratified any treaties regarding enforced disappearances, specifically the CPED and the CFPD.

The only treaty that El Salvador has both signed and ratified that is relevant to enforced disappearances is the American Convention on Human Rights.⁸⁴⁷ As a result, El Salvador is bound to respect the decisions made by the Inter-American Court of Human Rights, such as its ruling in *Velasquez-Rodriguez v. Honduras* described above.⁸⁴⁸

Moreover, El Salvador has ratified the CMW. But this multilateral treaty, governing the protection of migrant workers and families, does not specifically address the issue of migrant disappearances.⁸⁴⁹ It is important to note, however, that Mexico has also ratified this convention.⁸⁵⁰ Accordingly, under Article 92(1) of the Convention, El Salvador can engage with Mexico to address Mexico's violations against Salvadoran migrants in Mexico.⁸⁵¹ El Salvador may also submit any dispute over migrant issues with Mexico to arbitration.⁸⁵²

Currently, El Salvador does not have a domestic law that directly addresses the issue of migrant disappearances. However, both the Salvadoran Constitution, *Ley Especial para la Protección y Desarrollo de la Persona Migrante Salvadoreña y su Familia* (Special Law for the

⁸⁴⁶ U.N. CHARTER art. 101, ratified by El Salvador in 1945. *See also* OAS CHARTER art. 139, ratified by El Salvador in 1950.

⁸⁴⁷ Organization of American States, American Convention on Human Rights, Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, ratified by El Salvador in 1978.

⁸⁴⁸ *Velasquez-Rodriguez v. Honduras*, *supra* note 51.

⁸⁴⁹ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, *opened for signature* Dec. 18, 1990, 30 I.L.M. 1517 (entered into force July 1, 2003), ratified by El Salvador in 2003 [hereinafter *CMW*].

⁸⁵⁰ *Id.*, ratified by Mexico in 1999.

⁸⁵¹ *Id.* at art. 92(1).

⁸⁵² *Id.* Additionally, if the State Parties are unable to agree on the outcome within six months of an arbitration decision, El Salvador has the prerogative to refer the dispute to the International Court of Justice. *See* Statute of the International Court of Justice, art. 37 (The International Court of Justice is competent to entertain a dispute by virtue of a jurisdictional clause.)

Protection and Development of Salvadoran Migrants and their Families) (“Special Law for Migrants”), and the Salvadoran Penal Code offer some protections to migrants and their families.

1. Constitution

Similar to the other Northern Triangle countries, the Salvadoran Constitution guarantees certain rights relevant to migrants and their families, such as the right to migrate, the right to life, the right to physical and moral integrity, and the right to petition the government.⁸⁵³ Article 18 of the Constitution not only grants individuals the right to petition government authorities, but also to have the matter in their petitions resolved and to be informed of the result.⁸⁵⁴ At the same time, the Constitution requires public ministries, including the PDDH and the Office of the Attorney General, to respond to petitions and investigate violations.⁸⁵⁵

In 2014, *la Corte Suprema de Justicia* (CSJ) (Supreme Court of Justice) found constitutional support for a right to truth in articles 2 and 6 of the Salvadoran Constitution.⁸⁵⁶ According to the Court, the right to truth entails the right to know who caused the violation, the date and location in which the violation took place, how and why such violation occurred, regardless of the length of time that has passed.⁸⁵⁷ The Court extended this right to victims of violations of fundamental rights, their families, and society as a whole.⁸⁵⁸ The Court held that the right to truth requires serious, thorough, responsive, impartial, comprehensive, and systematic investigations. This holding, in conjunction with the constitutional provisions listed above, provides the families of disappeared

⁸⁵³ CONSTITUCIÓN DE LA REPUBLICA DE EL SALVADOR [E.S CONSTITUTION] arts. 2, 5, and 18, Dec. 12, 1983, available at <https://pdba.georgetown.edu/Constitutions/ElSal/constitucion.pdf>.

⁸⁵⁴ *Id.* art. 18.

⁸⁵⁵ *Id.* at arts. 193 and 194.

⁸⁵⁶ Sala de lo Constitucional de la CSJ [Constitutional Chamber of the CSJ], 665-2010, Feb. 5, 2014 (El. Sal.) (deciding on a case brought against the Attorney General of the Republic for failing to continue the investigation of an alleged collective homicide which occurred in 1981 in the department of San Vicente in violation of constitutional rights).

⁸⁵⁷ *Id.* at 7.

⁸⁵⁸ *Id.*

migrants a constitutional right to petition government agencies for information, and to demand investigations and reports.

2. Special Law for Migrants

In 2011, the Salvadoran government passed the Special Law for Migrants to protect the rights of Salvadoran migrants and their families.⁸⁵⁹ The law calls for “the design, formulation, evaluation, and monitoring of comprehensive public policies and the inter-institutional and cross-sectoral coordination of the State and civil society.”⁸⁶⁰ Additionally, Article 2(c) of the Special Law for Migrants guarantees extraterritorial protection, which means that the government’s obligations extend to Salvadoran migrants in transit and destination countries.⁸⁶¹

Among the provisions relevant to the issue of migrant disappearances, Article 6 establishes the *Consejo Nacional Para la Protección y Desarrollo de la Persona Migrante y su Familia* (National Council for the Protection and Development of the Migrant Person and Family) (“CONMIGRANTES”).⁸⁶² Article 10 enumerates CONMIGRANTES’ obligations, stating that it must:

- coordinate efforts and activities that benefit Salvadoran migrants, with the consulates of the Republic and with public and private institutions, inside and outside of the country;⁸⁶³
- create the necessary technical units to assist Salvadorans migrants and their families within the national territory, and when deemed appropriate, in coordination with the Ministry of Foreign Affairs, may do so abroad;⁸⁶⁴ and

⁸⁵⁹ Ley Especial Para la Protección y Desarrollo de la Persona Migrante Salvadoreña y su Familia [Special Law for the Protection and Development of Salvadoran Migrants and their families] Decreto [Decree] 655, Diario Oficial [D.O] No. 74, Tomo [Vol.] 391, Apr. 14, 2011 (El Sal.) [hereinafter Special Law for Migrants].

⁸⁶⁰ *Id.* art. 1.

⁸⁶¹ *Id.* art. 2(c).

⁸⁶² *Id.* art. 6.

⁸⁶³ *Id.* art. 10(m).

⁸⁶⁴ *Id.* art. 10(j).

- prepare, propose, channel and verify compliance with “policies integral to the protection and development of Salvadoran migrants and their families [. . . and] the implementation of a Strategic Plan.”⁸⁶⁵

The above Strategic Plan includes the Humanitarian Assistance and Protection Program,⁸⁶⁶ under which CONMIGRANTES is specifically tasked with facilitating the search for disappeared persons and the repatriation of remains.⁸⁶⁷ Additionally, Article 29 of the Special Law for Migrants creates a fund to help families pay “the costs of repatriation of Salvadoran migrants that have died abroad.”⁸⁶⁸

3. Penal Code

Similar to the other Northern Triangle countries, El Salvador’s Penal Code criminalizes deprivation of liberty, kidnapping and extortion, all of which are crimes that migrants face on their journeys.⁸⁶⁹ Article 364 of the Penal Code also criminalizes enforced disappearances, which it defines as occurring when a public official detains someone and refuses to disclose his or her whereabouts.⁸⁷⁰ However, the government agencies interpret “public officials” to mean Salvadoran public officials.⁸⁷¹ For this reason, the Salvadoran government does not view a migrant disappearance as an enforced disappearance. Instead, the National Civil Police and the Office of the Attorney General have investigated and prosecuted migrant disappearances as human trafficking. Article 367(A) of the Penal Code criminalizes human trafficking and the harm or death

⁸⁶⁵ *Id.* art. 10(a).

⁸⁶⁶ *Id.* art. 26.

⁸⁶⁷ *Id.* art. 27.

⁸⁶⁸ *Id.* art. 29.

⁸⁶⁹ CÓDIGO PENAL [CÓD. PEN.] [PENAL CODE] (El Sal.), available at https://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/GTM_codigo_penal.pdf.

⁸⁷⁰ *Id.* art. 364.

⁸⁷¹ Interview with Ministry of Foreign Affairs, Representatives from the Ministry, (Jan. 23, 2019) [*Interview with Ministry of Foreign Affairs*]; Interview with ES Police, *supra* note 814.

that can result, and imposes a prison sentence of four to eight years.⁸⁷² Police and prosecutors have used this provision to prosecute coyotes who assisted migrants in traveling across national borders and then disappeared.⁸⁷³

4. Definitions

In the absence of a clear definition of “disappearance” under Salvadoran law, the government has adopted two different terms: “disappeared” and “not located.” The term “disappeared” migrant is used to describe someone who has lost all contact with the family, whose whereabouts are unknown and who may have been victim of a crime in transit or in the destination country.⁸⁷⁴ The Salvadoran government has an obligation to search for disappeared migrants and coordinate with the country in which disappearances are suspected to have occurred in order to conduct a thorough investigation and, if necessary, prosecute those responsible.⁸⁷⁵ On the other hand, “not located” is a generic or catch all term for all Salvadoran migrants who are missing that does not impose any obligation on the government.⁸⁷⁶ Civil society has adopted the term “disappeared” and strongly suggests eliminating the term “not located” so that the government cannot evade its obligations to protect the rights of its nationals abroad.⁸⁷⁷

C. Efforts to Address Migrant Disappearances

El Salvador’s efforts to address this issue have concentrated on the search for disappeared migrants and the identification and repatriation of remains along the migration route. The Ministry of Foreign Affairs searches for Salvadoran migrants through its consular network. The Salvadoran

⁸⁷² CÓD. PEN., *supra* note 869, at art. 367(A).

⁸⁷³ Interview with ES Police, *supra* note 814.

⁸⁷⁴ E-mail from Claudia Interiano, Attorney, Fundación para la Justicia y el Estado Democrático de Derecho to Adela Perez-Franco, Student Attorney, Boston University School of Law International Human Rights Clinic (Aug. 15, 2019, 6:03 EST) (on file with author).

⁸⁷⁵ *Id.*

⁸⁷⁶ *Id.*

⁸⁷⁷ *Id.*

police collaborate with the International Criminal Police Organization (“INTERPOL”) to alert police in other jurisdictions of a missing person. The PDDH manages a forensic data bank that helps identify and return remains to families. Despite these government efforts, civil society, particularly COFAMIDE, has taken the lead in addressing this serious problem and advocating for the victim’s families.

1. Government

a. *Ministry of Foreign Affairs*

One of the Ministry of Foreign Affairs’ primary responsibilities is to defend and promote the rights of Salvadorans abroad.⁸⁷⁸ In an effort to carry out this responsibility, the Ministry of Foreign Affairs set up a call center in 2011 with a free hotline for Salvadorans to report serious crimes and human rights violations in Mexico, the United States, and Canada.⁸⁷⁹ The Ministry also established the Office for Salvadorans Abroad, tasked with managing an institutional registry of persons missing abroad, which consists of missing persons reports filed by the families of disappeared migrants.⁸⁸⁰ As of January of 2019, the registry contained 330 cases of disappeared migrants.⁸⁸¹

When a family goes to the Ministry of Foreign Affairs to report that they have lost contact with their relative abroad, the Ministry collects as much information as possible, which it then shares with its consular network in order to begin a search. The search process involves visiting and requesting information from detention centers, hospitals, and shelters. Between June 2017 and May 2018, the Ministry of Foreign Affairs successfully located 70 missing migrants.⁸⁸² The

⁸⁷⁸ Reglamento Interno del Órgano Ejecutivo [Internal Regulation of the Executive Branch] Decree 24, D.O No. 70, Vol. 305, Apr. 18, 1989 (El Sal.).

⁸⁷⁹ Interview with the Ministry of Foreign Affairs, *supra* note 883

⁸⁸⁰ *Id.*

⁸⁸¹ *Id.*

⁸⁸² MINISTERIO DE RELACIONES EXTERIORES, MEMORIA DE LABORES 2017-2018 155 (2018), <https://rree.gob.sv/informe/memoria-de-labores-2017-2018/>.

Ministry has also organized a series of workshops to strengthen its consulates' links with local organizations working with migrants to ensure that Salvadorans are informed and have access to basic services along their journey.⁸⁸³

b. National Civil Police

The police have also contributed to the search for disappeared migrants by working with INTERPOL.⁸⁸⁴ When families report to the police that their relative has disappeared abroad, the police are required to contact INTERPOL's National Central Bureau in El Salvador. INTERPOL uses the information provided by the family – including a photograph and personal information – to issue a yellow notice, which is a global police alert to help locate a missing person.⁸⁸⁵ The yellow notice is published in INTERPOL's database and alerts police in all INTERPOL member countries including Honduras, Guatemala, Mexico and the United States.⁸⁸⁶ If a yellow notice is active and the particular migrant is detained, the police or immigration authorities in the foreign country should notify INTERPOL, which will then inform the police in El Salvador that the missing migrant has been found. The police are then responsible for getting in touch with the migrant's family.⁸⁸⁷

c. PDDH

As previously mentioned, PDDH, in collaboration with the Ministry of Foreign Affairs, COFAMIDE, and EAAF, established a forensic data bank to search for and identify migrants' remains.⁸⁸⁸ When a family, having lost contact with their relative for a long period of time, suspects that its missing relative may have died on the journey, COFAMIDE may direct the family to the

⁸⁸³ *Id.* at 154.

⁸⁸⁴ Interview with ES Police, *supra* note 814.

⁸⁸⁵ *Id.*

⁸⁸⁶ *Id.*

⁸⁸⁷ *Id.*

⁸⁸⁸ Interview with PDDH, *supra* note 810, at 1.

PDDH to submit a DNA sample to the forensic data bank.⁸⁸⁹ The PDDH collects DNA samples from close relatives of the disappeared migrant and interviews the family to make note of any other identifying markers such as tattoos, previous physical injuries or dental abnormalities.⁸⁹⁰ As of October 2018, PDDH has collected over 800 DNA samples with respect to 326 registered cases of disappeared migrants.⁸⁹¹

As remains are discovered along the migrant route, EAAF compares the DNA to that provided by the families.⁸⁹² If there is a match, EAAF contacts the PDDH so that it may notify the victim's family and start the repatriation process.⁸⁹³ The Ministry of Foreign Affairs may get involved to help facilitate the repatriation of the remains and provide some financial assistance to those families unable to cover the costs of repatriation, which can range from \$3,000 to \$14,000.⁸⁹⁴ The Ministry of Foreign Affairs manages the *Fondo de Actividades Especiales para Atención a los Salvadoreños y Salvadoreñas en el Exterior y para las Personas Retornadas* (Special Activities Fund for Assistance to Salvadorans Abroad and Returned Persons) (FOSALEX), which was created in 2017 to assist Salvadorans abroad and help those who have either returned or been deported to reintegrate into society.⁸⁹⁵ The fund pools resources from the sale of movable property and services rendered at embassies, consulates and the decentralized Offices for Salvadorans

⁸⁸⁹ *Id.*

⁸⁹⁰ *Id.*

⁸⁹¹ *Estadísticas*, BANCO DE DATOS FORENSES DE MIGRANTES NO LOCALIZADOS DE EL SALVADOR, <https://bancoforenseelsalvador.org/estadisticas/> (last visited Jan. 15, 2021).

⁸⁹² Interview with PDDH, *supra* note 810, at 1.

⁸⁹³ *Id.*

⁸⁹⁴ Interview with GMIES, *supra* note 9. See also Xenia González Oliva, *Familias salvadoreñas pagan hasta \$14,000 por repatriar los cuerpos de sus muertos en el extranjero*, EL DIARIO DE HOY (Jan. 3, 2019).

⁸⁹⁵ Creación del Fondo de Actividades Especiales Para la Atención a los Salvadoreños y Salvadoreñas en el Exterior y para las Personas Retornadas [Special Activities Fund for Assistance to Salvadorans Abroad and Returned Persons] Decree No. 617, D.O No. 45, Vol. 414, art. 1, June 03, 2015 (El Sal.).

Abroad.⁸⁹⁶ However, only a small number of families have received assistance from this fund for reasons explained further below.

In addition, EAAF drafts a forensics report to substantiate the identification. This report certifies to the families that the remains are in fact those of their relative.⁸⁹⁷ PDDH provides psychological support to families during the waiting period, the notification, and repatriation process.⁸⁹⁸ As of November 2019, the forensic data bank has been responsible for 46 identification and repatriations, 3 identifications of remains that are still pending repatriation, and 12 identifications of people who have been found alive.⁸⁹⁹ The majority of the repatriated remains came from the United States rather than Mexico.⁹⁰⁰

2. COFAMIDE

COFAMIDE has led the way in raising awareness of the problem of migrant disappearance and advocating for the rights of victims and their families and has contributed to the search for disappeared migrants. In addition to its work with the forensic data bank, COFAMIDE maintains its own registry of missing migrants and organizes caravans to Mexico for families to search for their relatives.⁹⁰¹ These caravans make various stops along the migration route, such as at shelters and hospitals, to distribute photographs of missing relatives in the hopes that someone will recognize them and have information on their whereabouts.⁹⁰²

⁸⁹⁶ *Id.* art. 3.

⁸⁹⁷ Interview with PDDH, *supra* note 810.

⁸⁹⁸ *Id.*

⁸⁹⁹ *Id.* See also INTERNATIONAL BAR ASSOCIATION'S HUMAN RIGHTS INSTITUTE & INSTITUTO DE DERECHOS HUMANOS DE LA UNIVERSIDAD CENTROAMERICANA DE EL SALVADOR, PARALLEL REPORT UNIVERSAL PERIODIC REVIEW OF EL SALVADOR, 34TH SESSION 8 (2019).

⁹⁰⁰ Interview with PDDH, *supra* note 810.

⁹⁰¹ ¿Que Es COFAMIDE?, COFAMIDE - COMITÉ DE FAMILIARES DE MIGRANTES FALLECIDOS Y DESAPARECIDOS DE EL SALVADOR (Aug. 18, 2019), <http://cofamide.blogspot.com/p/about-cofamide.html>.

⁹⁰² *Id.*

COFAMIDE supports families at each stage, accompanying families in reporting their missing relative to various government agencies and the Mexican embassy in San Salvador.⁹⁰³ In coordination with FJEDD and other family collectives, COFAMIDE has pushed for the creation and use of transnational protocols for the search and identification of disappeared migrants as well as transnational mechanisms like the MAE that ensure that victims and their families have access to justice.⁹⁰⁴

D. Challenges and Gaps in Addressing Migrant Disappearances

1. Special Law for Migrants

El Salvador's Special Law for Migrants is a step in the right direction, but has significant gaps. This Law applies a broad approach to try to solve all migrant-related issues, and lacks specificity with regard to migrant disappearances. The only mention of disappearances occurs in Article 27, which calls for the search for disappeared persons.⁹⁰⁵ The Special Law for Migrants does not guarantee any meaningful rights to Salvadoran migrants or their families. Unlike the Honduran Migrant Law, which “guarantees Hondurans abroad the right to file a claim with the National Commission for Human Rights,”⁹⁰⁶ the Salvadoran law fails to provide Salvadoran migrants or their families with any similar recourse. The Special Law for Migrants does not have any specific provisions outlining options for Salvadoran migrants or their families to trigger

⁹⁰³ *Asociación Comité de Familiares de Migrantes Fallecidos y Desaparecidos del Salvador (COFAMIDE)*, PEACE INSIGHT, <https://www.peaceinsight.org/es/organisations/cofamide/?location=&theme>.

⁹⁰⁴ Gabriella Citroni, *Los primeros intentos en México y Centroamérica de dar respuesta al fenómeno de los migrantes desaparecidos o víctimas de desaparición forzada*, 970 INT'L REV. OF THE RED CROSS 16 (2017), available at <https://international-review.icrc.org/sites/default/files/905-citroni.pdf> (explaining COFAMIDE's role in establishing the Forensic Commission to investigate the massacres in Northern Mexico in the early 2010s). See also Mathieu Tourliere, *Agregaduría de la PGR en El Salvador recibe 23 denuncias por desaparición de migrantes*, PROCESO, Dec. 21, 2016, <https://www.proceso.com.mx/nacional/2016/12/21/agregaduria-de-la-pgr-en-el-salvador-recibe-23-denuncias-por-desaparicion-de-migrantes-175845.html> (noting that COFAMIDE was one of the first Salvadoran organizations to file with MAE).

⁹⁰⁵ Special Law for Migrants, *supra* note 859, at art. 27.

⁹⁰⁶ See *infra* Ch.VII(B)(2); See also Honduran Migrant Protection Law, *supra* note 407, at art. 7.

searches and investigations, and fails to establish any mechanism for families to report rights violations. As a result, the Special Law does not go far enough to protect the rights of Salvadoran migrants and their families.

Furthermore, the Special Law does not outline specific procedures for CONMIGRANTES to follow in fulfilling its mandate. Article 10 of the Law contains a list of broad obligations.⁹⁰⁷ These provisions leave much room for interpretation, however, and CONMIGRANTES has effectively avoided its obligation to search for disappeared migrants. Instead, it has focused its efforts almost exclusively on helping deported Salvadoran migrants reintegrate into society upon their return.⁹⁰⁸ Outside of CONMIGRANTES, the Special Law also fails to assign any other government agency the responsibility for implementing its provisions. Accordingly, government agencies are uncertain of their obligations with respect to this Law.

2. Reporting

The legal gaps described above, particularly the lack of a clear institutional route for reporting a disappearance, have been a source of confusion for both families and government agencies during the reporting process. Disappearances have been reported to the Ministry of Foreign Affairs, the National Civil Police, the PDDH and the Office of the Attorney General. Families often do not know where they should go to report a disappearance. Moreover, when families try to report a disappearance and initiate an investigation, government agencies often claim they lack the authority, and will direct the family to another agency, where the response is the same. Families refer to this phenomenon as “the ping-pong effect.”⁹⁰⁹ As government agencies deflect responsibility to other agencies, families are left with neither assistance nor answers.

⁹⁰⁷ Special Law for Migrants, *supra* note 859, at art. 10.

⁹⁰⁸ Interview with Hector Aquiles Magana, Representative of CONMIGRANTES (Jan. 23, 2019) [*Interview with CONMIGRANTES*]

⁹⁰⁹ Interview with COFAMIDE (Jan. 23, 2019) [*Interview with COFAMIDE*].

Some civil society actors believe that COMIGRANTES should be responsible for receiving reports from the families and requesting information from other agencies in order to maintain a national registry.⁹¹⁰ However, the Executive Secretary of CONMIGRANTES claimed that, because it receives funding from the Ministry of Foreign Affairs and does not have its own budget, CONMIGRANTES does not have sufficient resources to receive reports and maintain such a registry.⁹¹¹ Although COMIGRANTES has raised awareness of the risks of irregular migration and handed out maps identifying shelters along the migration route, it has not been involved in the search for disappeared Salvadorans or otherwise in assisting their families.⁹¹²

In the absence of a centralized agency responsible for receiving reports and requesting information from other government agencies, government agencies have recognized that it is essential for them to work together, including the Ministry of Foreign Affairs, PDDH, the National Civil Police, the Office of the Attorney General, the *Instituto de Medicina Legal* (Legal Medicine Institute), and the *Direccion General de Migracion y Extranjeria* (General Directorate of Migration and Alien Affairs) to establish guidelines on how to cooperate and exchange information effectively with respect to migrant disappearances.⁹¹³

3. Search and Investigation

Although El Salvador has not ratified any treaties on enforced disappearances, it is bound by the Inter-American Court's ruling in *Velasquez-Rodriguez* to investigate rights violations against its nationals abroad, including enforced disappearances.⁹¹⁴ El Salvador's efforts to uphold this obligation have been inadequate for several reasons, including lack of transnational

⁹¹⁰ Interview with GMIES, *supra* note 9.

⁹¹¹ Interview with CONMIGRANTES, *supra* note 908.

⁹¹² *Id.*

⁹¹³ Interview with ES Police, *supra* note 814.

⁹¹⁴ See discussion *intra* Ch. III(B).

cooperation, insufficient resource allocation, absence of political will, and failure to follow-up with families.

a. Transnational coordination

Inter-state and intra-state cooperation are essential to properly investigate a migrant disappearance, given its transnational nature. However, interviews with government agencies revealed limited cooperation with their counterparts in other countries.⁹¹⁵ The National Civil Police has only occasionally engaged with police in other jurisdictions when the Office of the Attorney General has opened an investigation.⁹¹⁶ Although the Office of the Attorney General is responsible for leading crime investigations in collaboration with the National Civil Police,⁹¹⁷ it rarely initiates an investigation into a migrant disappearance for two reasons. First, families are frequently afraid to go to the Office of the Attorney General or the National Civil Police because the coyotes who moved their relative across borders often threaten to kill them if they file a complaint.⁹¹⁸ Second, the government's position is that the duty to investigate and prosecute crimes against its nationals lies primarily with the state in which the crimes occurred.⁹¹⁹ It claims that those countries are better situated to conduct a thorough investigation, given their access and ability to collect relevant information.⁹²⁰ Furthermore, when a family goes to the Office of the Attorney General to report a disappearance, the family is directed to the Human Trafficking Office, which, in collaboration with the National Civil Police, investigates the disappearance as a case of human trafficking.⁹²¹

⁹¹⁵ Interview with ES Police, *supra* note 814; Interview with Ministry of Foreign Affairs, *supra* note 871; Interview with PDDH, *supra* note 810; Interview with CONMIGRANTES, *supra* note 908.

⁹¹⁶ Interview with the ES Police, *Id.*

⁹¹⁷ E.S CONSTITUTION, *supra* note 853, at Art. 193.

⁹¹⁸ Interview with GMIES, *supra* note 9.

⁹¹⁹ Interview with ES Police, *supra* note 814. *See also* Interview with Ministry of Foreign Affairs, *supra* note 871.

⁹²⁰ Interview with Ministry of Foreign Affairs, *Id.*

⁹²¹ Interview with ES Police, *supra* note 814.

Though the Ministry of Foreign Affairs does not directly investigate migrant disappearances, it can provide useful information to government agencies in other states to advance an investigation. As previously noted, the Ministry of Foreign Affairs' efforts have focused primarily on the search for disappeared migrants through its consular network. As a result, the consulates bear the responsibility of working with local authorities when conducting a search. The Ministry of Foreign Affairs explained that Mexican authorities are required to notify the consulate when a Salvadoran national has been detained,⁹²² however, the Ministry claims that Mexican authorities often do not comply with this obligation.⁹²³ The families assert that the Salvadoran consulates need to play a more proactive role in searching for disappeared migrants. Instead of waiting for notification from Mexican authorities, the consulates should regularly request information and initiate their own visits to detention centers, prisons, hospitals and shelters.⁹²⁴

Adequate access to the MAE is similarly limited. In December 2016, families of victims filed 23 complaints through the MAE at the Mexican embassy in San Salvador.⁹²⁵ Accessing the MAE in El Salvador requires travel to the Mexican embassy, which for many families from remote areas in El Salvador is not always feasible. The small number of complaints filed may be the result of inadequate access to the MAE, due to difficulty in physically accessing the Mexican embassy and lack of awareness of the MAE's existence as an option to report a disappearance that likely occurred abroad. It is unclear whether the MAE has produced any positive results for families in

⁹²² See Interview with Ministry of Foreign Affairs, *supra* note 871. See also Vienna Convention on Consular Relations art. 36, Apr. 24, 1963, 596 U.N.T.S. 26 (Ratified by Mexico on 16 June 1965 and acceded to by El Salvador on 19 January 1973).

⁹²³ See Interview with Ministry of Foreign Affairs, *Id.*

⁹²⁴ Interview with COFAMIDE, *supra* note 909.

⁹²⁵ See *Mecanismo de Apoyo Exterior recibe las primeras denuncias sobre centroamericanos desaparecidos en México*, MACARTHUR FOUNDATION (Feb. 13, 2017), <https://www.macfound.org/press/country/3/mecanismo-de-apoyo-exterior-recibe-las-primeras-denuncias-sobre-centroamericanos-desaparecidos-en-mexico/>.

El Salvador, and such information may not be publicly available due to the lack of reporting on the part of MAE officials and Salvadoran authorities. The lack of coordination, political will, and reporting contribute to a lack of awareness of the MAE as a viable option for Salvadoran families of disappeared migrants.

b. Limited Resources

Another issue raised in interviews with government agencies was the problem of limited resources. CONMIGRANTES, in particular, has requested its own budget.⁹²⁶ The Executive Secretary of CONMIGRANTES claims that with more funds it could expand its focus areas to include migrant disappearances, rather than working exclusively with deported Salvadorans. Despite its relatively small budget, PDDH's work with the forensic data bank and its provision of psychological support to families has significantly contributed to El Salvador's efforts to provide victims' families with answers and necessary assistance.⁹²⁷ In fact, GMIES stated that the government does not fund the forensic data bank. The bank is funded by external donors (e.g. EAAF).⁹²⁸ The government's underfunding is yet another problem indicating the government's lack of commitment to migrants and their families.

c. Lack of Political Will

Some civil society actors claim that the government has demonstrated no real interest in searching for disappeared migrants, investigating the circumstances surrounding their disappearances, prosecuting those responsible, or providing any reparations to the victims or their families.⁹²⁹ The Office of the Attorney General, which is responsible for leading investigations, in collaboration with the National Civil Police, argues that it lacks the jurisdiction to investigate and

⁹²⁶ Interview with CONMIGRANTES, *supra* note 908.

⁹²⁷ *Id.*

⁹²⁸ *Id.*

⁹²⁹ *Id.*

prosecute crimes committed against its nationals abroad.⁹³⁰ However, Article 9 of the Salvadoran Penal Code confers jurisdiction on the Salvadoran government over acts committed abroad by foreigners that violate the rights of Salvadoran nationals.⁹³¹

The Salvadoran government further contends that the internal disappearances crisis it is dealing with has a higher priority than external disappearances. In 2018, the National Civil Police received over 2,900 reports of disappearances within the country's territory. The government believes that this presents a more pressing issue requiring more attention and resources than migrant disappearances abroad. Furthermore, internal disappearances are easier to investigate because they occur within the territory of El Salvador.⁹³²

d. Follow-up with Families

Civil society actors have called on the government to follow up with families through periodic updates on the status of their cases.⁹³³ However, the families contend that the government has failed to keep families informed and involved in the process.⁹³⁴ When families have approached the Ministry of Foreign Affairs for information, the Ministry routinely informs them that the process is slow and that they may not receive answers for a long time.⁹³⁵ The families express frustration with the government's lack of follow-up. The National Civil Police acknowledged that this was an important area for improvement.⁹³⁶ Sometimes families hear from their missing relative and forget to notify the government agencies. Thus, by staying in contact with the families, government agencies can also benefit from any new information the families may have.

⁹³⁰ Interview with ES Police, *supra* note 814. *See also* Interview with GMIES, *supra* note 9.

⁹³¹ CÓD. PEN, *supra* note 869, at art. 9.

⁹³² Interview with ES Police, *supra* note 814.

⁹³³ E.S CONSTITUTION, *supra* note 853, at art. 18 (recognizing an individual's right to petition the government and be informed of the result). *See also* Interview with CONMIGRANTES, *supra* note 908.

⁹³⁴ Interview with CONMIGRANTES, *Id.*

⁹³⁵ Interview with Ministry of Foreign Affairs, *supra* note 871.

⁹³⁶ Interview with ES Police, *supra* note 814.

4. Reparations

At this time, reparations for the families of victims are limited to the costs of repatriation of migrants' remains. FOSALEX is the only official Salvadoran fund that provides money to help with these costs.⁹³⁷ Most families cannot afford to repatriate their relative's remains on their own,⁹³⁸ but FOSALEX itself has limited funds and cannot pay repatriation costs for all who need it.⁹³⁹ As a result, the Ministry of Foreign Affairs has implemented a process for determining which families are the most in need. The procedure involves taking inventory of individual surviving family members' net worth to determine whether a family as a whole is able to pay for repatriation without government assistance.⁹⁴⁰ This includes calculating the value of their home and other assets; the government has informed families that they could sell homes and assets to pay for the transportation of remains.⁹⁴¹ Thus, families are forced to decide between being homeless and having their relative's remains returned to them.⁹⁴² This is an insulting and demoralizing procedure that angers family members who, at the end of a traumatizing and slow process, are rarely even granted the funds to make it possible to repatriate their relative's remains.⁹⁴³

E. Conclusions and Recommendations for El Salvador

1. El Salvador must ratify the International Convention on the Protection of All Persons from Enforced Disappearance and the Inter-American Convention on Forced Disappearance of Persons.

1.1. El Salvador should take steps towards ratifying the treaties on enforced disappearances and amend its domestic laws so to comply with its obligations

⁹³⁷ Interview with Ministry of Foreign Affairs, *supra* note 871.

⁹³⁸ Interview with GMIES, *supra* note 9.

⁹³⁹ *Id.*

⁹⁴⁰ Interview with PDDH, *supra* note 810.

⁹⁴¹ Interview with GMIES, *supra* note *supra* note 9.

⁹⁴² *Id.*

⁹⁴³ Interview with PDDH, *supra* note 810.

under these conventions, such as reforming its Penal Code definition of enforced disappearance.

1.2. El Salvador should take the necessary measures to exercise jurisdiction over the offence of enforced disappearance abroad when the disappeared person is one of its nationals.

1.3. El Salvador should cooperate with other States Parties in helping to prevent, punish and eliminate enforced disappearances.

2. El Salvador must create a comprehensive legal framework that guarantees and protects the rights of migrants and their families.

2.1. El Salvador should adopt clear definitions of the terms ‘disappearance’ and ‘enforced disappearance’ in its laws and in practice.

2.2. El Salvador should either amend its Special Law on Migrants or adopt a new law that adequately addresses migrant disappearances. Such law should recognize the right of the victim’s family to know the fate of their relative and impose specific obligations on government agencies to:

2.3. Develop a clear, streamlined process to be followed by families when reporting a disappearance,

2.4. Standardize the collection and centralization of information on disappeared migrants into a national registry,

2.5. Investigate the circumstances surrounding the disappearance in collaboration with the Mexican government,

2.6. Establish protocols, particularly for its consulates, when searching for disappeared migrants and identifying and repatriating their remains,

2.7. Allocate sufficient resources to address all aspects of the problem of disappearances of its nationals who disappear abroad.

3. *El Salvador must improve its institutional coordination and increase its engagement with civil society, especially COFAMIDE.*

3.1. El Salvador's government agencies, particularly PDDH, Ministry of Foreign Affairs, Office of the Attorney General and the Civil Police, should agree upon common terminology and definitions.

3.2. El Salvador's government agencies should establish joint protocols and guidelines which clearly delineate the obligations of each in addressing this issue. COFAMIDE and other civil society organizations should be invited to participate in this process.

3.3. El Salvador should include COFAMIDE as one of the civil society organization within CONMIGRANTES.

3.4. El Salvador should continue to adopt and invest in programs to support the families considering their specific needs, including psychological care and legal assistance.

4. *El Salvador should more effectively cooperate with the Mexican Government, specifically the MAE, to investigate forced disappearances of Salvadoran migrants in Mexico.*

4.1. El Salvador should work with Mexico and the other Northern Triangle countries to adopt a uniform definition of disappearance.

4.2. El Salvador should coordinate with Mexico and the other Northern Triangle countries to collect data and statistics on the phenomenon of migrant disappearances.

- 4.3. El Salvador should play an active role in investigations by coordinating with Mexico and the other Northern Triangle countries and sharing any relevant information about investigations of its disappeared nationals.
- 4.4. El Salvador should communicate and coordinate with the corresponding MAE representatives and family victims at least every six months to report on the progress of any investigation, prosecution, or repatriation of the disappearance cases it is handling.
- 4.5. El Salvador should ensure that all family members know about their rights to participate in all stages of the criminal proceedings, provide testimony, and obtain adequate reparations as part of judicial remedies. The Salvadoran government should remove the bureaucratic and legal barriers to the exercise of these rights.
- 4.6. To aid in the investigations by the MAE, El Salvador must submit each reported disappearance to the MAE either through its MAE representative or directly to the MAE, which should maintain a consolidated database together with the EAAF.
- 4.7. El Salvador should cooperate with MAE and EAAF on protocols that ensure that remains are handled with dignity, and respect the families' wishes in the form and means of repatriation of remains.
- 4.8. El Salvador must also facilitate the domestic and international travel of families so that they may participate in the investigation, criminal proceedings, and identification of remains.

5. El Salvador should take all action necessary to ensure the proper handling of migrant remains in a respectful and dignified manner.

5.1. Salvadoran authorities must guarantee the chain of custody for human remains and dispose of unclaimed and unidentified remains in a dignified and respectful manner.

5.2. Salvadoran authorities must ensure that access to reparations is not contingent upon finding of remains or declaration of death.

5.3. Salvadoran authorities must also incorporate international forensic protocols for human rights investigations into its domestic criminal procedures.

6. *The Salvadoran government should take all action necessary to fully address the issues that cause Salvadorans to emigrate, while also recognizing the right to migrate.*

6.1. Everyone has the right to migrate and to remain home. Both these rights are recognized in human rights law, including the American Declaration and American Convention on Human Rights, and are not only guaranteed to the wealthy. States of the Americas should not undermine these rights or discourage migration, but facilitate them by refusing to agree to policies that deter freedom of movement. El Salvador, like the other Northern Triangle countries, must also guarantee economic and social development and protection against violence so that their citizens are not forced to migrate to live in safety and dignity.

6.2. As such, the Salvadoran government must address the root causes that propel migrants to leave Honduras in the first place. To accomplish this, the Salvadoran government must be serious about removing corrupt figures from office and reduce the high rate of impunity.

6.3. El Salvador must implement reforms that tackle the issue of poverty, which has led to the rise of gangs, violence, and insecurity. Like the other Northern Triangle

countries, El Salvador has received assistance from the U.S. through the Alliance for Prosperity Plan for this purpose. The Salvadoran government should refuse to condition this or other foreign aid on undermining the protection of its citizens, and should refuse austerity measures from the World Bank and IMF that limit its ability to tackle the serious problems that are forcing its citizens to migrate.

IX. CONCLUSION

Under international and regional law, Mexico, the Northern Triangle countries and the United States must coordinate and communicate to ensure the proper functioning of the MAE in order to effectively and promptly respond to migrant disappearances. Families of the disappeared are urgently calling for an effective regional solution to improve the search for their loved ones, bring those responsible for enforced disappearances to justice, and ensure that migrant remains are handled with care in a respectful and dignified manner. All state and non-state actors involved in the functioning of the MAE should have the families' concerns in mind at all times. Families seek closure. They want to know what happened to their relatives, and hope to locate them. Many families lost their breadwinner without knowing anything about their fate. Many have spent years agonizing about what happened to their relative. Many have suffered from debilitating mental health from the trauma of not knowing their loved ones' whereabouts. Many have died without ever knowing what happened to their disappeared relative. All relevant states must take migrant disappearances seriously, and use all reasonable efforts to ensure the effective and prompt processing of cases within their own borders, and coordinate with other states through the MAE to maximize search efforts. They are bound to these obligations under international, regional and, for the most part, their own domestic laws.

The MAE has the potential to be a successful transnational mechanism and a model for other regions to adopt in responding to migrant disappearances. To ensure the proper functioning of the MAE and maximize its benefits, all five states must cooperate thoroughly with one another and with the MAE, as well as the Mexican consulates, embassies, and MAE representatives and staff assigned to their state. With sufficient political will and coordination, the MAE can bring

answers, uncover the fate of the disappeared, and offer real possibility for the families to find truth and justice.

While working closely with the MAE, all five states must implement national mechanisms that: provide clear routes for reporting a disappearance and proper access to these routes; prompt and effective investigations; coordination among different levels of government; an appropriate process for handling remains in a respectful and dignified manner; frequent and consistent follow up with families; proper training of judges, prosecutors, and law enforcement; and measures to eradicate impunity. Moreover, the five states must effectively communicate with each other, the corresponding MAE representatives, and the MAE itself. All five states must coordinate on a regular basis to ensure robust search, rescue, identification and repatriation of victims or their remains. States must do much, much more than they are currently doing to ensure that the families of thousands of disappeared migrants across the region receive answers, support and reparations, as they are required to do under international, regional, and their own domestic laws.

APPENDIX I: INTERVIEW LIST

Mexico Interviews (October 2015)

1. Government Meeting in Saltillo, Mexico
2. Fray Juan de Larios Diocese Centre for Human Rights
3. Sister Leticia Gutierrez, Missionary at the Scalabrinian Mission for Migrants and Refugees
4. Tirza and Comité de Familiares de Migrantes Desaparecidos (COFAMIPRO)
5. Colectivo Ustedes Somos Nostros

Honduras Interviews (April 2017)

1. Casa Alianza
2. Comité de Familiares de Migrantes Desaparecidos (COFAMIPRO)
3. Equipo de Reflexión, Investigación, y Comunicación (ERIC)
4. Human Rights Watch (HRW)
5. Comisionado Nacional de Derechos Humanos (CONADEH)
6. International Committee of the Red Cross (ICRC)
7. Interview with Director of the Observatorio de la Violencia, Universidad Nacional de Honduras
8. United Nations High Commissioner for Refugees (UNHCR)
9. Foro Nacional para las Migraciones en Honduras (FONAMIH)
10. Scalabrini Sisters
11. Centro Internacional para los Derechos Humanos de los Migrantes (CIDEHUM)
12. Comité de Familiares de Migrantes del Centro de Honduras (COFAMICENH)

Guatemala Interviews (November 2017)

1. International Committee of the Red Cross (ICRC)
2. Doña Lucia Interview in small indigenous village outside of Quetzaltenango, Guatemala
3. Equipo de Estudios Comunitarios y Acción Psicosocial (ECAP)
4. Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD)
5. International Organization for Migration (IOM)
6. Mesa Nacional para las Migraciones en Guatemala (MENAMIG)
7. Public Ministry of Guatemala
8. Procurador de los Derechos Humanos (PDH)
9. Family Interviews

El Salvador (January 2019)

1. Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD)
2. COMCAVIS TRANS
3. Consejo Nacional para la Protección y Desarrollo de la Persona Migrante y su Familia (CONMIGRANTES)
4. Grupo Monitoreo Independiente
5. International Committee of the Red Cross (ICRC)
6. Ministry of Foreign Relations of El Salvador
7. Interview with Law Enforcement
8. Interview with Coordinator, Departamento de Atención al Migrante y Desplazamiento Forzado, Procuraduría para la Defensa de Derechos Humanos
9. Family Interviews