

GENERAL ALLEGATION TO THE UNITED NATIONS
WORKING GROUP ON ENFORCED OR INVOLUNTARY
DISAPPEARANCES

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Request for Hearing at the WGEID session of February, 2021

Prepared and co-authored by the Boston University International Human Rights Law Clinic (IHRC) and the Fundacion para la Justicia y el Estado Democratico de Derecho (FJEDD)

Contacts:

Boston University Asylum & Human Rights Program <u>Professor Susan M. Akram</u> , Supervising Attorney <u>Mariem Marquetti</u> , Law Student	Fundacion para la Justicia
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Boston University School of Law
International Human Rights Clinic
765 Commonwealth Avenue
Boston, MA 02215
617-353-3131

<http://www.bu.edu/law/central/jd/programs/clinics/international-human-rights/>

INTRODUCTION

1. This General Allegation concerns the systemic failure of the countries of Central America and Mexico to investigate thousands of disappearances of migrants; provide information to their families; prosecute both government and third party actors responsible; preserve remains and forensics data; respectfully repatriate remains and provide reparations to the families. As a single, tragic example of systemic failures, last year and this year mark the tenth anniversary of the discovery of mass graves of migrants in San Fernando, Tamaulipas, Mexico. To date, none of the families whose loved ones were identified in the graves has received answers, the remains of their relatives, or reparations for the harm they have suffered.

2. This General Allegation is made on behalf of the BU IHRC (and FJEDD) to highlight the systemic patterns of violations both at the regional level and individually by Mexico, Honduras, Guatemala, El Salvador, and the United States. The focus of this communication is on Mexico and the Northern Triangle states, where the IHRC has conducted extensive fieldwork and written a comprehensive report detailing the findings from its research and fieldwork.¹ The United States shares responsibility for migrant disappearances in the region, and as such, this submission refers to all five when discussing common violations. However, the published report does not include research and fieldwork specific to the United States; a report on United States' violations of international law as it pertains to migrant disappearances is forthcoming and will be provided to the WGEID at a later date.

3. In 2015, in response to pressure from civil society, the Mexican government established the *Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación* (Mechanism for Mexican Foreign Support of Search and Investigation) (MAE).² The MAE was established under Mexico's General Law of Victims and the International Convention for the Protection of All Persons from Enforced Disappearances (ICPED), which includes: (1) the right to adequate access to justice; (2) the right to the truth; (3) the right to effective and prompt investigations; (4) the right to be informed; and (5) the right to reparations.

4. The MAE was designed to guarantee access to truth and justice to families of disappeared migrants from their countries of origin.³ The Mechanism promised to facilitate the investigation process for disappearances by utilizing Mexican embassies and consulates.⁴ While the creation of the MAE is a step in the right direction, substantial delays, lack of political will, lack of accessibility, and lack of transnational coordination have rendered the system ineffective.

5. Under international law, Mexico, Honduras, Guatemala, El Salvador, and the United States must engage in effective regional cooperation to ensure that the existing regional Mechanism functions as it was intended.

¹ BOSTON UNIVERSITY INTERNATIONAL HUMAN RIGHTS CLINIC, FUNDACION PARA LA JUSTICIA Y EL ESTADO DEMOCRATICO DE DERECHO, PEACE BRIGADES INTERNATIONAL, [DISAPPEARED MIGRANTS FROM CENTRAL AMERICA: TRANSNATIONAL RESPONSIBILITY, THE SEARCH FOR ANSWERS AND LEGAL LACUNAE](#) (2020) [hereinafter *DISAPPEARED MIGRANTS FROM CENTRAL AMERICA*],

² 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 [hereinafter Acuerdo A/117/15].

³ COLECTIVO VS. LA IMPUNIDAD, FISCALOMETRO (Oct. 2020), at 56. https://www.fundacionjusticia.org/wp-content/uploads/2020/11/FISCALO%CC%81METRO-2_compressed.pdf [hereinafter *Fiscalometro*].

⁴ *Id.*

7. This submission highlights the findings of the IHRC’s report, focusing on the urgent need to fully implement the MAE and ensure that all states in the region effectuate the transnational responsibility set up by the MAE.⁵

THE CRISIS OF CENTRAL AMERICAN MIGRANT DISAPPEARANCES

8. Despite significant efforts from civil society and family collectives in the past decade, the crisis of migrant disappearances is only becoming more acute. The total number of disappearances is unknown due to the lack of data-gathering coordination in the region, coupled with the already irregular nature of migration and inadequate reporting processes.⁶ However, the Movimiento Migrante Mesoamericano reported that from 2006 to 2016, between 72,000 and 120,000 migrants from Mexico and Central America have disappeared in Mexico.⁷ Mexico’s National Commission for the Search of Persons of the Ministry of Governance [Secretaría de Gobernación] reported that 147,033 persons were reported disappeared since 1964. Of these 147,033 persons, 85,396 have been found to date, while 61,637 remain disappeared in Mexico.⁸ From 2014 to 2019 alone, 32,322 disappearances were reported in Mexico.⁹ Within only five months in 2019, 741 Honduran migrants were reported as having disappeared.¹⁰

9. The number of *enforced* disappearances is less clear. An enforced disappearance occurs when there is: (1) a deprivation of liberty against the will of the person; (2) with *government officials* involved, at least by acquiescence; and (3) a refusal by government officials to acknowledge the deprivation of liberty or concealment of the fate or whereabouts of the disappeared person.¹¹ While there is no exact number available, the outstanding cases reported by Mexico’s National Prosecutor Office [Fiscalía General de la República] (FGR) annual reports and by the Working Group on Enforced or Involuntary Disappearances (WGEID) 2019 report reveal the alarming rate of enforced disappearances in the region. In 2019 alone, 1,363 cases of enforced disappearances had been reported in Mexico, 1,307 of which are pending. Of the 1,307 pending cases: only 365 investigations were initiated, where eight persons were found alive and ten deceased.¹² At the end of its six-month period

⁵ IHRC teams traveled to Mexico, Guatemala, Honduras, and El Salvador to interview family collectives, non-governmental organizations supporting the families, and state authorities. In its fieldwork, the IHRC met with families and family collectives such as COFAMIDE in El Salvador and COFAMIPRO in Honduras. Field interviews included the International Committee of the Red Cross, Human Rights Watch, the Scalabrinian Sisters, the Missing Migrants Project, and UNHCR. The IHRC partnered with the Fundación para la Justicia y el Estado Democrático de Derecho (“FJEDD”) and Peace Brigades International (PBI) to conduct field interviews.

⁶ *DISAPPEARED MIGRANTS FROM CENTRAL AMERICA*, *supra* note 1, citing *Central American Migration*, MOVIMIENTO MIGRANTE MESOAMERICANO (July 13, 2016), <https://movimientomigrantemesoamericano.org/2016/07/13/central-american-migration/>.

⁷ *Id.*

⁸ Ivan E. Saldaña, *Hay 61 mil 637 desaparecidos; suman 5 mil 184 casos en lo que va del sexenio*, EXCELSIOR (Jan. 1, 2020), <http://www.excelsior.com.mx/nacional/hay-61-mil-637-desaparecidos-suman-5-mil-184-casos-en-lo-que-va-del-sexenio/1356602>.

⁹ *Id.*

¹⁰ *Honduras registra 741 migrantes desaparecidos, 18 % de ellos mujeres*, DEPARTAMENTO 19 (Aug. 30, 2019), <http://departamento19.hn/honduras-registra-741-migrantes-desaparecidos-18-de-ellos-mujeres/>. *Honduras registra 741 migrantes desaparecidos, 18% mujeres*, PROCESO DIGITAL (Aug. 30, 2019), <https://proceso.hn/7-0-blanqueada-y-barrida-de-bravos-que-pasan-a-serie-campeonato/>.

¹¹ International Convention for the Protection of all Persons from Enforced Disappearance, Dec. 23, 2010, 2716 U.N.T.S. 3, at art. 2 [hereinafter ICPED]. See also MANDATE, UNITED NATIONS WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES, <https://www.ohchr.org/EN/Issues/Disappearances/Pages/DisappearancesIndex.aspx>.

¹² INFORME ANNUAL DE ACTIVIDADES DE LA FISCALIA ESPECIALIZADA EN MATERIA DE DERECHOS HUMANOS, FISCALIA GENERAL DE LA REPUBLICA (2019).

under review in 2019, the WGEID itself reported 5,668 outstanding cases from Mexico, Guatemala, Honduras, and El Salvador alone.¹³

10. The MAE was established by Mexico’s Attorney General’s Office [Procuraduría General de la Republica] (PGR) in 2015, as a response to civil society pressures and recommendations from the United Nations Committee Against Enforced Disappearances (CED) and the Inter-American Commission of Human Rights.¹⁴ The MAE’s main objectives are to “guarantee an effective, clear, impartial and transparent criminal justice system” accessible to Mexican citizens and foreigners submitting claims regarding crimes committed against their relatives in Mexico.¹⁵ Mexico designed the MAE to ensure that family victims have an “effective possibility of obtaining information and participating in investigations and the search for disappeared persons.”¹⁶

11. The MAE serves to advance the rights recognized in various domestic laws, but primarily Mexico’s General Law of Victims [Ley de Víctimas], which allows any person, regardless of nationality, to report crimes committed against them or a relative in Mexico, to Mexican authorities.¹⁷ The General Law of Victims incorporates several provisions of the ICPED. Under both the General Law of Victims and the ICPED, victims, including the migrant’s family, are entitled to the following: (1) the right to adequate access to justice; (2) the right to the truth; (3) the right to effective and prompt investigations; (4) the right to be informed at all stages of the investigation and/or prosecution of perpetrators; and (5) the right to reparations.

11. However, the General Law of Victims and the MAE have been deficient in practice. The MAE remains 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.”¹⁸ There is a lack of political will on the part of the Mexican Government, particularly Mexico’s Ministry of Foreign Relations [Secretaría de Relaciones Exteriores], to implement the MAE .¹⁹ Family victims often cannot access the MAE’s judicial and administrative functions and are unable to obtain a visa to travel to Mexico to access the legal rights guaranteed under the General Law of Victims. Many families are not even aware that they have this option.²⁰

¹³ Specifically, the WGEID reported 130 outstanding cases from Honduras at the beginning and end of the six-month period; 2,897 outstanding cases from Guatemala at the beginning and end of the six-month period; 371 outstanding cases from Mexico at the beginning of the six-month period, and 357 cases at the end of the period; and 2,282 outstanding cases from El Salvador at the beginning of the six-month period, and 2,284 at the end of this period. See Human Rights Council, Rep. of the Working Group on Enforced or Involuntary Disappearances, Forty-Second Session, ¶ 71, U.N. Doc. A/HRC/42/40 (July 30, 2019).

¹⁴ ACUERDO A/117/15, *supra* note 2.

¹⁵ *Id.*

¹⁶ Committee on Enforced Disappearances, CED/C/SR, 119, 120, and 121 meetings (Feb. 2-3, 2015), responding to report submitted by Mexico under art. 29, ¶ 1, of CPED (CED/C/MEX/1).

¹⁷ ACUERDO A/117/15, *supra* note 2. See also 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 [hereinafter *General Law of Victims*].

¹⁸ 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> [hereinafter *FJEDD and Trial International Report*].

¹⁹ FUNDACIÓN PARA LA JUSTICIA Y EL ESTADO DEMOCRÁTICO DE DERECHO, FISCALÓMETRO, COMO ENFRENTA NUESTRO PAIS SU IMPUNIDEMIA (Nov. 2020), https://www.fundacionjusticia.org/wp-content/uploads/2020/11/FISCALOC%CC%81METRO-2_compressed.pdf.

²⁰ FJEDD and Trial International Report, *supra* note 18, at ¶¶ 98-104.

12. Under the General Law of Victims, families may apply for a humanitarian visa to travel to Mexico and participate in investigations, criminal proceedings, or identification of remains pertaining to a relative who disappeared or was subjected to an enforced disappearance. Funds for travel may be covered by the Executive Commission for the Attention to Victims [Comision Ejecutiva de Atencion a Victimas] (“CEAV”). However, to obtain a humanitarian visa covered by 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.”²¹ Visas are not granted or covered by the CEAV if there is no benefit to the ministry.²² These bureaucratic measures create a large disparity between family victims outside of Mexico and those in Mexico, since the latter have direct access to offices in Mexico and do not need to show that their requests meet this requirement.²³ Even when visas are granted, travel expenses are not covered, making travel impossible for families who cannot afford such expenses.²⁴

13. Furthermore, the Migratory Archive of the National Institute of Migration in Mexico revealed in a meeting with FJEDD that expediting humanitarian visas was not possible due to a general “lack of regulations or willingness” by the consulates abroad “to regulate” the processing of such visas.²⁵ Instead, the families would have to arrive to Mexico and then initiate a request to change their migratory status while in Mexico, which is impossible for many of the families.²⁶ Relying on this information, in 2017, a number of families and their representatives went to the National Institute of Migration to change their migratory status, but were treated poorly and told to leave since the change was not possible.²⁷ Some of the authorities interpret humanitarian visas to apply only to direct victims, and not to their family members.²⁸

COMMON AND SYSTEMIC PATTERNS OF VIOLATIONS

14. There are a number of common and systemic patterns of violations of the ICPED and Mexico’s General Law of Victims engaged in by all of the Central American states and Mexico.

15. States systematically fail to take enforced disappearances seriously, and have put policies in place that increase migrant deaths and disappearances. Despite implementing measures such as the General Law of Victims and the MAE, Mexico persists in detention and deportation policies that exacerbate human rights violations against migrants and result in thousands disappearing.²⁹ Similarly, recent U.S. policy, including the “safe third country” agreements, have led to migrants taking more dangerous routes where they are vulnerable to enforced disappearances.³⁰ Rather than prevent enforced disappearances, the states involved exacerbate such disappearances.

16. For decades, Mexico, Honduras, Guatemala, and El Salvador have relied on their own national mechanisms to address enforced disappearances, but consistently fall short. Fears of detention, deportation, or reprisals, and a general lack of trust in state authorities prevent the families

²¹ FJEDD and Trial International Report, *supra* note 18, at ¶ 98.

²² *Id.*

²³ *Id.*

²⁴ *Id.* at ¶ 99.

²⁵ *Id.* at ¶ 101.

²⁶ *Id.*

²⁷ *Id.* at ¶ 102.

²⁸ *Id.* at ¶ 101-102.

²⁹ EL ACCESO A LA JUSTICIA PARA PERSONAS MIGRANTES EN MÉXICO: UN DERECHO QUE EXISTE SÓLO EN EL PAPEL (July 2017), at 34, <https://fundar.org.mx/mexico/pdf/Accesoalajusticia2017.pdf> [hereinafter *El Acceso a la Justicia*].

³⁰ 8 U.S.C. § 1158(a)(2)(A) (2019). *See also* James Blake, *Briefing: The fallout of US migration policies in Mexico and Central America*, THE NEW HUMANITARIAN (Feb. 11, 2020), <https://www.thenewhumanitarian.org/analysis/2020/02/11/US-Mexico-migration-Honduras-Guatemala-El-Salvador>.

from reporting an enforced disappearance. Furthermore, the five states do not have a consistent meaning of ‘disappearance’ within their territories, amongst each other, and with international law.³¹

17. Article 12 of the ICPED establishes the right of family victims to report a disappearance to competent authorities. The ICPED was also drafted on the principle that victims have the “right to justice.”³² Yet, high levels of impunity and distrust in state institutions impede family victims from reporting a disappearance in the first place. Moreover, vulnerable communities, such as migrants, indigenous peoples, and rural communities, are often times not able to reach the institutions in place to report a disappearance.³³

18. The General Law of Victims provides that victims must have access to Mexico’s judicial and administrative mechanisms, as well as the mechanisms imposed by Mexico’s Constitution, federal laws, local laws, and international treaties.³⁴ The MAE itself is an institution designed to allow access by all family victims in the region in the search for their relatives in Mexico or to seek justice.³⁵ Nevertheless, there are no clear institutional routes to report a disappearance either in state institutions or through the MAE. Moreover, there is minimal access to institutions that are supposed to promptly and effectively launch investigations.³⁶

19. The General Law of Victims also provides that Mexico must launch investigations in an “immediate and prompt manner once known to them,” which includes search protocols and proper “exhumations carried out with due diligence and competence.”³⁷ Moreover, reported cases “should be known to the authorities in the most immediate manner not to exceed twenty-four hours.”³⁸ However, when cases are reported, delays are unreasonable and cause significantly more harm to the families.³⁹

20. Another obstacle impeding proper access to justice is the judges’ and prosecutors’ lack of preparation, training, and reluctance in cases of enforced disappearances. Such cases are not treated as top priority in the judicial systems, as they should be.⁴⁰

21. Furthermore, the role of consulates is fundamental to the functioning of the MAE. Consulates are in a position to obtain relevant information for the search of migrants and to demand respect for migrants’ rights.⁴¹ However, many states in Mexico do not have consulates from Central America.⁴² Throughout Central America, the lack of representative offices of the MAE or consulates makes it more difficult for families to reach the MAE.⁴³ Communication among state authorities, the consulates, and families is extremely limited. There are no concrete measures or guidelines in place for the MAE’s functioning in Mexico and in other states and the consulates.⁴⁴ As of 2020, FJEDD, a civil society organization, has presented 132 cases before the MAE on behalf of families in Honduras,

³¹ DISAPPEARED MIGRANTS FROM CENTRAL AMERICA, *supra* note 1.

³² ICPED, Preamble.

³³ BU IHRC, Skype Interview with FJEDD (Apr. 15, 2020) [hereinafter *Interview with FJEDD*].

³⁴ General Law of Victims, *supra* note 17, at Tit. II, ch. 4, arts. 10 and 11.

³⁵ *Id.* at Tit. II, ch. 3, art. 10.

³⁶ FJEDD and Trial International Report, *supra* note 18, at ¶ 106.

³⁷ General Law of Victims, *supra* note 17, Tit. II, ch. 5, art. 21.

³⁸ *Id.* at Tit. VI, ch. 5, art. 108.

³⁹ FJEDD and Trial International Report, *supra* note 18, at ¶ 106.

⁴⁰ Interview with FJEDD, *supra* note 33.

⁴¹ El Acceso a la Justicia, *supra* note 29, at 18.

⁴² *Id.*

⁴³ FJEDD and Trial International Report, *supra* note 18, at ¶ 93.

⁴⁴ *Id.* at ¶ 85.

Guatemala, and El Salvador of migrants who disappeared in Mexico.⁴⁵ FJEDD’s experience has been that there is a lack of “suitable mechanisms of transnational coordination and collaboration.”⁴⁶

22. Article 24(2) of the ICPED establishes the victims’ right to the truth. The General Law of Victims similarly provides that “the victims have the imprescriptible right to know the truth.”⁴⁷ However, due to lack of political will, lack of coordination, and difficult access to the MAE, the right to the truth is unattainable for the vast majority of victims. Ten years ago, in San Fernando, Tamaulipas, Mexico, 72 migrants were brutally assassinated and buried in a mass grave. The family victims who lost a relative in that massacre were left without answers and have had no access to justice for the past ten years. Mexico did little in its response to investigate the massacre, and the countries-of- origin of the migrants murdered in that event took no action on their part. El Salvador, for instance, has not coordinated with Mexico to clarify what occurred and to locate the remains of Salvadoran migrants murdered in the massacre, therefore denying family victims in El Salvador their right to the truth.⁴⁸

23. Article 3 of the ICPED requires States Parties to investigate cases of enforced disappearances and “to bring those responsible to justice.”⁴⁹ Article 12 of the ICPED states that the State Party shall “examine the allegation promptly and impartially, and where necessary, undertake without delay a thorough and impartial investigation.”⁵⁰ Yet, when families report an enforced disappearance, they are subjected to verbal abuse by state authorities, usually police officers, who blame them and their relatives for the disappearance. Moreover, the authorities regularly lose documentation.⁵¹

24. Authorities rarely take into account the family’s trauma or psychosocial situations.⁵² Families report that authorities exclude them from participating in the investigation process, do not find interpreters for family victims who speak a different language, and are not capable of providing psychological or moral support.⁵³ In El Salvador, for example, families are afraid to report a disappearance with the Office of the Attorney General, which is involved in criminal investigations with the National Civil Police.⁵⁴ In addition, the Salvadoran government does not prosecute crimes

⁴⁵ FISCALÓMETRO, *supra* note 3, at 57.

⁴⁶ FUNDACIÓN PARA LA JUSTICIA Y EL ESTADO DEMOCRATICO DE DERECHO, VERDAD Y JUSTICIA A FAMILIAS DE PERSONAS SALVADOREÑAS MIGRANTES DESAPARECIDAS O FALLECIDAS EN EL TRANSITO POR MEXICO HACIA ESTADOS UNIDOS, LA RESPONSABILIDAD DEL PAIS DE ORIGEN, at 7.

⁴⁷ General Law of Victims, *supra* note 17, at Tit. II, ch. 5, art. 19.

⁴⁸ FUNDACION PARA LA JUSTICIA Y EL ESTADO DEMOCRATICO DE DERECHO, RED REGIONAL DE ORGANIZACIONES CIVILES PARA LAS MIGRACIONES, COFAMIDE, DESAFIOS EN EL TEMA DE MIGRANTES DESAPARECIDOS EN EL SALVADOR, at 1 [hereinafter *Desafios en el tema*] (on file with author).

⁴⁹ ICPED, at art. 3

⁵⁰ *Id.* at art. 12.

⁵¹ DISAPPEARED MIGRANTS FROM CENTRAL AMERICA, *supra* note 1.

⁵² The “mechanization of consular matters and governmental bureaucracy dehumanize the authorities.” 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 (2017), at 8 [hereinafter *Informe Dirigido a La Comisión Interamericana*].

⁵³ *Id.*

⁵⁴ Letter from Patricia Vazquez, Boston University School of Law International Human Rights Clinic to Agnes Callamard, Special Rapporteur on extrajudicial, summary or arbitrary executions (2021) (on file with author). **M: Can you cite Patricia’s source instead, since we have not yet submitted this?**

that occur against their nationals abroad, reasoning that the states where the crimes occurred are better equipped to handle the investigation.⁵⁵

25. Article 12(2) of the ICPED provides that even without a formal complaint, an investigation must be launched if authorities suspect that a person has been subjected to an enforced disappearance. Implementing a regional institution and then making little effort to reach family victims across the region defeats the purposes of the mechanism and violates Articles 12 of the ICPED.

26. The ICPED requires that states launch effective investigations; in order to do so, they must maintain an updated database of disappeared persons.⁵⁶ Yet, databases of disappeared persons are of necessity being maintained by civil society actors – the families themselves—because states are failing to do so. Family collectives throughout Central America maintain their own registry of cases – often times cases that are not even known to the government.⁵⁷ In El Salvador, civil society successfully pushed for the creation of the Database of Migrants Not Located from El Salvador [Banco de Datos Forenses de Migrantes No Localizados de El Salvador], which had documented 326 cases by 2019. Of these cases, forty-two have been reported to the MAE since 2016.⁵⁸ While efforts have been made, the registration of only 326 cases in the national forensic database of disappeared migrants leaves out hundreds of thousands of cases from earlier years, including cases from massacres such as the massacre of the 72 in San Fernando, Tamaulipas.

27. Investigations handled by the MAE suffer from excessive formalism and bureaucracy. There is no clear strategy on how to proceed with the investigations, let alone on how to follow up with the families. Due to travel issues and lack of coordination, participation by the families is almost nonexistent. The absence of clear instructions for the consulates further complicates investigations.⁵⁹

28. Under article 24(2) of the ICPED, family victims are guaranteed the right to be informed of “the progress and results of the investigation.”⁶⁰ The International Convention on Migrant Workers similarly stated in its 2017 recommendations to Mexico regarding the MAE, that “migrants and their families should be kept informed of investigations and be able to participate in the process, including by setting up permanent units in the State party’s embassies and consulates.”⁶¹

29. The General Law of Victims also establishes the right to be informed. Specifically, family victims “shall receive specific information about the violations of rights or crimes that affect them directly, including the circumstances in which the events occurred, in cases of disappeared, missing, missing, or deceased persons, once their fate and whereabouts or remains are known.”⁶² The victims also enjoy the right “to be informed in a clear, precise and accessible manner,” and should be fully informed of their rights.⁶³ However, unreasonable delays in pending cases and the absence of follow-up with the families is the norm in the states and with the MAE. Slow, bureaucratic, and absent communications between state authorities make it more difficult for a family in Honduras, for example, to receive updates from a pending case submitted through the MAE. Moreover, in

⁵⁵ *Id.*, citing Interview with National Civil Police, Representatives from the Migration and Internal Disappearances Departments (Jan. 24, 2019).

⁵⁶ ICPED, at arts. 12, 15, 19.

⁵⁷ *Desafios en el tema*, *supra* note 48, at 1.

⁵⁸ *Id.*

⁵⁹ FJEDD and Trial International Report, *supra* note 18, at ¶ 108.

⁶⁰ ICPED, at art. 24(2).

⁶¹ Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of Mexico, U.N. Doc. CMW/C/MEX/3 (Sept. 13, 2017), <https://undocs.org/en/CMW/C/MEX/CO/3>.

⁶² General Law of Victims, *supra* note 17, at Tit. II, ch. 5, art. 19.

⁶³ *Id.* at Tit. II, ch. 4, art. 12(I).

Guatemala, the Ministerio Público (Public Ministry), which is in charge of prosecuting crimes, only exchanges information with prosecutors in Mexico about initiating an investigation of a disappeared Guatemalan national, and refrains from further involvement.⁶⁴

30. Article 24(5) of ICPED establishes the victims' right to reparation. States Parties are required to "take the appropriate steps with regard to the legal situation of disappeared persons whose fate has not been clarified and that of their relatives, in fields such as social welfare, financial matters, family law and property rights."⁶⁵ The General Law of Victims provides that victims are entitled to reparations. In fact, the Public Ministry is required to request reparations if the victim does not submit the request.⁶⁶

31. However, several family victims, even those who suffered huge financial losses as a result of their relative's disappearance, are unable to obtain reparations. In Honduras, families are required to obtain a certificate of death to be eligible for reparations, even when they have no confirmation that the disappeared relative is deceased.⁶⁷ In El Salvador, eligibility to inherit benefits through parentage or marriage from the disappeared person depends on a showing of the cause of death.⁶⁸ However, cases sent from Mexico or the United States, where the remains of the disappeared relative were found, identify "No cause of death," rendering the family victim ineligible for inheritance benefits.⁶⁹ As such, some families have had to bury their relative despite not being able to register their relative's death after as long as eight years. Meanwhile, the state refuses to provide support to the families or to change the law.⁷⁰ In Guatemala, the Ministry of Foreign Relations [Ministerio de Relaciones Exteriores] (MINEX) is the only government entity with the budget to provide reparations for the families of the disappeared, yet reparations are limited to costs associated with the repatriation of migrant remains.⁷¹

32. Little data is known as to the MAE's reparations program, which is why an intervention by the WGEID would be necessary to assess whether reparations are being granted effectively, according to Mexico's own General Law of Victims.

REQUESTS TO THE WGEID

*"If migration crosses borders, so should justice."*⁷²

33. The IHRC (and FJEDD), on behalf of the families of the disappeared across the region, respectfully request the WGEID to consider taking the following steps:

⁶⁴ Interview with Rosmery Yax & Susana Urbina, Attorney and Social Worker, Fundación para la Justicia y el Estado Democrático de Derecho, at 8 (Nov. 15, 2017).

⁶⁵ ICPED, at art. 24(5).

⁶⁶ General Law of Victims, *supra* note 17, at Tit. II, ch. 4, art. 12(II).

⁶⁷ Sección B: Reglamento del Fondo de Solidaridad con el Migrante Hondureño (FOSMIH), 34,559 LA GACETA (Feb. 3, 2018), at Tit. I, ch. 2, art. 24.

⁶⁸ Desafíos en el tema, *supra* note 48, at 2. *See also* Ley Transitoria del Registro del Estado Familiar y de Los Regimenes Patrimoniales del Matrimonio [Transitory Law for the Registry of the Family Status and Marriage Patrimonial Regimes], Decreto [Decree] 496, Diario Oficial [D.O] No. 228, Tomo [Vol.] 329 (Aug. 12, 1995) (El Sal.).

⁶⁹ Desafíos en el tema, *supra* note 48, at 2. *See also* Transitory Law for the Registry of the Family Status and Marriage Patrimonial Regimes, *supra* note 68.

⁷⁰ *Id.*

⁷¹ *See* Letter from Patricia Vazquez to Agnes Callamard, *supra* note 54. *See also* 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) (on file with author).

⁷² FJEDD, Informe Dirigido a la Comisión Interamericana, *supra* note 52, at 8.

- a. To hold hearings on an urgent basis at its February 2021 session of hearings on the systemic failures of the Northern Triangle states and Mexico to meet their legal obligations towards the families, and on the weaknesses of the legal framework of protection towards the victims. Representatives of the families, in particular, staff of the FJEDD, should be invited to testify at the hearings.
 - b. To call on state officials or representatives from Mexico, Honduras, Guatemala, El Salvador and the United States to convene to discuss the MAE as a regional, transnational strategy for addressing enforced disappearances in the region, and reach a multilateral agreement detailing the roles of state institutions and officials involved in the proper functioning of the MAE.
 - c. To request that Mexico ensure the assignment of MAE representatives to Central American countries. Such representatives should conduct visits to Central American countries to make the MAE more accessible, and clearly distinguish between new cases received and those that need follow-up to prevent overloading and confusion.⁷³
 - d. To call on Mexico to ensure that the MAE creates informational packets available in all languages, including indigenous languages, for distribution. The informational packets should detail the rights, resources and options that families have under the General Law of Victims and other relevant applicable law. These packets should also contain relevant contact information of the MAE representative assigned to the state.
 - e. To call on the five states to ensure that their respective police understand the investigatory functions of the MAE, and work closely with MAE representatives as well as provide the corresponding MAE representative with proper access and transparency to pending investigations in the state.
 - f. To call on the five states to ensure that their respective police inform the families of the option to report the disappearance to the MAE, and if the family so desires, the police should automatically transfer the case files to the corresponding MAE representative or to the MAE directly.
34. Furthermore, if this General Allegation is accepted, we request its transmission to Mexico, and that the WGEID consider the following requests:
- a. To consider conducting an urgent on-site mission to Mexico, to investigate the functioning of the MAE within Mexico and other states in the region, as well as the processing of humanitarian visas for families to travel to Mexico. Such a mission falls clearly within the WGEID's mandate to "assist families in determining the fate or whereabouts of" disappeared relatives and to serve as a "channel of communication between" the families and the states.⁷⁴
 - b. To call on Mexico to ensure that MAE representatives (or an MAE official, if the representative is not available): assist the families in reporting the disappearance, inform the families of their rights and options available under relevant law, assist the family, if the family so desires, in applying for a humanitarian visa to travel to Mexico, and transfer the case file immediately to the MAE.

⁷³ FJEDD and Trial International Report *supra* note 18, at ¶ 106.

⁷⁴ MANDATE, WORKING GROUP ON ENFORCED OR INVOLUNTARY DISAPPEARANCES, *supra* note 11.

- c. To call on Mexico to ensure that MAE representatives are informing the families when criminal proceedings have commenced against the alleged perpetrator, the court dates of hearings and trial, the rights of the families, particularly their rights to participate in the criminal proceedings and provide evidence, and the option to apply for a humanitarian visa to travel to Mexico.
 - d. To request from Mexico that the MAE promptly assign a prosecutor when a perpetrator is identified. The family's contact information should be provided to the prosecutor without delay. Similarly, the prosecutor's contact information should be provided to the family without delay. The prosecutor should immediately reach out to the family and remind the family of their rights and options available under relevant law, as well as follow up with the family regularly.
 - e. To request from Mexico that the MAE communicate with INTERPOL, particularly its regional bureau in San Salvador to facilitate the exchange of information filed by families and civil society organizations across the region.
 - f. To request from Mexico that the MAE and its representatives facilitate or streamline the process for applying to obtain 'victim status' under the General Law of Victims and obtain access to the rights under that law.
 - g. To request that Mexico equip authorities in charge of investigating enforced disappearances with "the necessary powers and resources to conduct the investigation effectively," meaning that Mexico, a State Party to the ICPED, must provide the MAE with sufficient resources, powers, and guidelines to make it function properly.⁷⁵
35. Finally, if this General Allegation is accepted, we request the WGEID to consider transmitting it to all the Northern Triangle states and the United States, and take the following actions:
- a. To consider conducting on-site missions to Honduras, Guatemala, El Salvador, and the United States in order to further investigate the functioning of the MAE and the Mexican consulates in those states, and formulate recommendations geared towards improving channels of communication among state authorities, families and the MAE.
 - b. To call on the five states to ensure that the definition of enforced disappearance adopted in their laws is in line with the definition in the ICPED. All states should incorporate the most severe penalties for enforced disappearances in their domestic law.
 - c. To call on the five states to ensure that judges and prosecutors are properly trained, impartial, and have no institutional ties to the entity where the perpetrator also works or has influence in, and to request that Mexico, particularly the MAE, hold training sessions for prosecutors, judges, police and other criminal justice actors.⁷⁶
 - d. To call on the five states to hold accountable any individual who obstructs justice and hampers or attempts to hamper the criminal proceedings of an alleged perpetrator, by,

⁷⁵ ICPED, at art. 12(3)(a).

⁷⁶ Committee Against Torture, Concluding observations on the seventh periodic report of Guatemala, ¶ 17, U.N. Doc. CAT/C/GTM/CO/7 (Dec. 26, 2018).

for example, attacking or threatening judges and prosecutors involved in the prosecution of a perpetrator of an enforced disappearance.⁷⁷

- e. To request that the five states promptly forward the application for obtaining victim status under the General Law of Victims to Mexico through the Mexican consulate in the state, if families decide to apply through their state institutions.
- f. To call on States Parties to ICPED to work closely with the MAE to ensure that an effective investigation is being carried out abroad and ensure that prosecution of the alleged perpetrator commences promptly, regardless of the perpetrator's nationality.⁷⁸ Non-States Parties to this Convention – El Salvador and the United States – have a similar interest in seeing that investigations and prosecutions that occur abroad are being carried out promptly and effectively.

⁷⁷ *Id.*

⁷⁸ Under ICPED, States Parties *may* exercise jurisdiction abroad if one of their nationals is the subject of a disappearance. ICPED, at art. 9.