

**Executive Summary of the General Allegation to the Working Group on Enforced or Involuntary Disappearances concerning the Obstacles Faced by Victims of Disappearance in Obtaining Adequate Social Support and Measures of Reparation in Mexico**

**submitted by**

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## **I. Background and Aim of the General Allegation**

1. Pursuant to Art. 33 of the methods of work of the United Nations Working Group on Enforced or Involuntary Disappearances (“WGEID”), it regularly transmits to States a summary of allegations received or gathered from reliable sources with regard to obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (“the Declaration”), and requests the State to comment thereon.
2. The organisations subscribing this general allegation deem it appropriate to bring to the attention of the WGEID the obstacles that victims of disappearance in Mexico encounter in their access to adequate social support and measures of reparation. The situation referred to in the general allegation is common to victims of enforced disappearance and to victims of acts of the same nature perpetrated by non-State actors. It must be pointed out that, **in the case of Mexico, the absence of thorough and effective investigations makes it often impossible to rule out the involvement, direct or indirect, of State agents.**
3. The organisations subscribing the general allegation are aware that the Working Group does not intervene in cases that are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the Government. Nevertheless, when the State violates its obligation to prevent and effectively investigate an alleged case, **this makes it impossible to rule out a potential enforced disappearance**, all the more so, in a country where there are several evidences of collusion of State agents with criminal organisations. In this scenario, **the State remains under an obligation to ensure, among others, the victims’ right to obtain reparation and measures of support.** For this reason, in the general allegation the phrase “victims of disappearance” is used, in order to encompass all the above-described situations, without prejudice to the State’s obligation to investigate and establish the corresponding criminal responsibilities.
4. Besides providing an analysis of the existing legislation and institutional framework, the general allegation will mainly deal with the situation in the States of Coahuila, Chihuahua, and Veracruz, as well as with that of relatives of migrants victims of disappearance in Mexico who live in the neighbouring countries (in particular in Honduras, Guatemala, and El Salvador). The choice of these subjects is due to the specific knowledge and expertise of the subscribing organisations. The exclusion of other matters does not imply by any means that the obstacles identified in the general allegation are limited to the three mentioned States or to relatives of disappeared migrants. To the contrary, without prejudice for their peculiarities, the subjects at stake are illustrative of a general situation that affects thousands of persons.

5. In its concluding observations on Mexico, the Committee on Enforced Disappearances declared that there is a “situation of widespread disappearances in much of the State party’s territory”.<sup>1</sup> The WGEID affirmed that it shares this concern.<sup>2</sup> Although the precise number of victims of enforced disappearance in Mexico has not yet been established with certainty, reports issued by national and international institutions, as well as by civil society organisations, demonstrate that thousands of persons are directly affected.
6. The general allegation focuses on the right to reparation of relatives of disappeared persons, as well as on the State’s obligation to provide social assistance to the families for violations of economic, social and cultural rights as a result of enforced disappearance.<sup>3</sup>
7. The integral version of the general allegation contains an in-depth analysis of the applicable legislation, both at the federal and States’ level, and the institutional framework concerning measures of reparation and social assistance for relatives of disappeared persons in Mexico. Furthermore, it provides concrete examples of the obstacles faced by families of victims in accessing measures of social assistance and integral reparation. Reference is also made to the flawed legislation on the declaration of absence due to enforced disappearance and to the difficulties that families encounter in obtaining such certificates. An entire section of the general allegation deals with the specific situation of relatives of disappeared migrants who reside outside Mexico and who encounter outstanding and unique obstacles in the fulfilment of their right to social assistance and reparation. Finally, the integral version of the general allegation provides a comprehensive list of conclusions and concrete recommendations.
8. This executive summary aims at illustrating the main subjects of concern that are thoroughly presented and analysed in the integral version of the general allegation, recapitulating the major conclusions and recommendations (for the complete list of recommendations, see para. 157 of the integral version of the general allegation).
9. It is the view of the organisations subscribing the general allegation that Mexico breaches many of its international obligations and there are several serious obstacles to the full enjoyment of the rights enshrined, among others, in the Declaration. Hence, the subscribing organisations respectfully request that the WGEID:

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<sup>1</sup> Committee on Enforced Disappearances (CED), *Concluding Observations on Mexico*, UN Doc. CED/C/MEX/CO/1 of 13 February 2015, para. 10 (emphasis added).

<sup>2</sup> Working Group on Enforced or Involuntary Disappearances (WGEID), *Follow-up Report on its Mission to Mexico*, UN Doc. A/HRC/30/38/Add.4 of 11 September 2015, para. 7.

<sup>3</sup> WGEID, *Study on Enforced or Involuntary Disappearances and Economic, Social and Cultural Rights*, UN Doc. A/HRC/30/38/Add.5 of 9 July 2015.

## Requests

Pursuant to Art. 33 of its methods of work, **transmits to Mexico the general allegation and requests it to comment thereon**, keeping the subscribing organisations informed on the answers submitted by the State.

Pursuant to Art. 48 of its methods of work, and in the light of the **widespread scale of enforced disappearance across the country and of the thousands of persons affected** in the enjoyment of their rights as detailed in the general allegation, **refers the latter to the competent authorities, be they international, regional, subregional or domestic**, including the **Security Council of the United Nations** and the **Prosecutor's Office of the International Criminal Court**.

## II. The Applicable Legislation and the Institutional Framework concerning Social Assistance and Measures of Reparation for Victims of Disappearance

10. At the federal level, relatives of disappeared persons may try to obtain reparation and measures of assistance through three main procedural avenues, namely the recommendations issued by the National Commission on Human Rights (and similar institutions in each State); the proceedings aiming at establishing State's civil liability; and the *amparo* action. Nevertheless, **mainly due to procedural obstacles or restrictive jurisprudential interpretations provided by Mexican courts, none of the three has proved effective in order to ensure adequate social support and integral reparation to relatives of disappeared persons.**
11. An additional crucial tool for obtaining support and reparation is represented by the **General Law on Victims** (2013). Although it enshrines a comprehensive definition of the notion of victim, **its interpretation and rules and methods of work and guidelines** adopted by the mechanism in charge of guaranteeing its implementation (i.e. the Executive Commission of Support to Victims, *Comisión Ejecutiva de Atención a Víctimas*, hereinafter "CEAV") are **far more restrictive and, in practice, they lead to the exclusion of several persons from the enjoyment of the rights enshrined in the law. Many persons experienced practical difficulties in having their names inscribed in the National Registry of Victims** and, to date, this prevents their access to measures of social assistance and reparation. Moreover, it must be noted that on 4 November 2016 **amendments to the General Law on Victims have been approved by the Senate and must now be approved by the Congress.** Notably, the proposed amendments **have not been thoroughly discussed and designed in consultation with relatives of disappeared persons and civil society at large.** The proposed amendments would lead to further

marginalisation of relatives of victims of disappearance and other gross human rights violations. Finally, to date **the CEAV has failed to adequately and effectively fulfil its mandate**: in several cases **officers have not shown willingness or ability to adequately attend victims and their families**, and **episodes of re-victimisation have not been infrequent**, including instances where **relatives have been denigrated or told inaccurate information** that, in practice, prevented them from fulfilling their rights. This is particularly grave, being the CEAV the very institution that should be in charge of providing support and assistance to victims of gross human rights violations.

12. **The legislative and institutional framework at the state level is highly fragmented and, oftentimes, flawed or insufficient.** Even in those States where adequate legislation has been enacted, the **competent institutions frequently lack adequate human and financial resources to effectively perform their mandate.** As a result, access to adequate measures of social support and reparation remains extremely difficult for relatives of disappeared persons. On the one hand, understanding the legal complexities underlying the division between federal and States' competences proves to be an overly complicated task and **relatives struggle with what they perceive as a bureaucratic maze.** On the other hand, the existing differences in the laws of the various States generate instances of discrimination and re-victimisation.

*For more details, please refer to paras. 15-72 of the integral version of the general allegation*

### **Recommendations**

The **recommendations issued by the National Commission on Human Rights, and by the national human rights institutions of the 32 States within the Federation, shall encompass also measures of support and integral reparation** and, where appropriate, **it must be possible to subject them to *amparo* actions.** The **mechanism to ensure the implementation of such recommendations** must be enhanced and rationalised.

The measures of reparation awarded through ***amparo* actions shall not be unduly limited to restitution, but must encompass also compensation, rehabilitation, satisfaction, and guarantees of non-repetition.**

The **General Law on Victims must be fully implemented and its amendments shall not be discriminatory** in nature nor unduly lower the current level of protection, and they **must abide by international human rights law**, taking into account and being in line with other ongoing legislative initiatives, such as the adoption of a General Law on Enforced Disappearance.

In the implementation of the General Law on Victims, the latter must be **treated with respect for their inherent dignity.** Instances of **re-victimisation must be prevented by all means.** In general, there must be a **thorough simplification and rationalisation of**

**the existing bureaucratic and administrative procedures and requirements.**

The CEAV's **personnel must regularly receive adequate training, including on psycho-social assistance**, and must genuinely be at the service of victims. The **managing body of the CEAV must provide a coherent interpretation of the General Law on Victims.**

**Monitoring mechanisms must be established to assess the operative and financial functioning of the CEAV. Relatives of disappeared persons and their representative associations must be involved** in the design and running of such mechanisms.

**Legislation at the State level concerning the rights of victims of gross human rights violations must be harmonised, as well as the relevant institutional framework.** The rights enshrined in the General Law on Victims must be considered as a minimum standard. Institutions in charge of dealing with the victims at the State level must be provided with **adequate funding and human resources.**

### **III. The Main Obstacles Encountered in the Access to Social Assistance and Measures of Reparation**

13. To date, the organisations subscribing the general allegation **have no direct knowledge of any single case where victims obtained integral reparation as provided for in the General Law on Victims.** This speaks for itself in terms of the level of implementation of such law and of the remaining insurmountable practical obstacles in applying for reparation under the existing scheme. One major problem is related to the fact that, pursuant to the General Law on Victims, **compensation is made dependent on the existence of a formal order issued by a judicial authority or a human rights mechanism.** Afterwards, the victim is required to submit a further request to the CEAV to obtain compensation. This unduly formalistic and complicated procedure imposes on victims procedural burdens that they often cannot bear. The former applies only to compensation, while it remains unclear which should be the procedure followed to obtain from the CEAV other measures of reparation, such as rehabilitation, satisfaction and guarantees of non-repetition. As a matter of fact, the number of victims that may have obtained only compensation over the past year is lower than 150. This number is alarmingly low if compared with the number of persons registered as disappeared in the country.
14. Unfortunately, **the situation is not better when it comes to access to measures of social support.** Outstanding **obstacles exist from the very initial stage, i.e. in obtaining the formal recognition of the status of victims and in being registered as such.** Notably, the recognition as a victim and his or her enrolment in the National Registry are indispensable preconditions to have access to any measure of social

assistance and reparation. **Losses of files, inaccuracies in the filling of the forms, imposition of bureaucratic and formal requirements that are not explicitly set forth in the applicable legislation have been reported on multiple occasions** and, to date, the CEAV has been unable to address and solve these problems. Notably, the **exact number of victims of disappearance registered in the National Registry of Victims is currently unknown.**

15. When **relatives of disappeared persons eventually have access to some form of social assistance or support, this is usually due to their own initiative and persistence, as the existing legal and institutional framework is all but user-friendly and proactive.** Relatives are left alone to navigate the overly complicated existing scheme and, even when they manage to find their way out, the CEAV fails to provide them with adequate support. For instance, if, with great sacrifice, **relatives anticipate the expenses for some form of support** (for instance medical expenses or transportation and burial expenses) and then request the **reimbursement** they are entitled to receive pursuant to the General Law on Victims, **either the CEAV keeps them waiting for months, or refuses to cover these expenses.**

*For more details, please refer to paras. 73-87 of the integral version of the general allegation*

### **Recommendations**

**Procedures to ensure the inscription of persons in the National Registry of Victims must be significantly simplified:** bureaucratic obstacles shall be removed and the time allocated to proceed to enter a name in the Registry shall be consistently shortened.

Personnel responsible for instances of **losses of confidential data or files, inaccuracies in the filling of relevant forms,** and episodes of **inappropriate or offensive behaviour** vis-à-vis victims and their relatives must be **identified and held accountable.**

Access to **compensation and other measures of reparation shall not be made conditional upon the conclusion of criminal proceedings** or the formal accreditation of the existence of a violation by a human rights mechanism.

The CEAV shall establish an **effective procedure to ensure** that, in cases where victims, relatives, or their representative associations **anticipate expenses related to measures of assistance** (e.g. medical expenses, burial expenses, or transportation), **reimbursement takes place within the shortest delay** and is **not subjected to unreasonable bureaucratic and overly formalistic requirements.**

#### **IV. The Declaration of Absence Due to Enforced Disappearance**

16. At the **federal level, the existing Mexican legislation does not contain specific measures** (such as the “**declaration of absence due to enforced disappearance**”)



**to regulate the legal situation of disappeared persons whose fate has not been clarified in fields such as social welfare, financial matters, family law and property rights.** Relatives are therefore forced to obtain “declarations of death”, which, given the specific nature of enforced disappearance results a form of ill-treatment and is highly re-traumatizing, besides failing to address the real nature of the crime and potentially contributing to fostering impunity.

17. **Legislation regulating certificates of “declaration of absence due to enforced disappearance” exists only in a handful of States.** However, even in those States, such as Coahuila and Chihuahua, which have adopted a comprehensive legal framework on the subject, **procedures to obtain such certificates are often lengthy and overly complicated.** Moreover, **public servants are not yet familiar with these procedures and relatives experience obstacles in having access to information on the progress of the relevant proceedings** in their case.

*For more details, please refer to paras. 88-99 of the integral version of the general allegation*

#### **Recommendations**

Mexico shall **adapt its legislation at the federal level to ensure that relatives of disappeared persons can obtain certificates of absence due to enforced disappearance** to regulate their and the victim’s legal situation in fields such as social welfare, financial matters, family law and property rights. The procedures to issue such certificates must be free, user-friendly, and prompt.

**Legislation on certificates of absence due to enforced disappearance at the State level must be harmonised.** In those States that already have such legislation in place, **public servants must receive adequate trainings** on the functioning of the relevant procedures and **personnel must be appointed to keep relatives regularly informed on the status of their pending requests.**

#### **V. The Specific Obstacles Encountered by Relatives of Migrants Victims of Disappearance in Mexico**

18. All the above-mentioned obstacles affect also migrants victims of disappearance in Mexico and their relatives. When the latter reside outside Mexico, the situation is particularly harsh and they face even greater hurdles. This is especially grave, considering that in the last years thousands of migrants have been subjected to gross human rights violations in Mexico, including massacres, torture, executions, and enforced disappearance. At the time of writing, the perpetrators of these egregious crimes enjoy almost total impunity. Hence, for the families of these persons, unveiling the truth on what has happened and fulfilling their right to justice is the first form of reparation.



19. Unfortunately, even in the rare cases where an investigation is eventually opened into gross human rights violations committed against migrants, **their families experience serious difficulties in having access to information concerning the progresses and results of such investigations.** This often means that relatives are **prevented from providing evidence or data** that may be useful to determine the identity of those responsible or to foster the process of establishing the fate and whereabouts of their loved ones. In many cases, **relatives of migrants victims of gross human rights violations are not formally recognised as “victims” by Mexican authorities and are therefore not linked in any way to the investigation,** being **prevented from having access to the relevant files and documentation.** On the one hand, many relatives cannot travel to Mexico because of the impossibility to obtain a visa or due to financial restraints. On the other, **those who try to appoint a legal representative in Mexico face several hindrances and considerable delays that, in the end, jeopardise the overall process of search and investigation on the fate and whereabouts of their loved ones, as well as the chances to identify those responsible for the crimes concerned, prosecute and sanction them.**
20. An example that can be quoted is that of the relatives of the 49 victims whose mutilated mortal remains were found in May 2012 in Cadereyta, Nuevo León. Despite several attempts, to date they have not been able to gain access to the files of the investigation and they are now placing all their hopes into the establishment of a group of international independent experts that may be allowed to have access to the relevant documentation and help them unveiling the truth on the fate of their loved ones, the circumstances of their disappearance and subsequent arbitrary execution, and the identity of the perpetrators.
21. In the cases involving migrants victims of gross human rights violations in Mexico, the recommendations of the **National Commission on Human Rights, the *amparo* actions, and the CEAV have all proved utterly ineffective in ensuring access to social support and measures of reparation.** With regard to the National Commission on Human Rights, to date it has not yet issued its recommendations on outstanding cases occurred in 2011. In those rare cases involving migrants where it has pronounced itself, the **National Commission on Human Rights failed to recommend any measure of social support and reparation in favour of relatives of the direct victims who, in open breach of international standards, have not even been considered as victims themselves.** With regard to the *amparo* action, it has been used in some cases concerning migrants. In some instances, **despite years have passed since the submission of the complaint, the Supreme Court of Justice of the Nation has not yet pronounced itself.** In some other cases, the Supreme Court **interpreted in a very narrow way the contents of the *amparo***

**action**, limiting it to merely conservative or restitutory measures, and refusing to encompass measure of reparation of a different nature.

22. In general, relatives of migrants disappeared in Mexico are facing huge obstacles in fulfilling their rights pursuant to the General Law on Victims. In particular, **the CEAV is imposing on them a number of bureaucratic requirements that, living abroad, they are unable to fulfil**. Further, the CEAV hinders the families' right to appoint a legal representative in Mexico, *de facto* leaving them without any access to justice and redress. Moreover, although a number of relatives of migrant persons disappeared in Mexico had already been recognized as victims by the predecessor (Províctima) of the CEAV, the latter alleges that the **files of Províctima cannot be found and families must undergo anew the whole process of recognition and registration as victims, with all the ensuing difficulties**. Also migrants have met with the CEAV's refusal to cover or reimburse the expenses they incurred for medical purposes, for burial, transfers of mortal remains or journeys. Considering that frequently they live in extremely precarious economic situation, instead of providing them with the support they would be entitled to pursuant to the General Law on Victims, the **CEAV exposed them to further victimisation and risks**.
23. On 16 December 2015, the Office of the Attorney General of the Republic adopted an agreement establishing an **Investigation Unit on Crimes against Migrants and an External Support Mechanism for Search and Investigation**. This new institution could represent the bridge between relatives of disappeared migrants residing abroad and Mexican institutions in charge of providing social assistance and reparation. Unfortunately, the **first attempts in this sense have anew been frustrated by bureaucratic obstacles and the lack of coordination among competent Mexican authorities**.

*For more details, please refer to paras. 100-155 of the integral version of the general allegation*

### **Recommendations**

Relatives of migrants victims of gross human rights violations in Mexico must be **enabled to appoint legal representatives of their choice and be formally recognised as “victims” in ongoing criminal investigations and proceedings**. In particular, they must be **granted access to information on the progress of investigation, to the files, and must be enabled to make statements and be actively linked to the investigation**.

In the case concerning the 49 mutilated bodies recovered in 2012 in Cadereyta, Nuevo León, **a commission of independent experts must be appointed**, so that it can review the status of the investigation conducted by domestic authorities and **inform accordingly**

**the relatives** of the victims who have been identified so far, also **suggesting possible new investigative steps to be undertaken.**

Ensure that the **CEAV fully enforces its mandate and all obstacles currently hampering the fulfilment of the victims' right to compensation and integral reparation in cases involving migrant persons are removed without delay.** In particular, **all bureaucratic hindrance to the process of registering a migrant person as "victim" and opening the corresponding files must be eliminated.** Moreover, the registers of victims managed by the authority that preceded the CEAV must be recovered and used as a valid basis of the recognition of the status of victim to relatives of migrant persons. **A simplified procedure to register relatives of disappeared migrant persons as victims must be established.** Also in the case of migrants, the CEAV must ensure that **expenses anticipated in relation to the demarches to search the disappeared are duly and promptly reimbursed,** without imposing on victims bureaucratic requirements that are impossible to meet.

The newly established **Investigation Unit on Crimes against Migrants and an External Support Mechanism for Search and Investigation** must serve as a **bridge between relatives of disappeared migrants residing abroad and Mexican institutions in charge of providing social assistance and reparation.** Mexico must develop means of informing victims of gross human rights violations and their relatives residing abroad about the existence and functioning of the Investigation Unit and the Support Mechanism and facilitate the access to these institutions.