Executive Summary of the Follow-Up Report on the Implementation by Mexico of the Recommendations issued by the Committee on Enforced Disappearances in February 2015

by

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I. Background

1. On 13 February 2015 the Committee on Enforced Disappearances (hereinafter, "the Committee") adopted its concluding observations on the report submitted by Mexico under Art. 29, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (hereinafter, "the Convention").

2. Pursuant to its rules of procedure, the Committee requested Mexico to provide, by 13 February 2016 at the latest, relevant information on the implementation of the recommendations as contained in paragraphs 18, 24 and 41.

3. In February 2016, the Fundación para la Justicia y el Estado Democrático de Derecho, TRIAL International, and five civil society organisations (Casa del Migrante de Saltillo, Coahuila; Centro Diocesano para los Derechos Humanos Fray Juan de Larios, A.C.; Fuerzas Unidas por Nuestros Desaparecidos (as) en Coahuila; Comité de Familiares de Migrantes Fallecidos y Desaparecidos - El Salvador; Comité de Familiares de Migrantes de El Progreso) submitted an alternative report to the Committee.[1] On 25 February 2016, Mexico submitted its follow-up report. On 14 October 2016, the Committee issued its report on follow-up to the concluding observations.[2]

4. The *Centro Diocesano para los Derechos Humanos Fray Juan de Larios*, the *Fundación para la Justicia y el Estado democratico de derecho,* and TRIAL International submit a follow-up report to the Committee to illustrate the limited implementation of the above mentioned recommendations, the remaining obstacles and pitfalls, and to inform on the worsening of the situation in the country concerning a number of issues since February 2015. The follow-up report is submitted in its integral version in Spanish and, with the aim of facilitating the work of the members of the Committee, in this summarised English version.

5. The organisations subscribing the follow-up report know that Mexico is expected to submit information on the implementation of all the Committee's recommendations by 13 February 2018. Nevertheless, in view of the seriousness of the situation of victims of enforced disappearance and their relatives across Mexico and in the neighbouring countries, the periodic submission of updated information to the Committee is considered more adequate, in order to facilitate its monitoring task and to obtain a regular assessment of the progress in the country. In this regard, it must be stressed that the number of persons registered as missing or victims of enforced disappearance across the country saw a **stark increase in the last year,**

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[1] Follow-up report submitted in February 2016, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fNGS%2fMEX%2f23956&Lang=en.

[2] Committee on Enforced Disappearances (CED), *Report on Follow-up to the Concluding Observations,* UN doc. CED/C/11/2 of 8 November 2016.

reaching a total of 29,917 persons as of December 2016.[3] This is an alarming figure. Yet, it must be read in light of the fact that it is not fully updated and complete, due to the serious underreporting.

6. In its concluding observations on Mexico, the Committee declared that there is a "situation of widespread disappearances in much of the State party's territory".[4] The Working Group on Enforced or Involuntary Disappearances shares this concern,[5] as well as national and international institutions, and civil society organisations. When assessing the level of implementation of its recommendations, the Committee must duly **take into account the scope of the phenomenon across the country and the consequences provided for under international law**, including the possibility for the Committee to request to conduct a country visit and to refer the situation, on an urgent basis, to the United Nations General Assembly. In particular, the existence of a widespread practice of disappearance entails an aggravated responsibility for the State in terms of prevention and eradication of the crime. The level of implementation of the Committee's recommendations must be evaluated against this background.

II. The Lack of a Unified National Register of Persons Subjected to Enforced Disappearance and Problems related to the National Register of Missing and Disappeared Persons

Para. 18 of the Concluding Observations of February 2015

The State party should take the steps necessary to **establish a single nationwide register of disappeared persons** which generates accurate statistics that can be used to devise comprehensive and coordinated public policies for the prevention, investigation, punishment and elimination of this abhorrent crime. The register should, as a minimum: (a) provide exhaustive and detailed information about all cases of disappeared persons, including information about the sex, age and nationality of the disappeared persons and the place and date of their disappearance; (b) include information that can be used to determine whether the case in question is one of enforced disappearance or a disappearance that occurred without any involvement of State agents; (c) facilitate the generation of statistical data on cases of enforced disappearances, including cases that have been clarified; and (d) contain information based on clear, consistent criteria and be updated on a regular basis. In this context, the State party should use the fact that the regulations implementing the Act on the National Register of Missing and Disappeared Persons are still pending adoption as an opportunity to ensure that the aforementioned criteria are met. It should also adopt the necessary measures to guarantee that the authorities responsible for entering the relevant data do so in a consistent and

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3 See http://secretariadoejecutivo.gob.mx/rnped/datos-abiertos.php (visited on 23 January 2017).

4 CED, *Concluding Observations on Mexico,* UN Doc. CED/C/MEX/CO/1 of 13 February 2015, para. 10 (emphasis added).

5 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.

exhaustive manner, immediately after being informed of a disappearance.

7. Although the Committee rated "B" the level of implementation of the above-mentioned recommendation, the associations subscribing this follow-up report respectfully disagree and consider that "**C**" would be more adequate, provided that **the action taken by Mexico so far does not fully enforce the Committee's recommendation**.

8. At the time of writing Mexico has not yet established a unified register of persons subjected to enforced disappearance. With regard to the **National Register of Missing and Disappeared Persons** (hereinafter, "RNPED"), it must be stressed that it **gathers data concerning categories of persons unaccounted for due to different reasons** and not only of victims of enforced disappearance. Moreover, the **criteria followed to enter data or struck them out of the RNPED, as well as to update such information, remain unclear and there does not seem to be any transparent and sound regulation of these matters**. This lack of clarity and coherence **hinders the reliability of the data contained in the RNPED** and, eventually, **jeopardises the search of disappeared persons and the corresponding investigations**.

For more details, please refer to paras. 11-25 of the integral version of the follow-up report

III. The Functioning of the Investigation Unit on Crimes against Migrants and the External Support Mechanism for Search and Investigation

Para. 24 of the Concluding Observations of February 2015

In **conjunction with countries of origin and countries of destination, and with input from victims and civil society, the State party should redouble its efforts to prevent and investigate disappearances of migrants, to prosecute those responsible and to provide adequate protection for complainants, experts, witnesses and defence counsels. The transnational search and access to justice mechanism should guarantee**: (a) that **searches are conducted for disappeared migrants** and that, if human remains are found, they are identified and returned; (b) that ante-mortem information is compiled and entered into the ante-mortem/post-mortem database; and (c) that the **relatives of the disappeared persons, irrespective of where they reside, have the opportunity to obtain information and take part in the investigations and the search** for the disappeared persons.

9. On 16 December 2015, the Office of the Attorney General of the Republic adopted an agreement establishing an **Investigation Unit on Crimes against Migrants** (hereinafter, "Migrants Unit") **and an External Support Mechanism for Search and Investigation** (hereinafter, "MAE").

10. The associations subscribing the follow-up report regard the establishment of the

Migrants Unit and the MAE as a considerable progress. Nevertheless, they consider that the **existing drawbacks characterising the functioning of the Unit and the MAE require a grade "C" in the level of implementation of the Committee's recommendation**. Much remains to be done to ensure that the Migrants Unit and the MAE work effectively and provide an adequate answer in terms of prevention, as well as investigation, search, justice and redress for the victims concerned.

11. First of all, neither the agreement establishing the Migrants Unit and the MAE nor the guidelines for the functioning of the latter adequately address a number of crucial issues: the **Migrants Unit is understaffed and not adequately funded**. In particular, its **personnel is not duly trained** and it does not count on a special section that analyses the criminal context existing in the countries concerned, hence undermining the outcome of the investigations and of the operations of search. Moreover, **Mexico does not have an updated and unified register of migrant persons deprived of their liberty or otherwise in custody of State's authorities**. There is currently **no coordination mechanism between the Attorney General's Office and other authorities** that may be involved in dealing with migrant persons and their families in the countries of origin.

12. The guidelines on the functioning of the MAE were adopted on 13 September 2016. In the drafting of this document and the design of the MAE, **the Attorney General's Office did not take into account numerous suggestions submitted by civil society organisations and Committees of relatives of disappeared migrants**. This **flawed process of consultation resulted in the existence of several practical pitfalls in the functioning of the MAE**. The existing problems mainly concern the **functioning of the Migrants Unit and the MAE**; the **rights of victims before the MAE**; the **procedure to be followed by the MAE and the corresponding obligations of the *attaché***; and the **communication among prosecutors, victims, and *attaché***.

13. Currently, **the only *attaché* of the Attorney General's Office for Central America resides in Guatemala**. This implies that, whenever actions relating to the Migrants Unit and the MAE must be undertaken in countries such as El Salvador and Honduras, the *attaché* must travel there and this requires taking care of all the relevant practical and logistical arrangements, as if the MAE did not exist. While the aim of the MAE was precisely to speed up the process of collection of data and complaints among the different countries, at present the registration of complaints and their transfer to Mexico may take months. **This situation consistently hinders the work of the Migrants Unit and frustrates the very object and purpose of the MAE**. Similarly, at the time of writing, **the access to measures of social support and reparation for relatives of disappeared migrants is hardly**

ensured. As a matter of fact, they cannot exercise such right in their respective country of origin and are requested to travel to Mexico, with all the ensuing practical difficulties that are often insurmountable. All in all, so far the **procedure to collect complaints through the MAE has been plagued by delays** and has **not provided enough guarantees in terms of protection of victims, witnesses and their relatives**, in particular in keeping **confidential sensitive data**. Finally, it would seem that **Mexican embassies and consulates in the Americas are not yet familiar with the existence of the MAE and its mandate**. This lack of awareness ultimately undermines the use of the mechanism and leaves relatives of disappeared migrants to bear the brunt of the demarches that must be undertaken to file complaints and to seek to unveil the truth on the fate and whereabouts of their loved ones and obtain justice and redress.

For more details, please refer to paras. 26-68 of the integral version of the follow-up report

IV. The Pitfalls in the Search of Disappeared Persons and, in case of Death, in the Localisation, Exhumation, Identification, Respect and Return of Their Mortal Remains

Para. 41 the Concluding Observations of February 2015

In the light of Art. 24, para. 3, of the Convention, the State party should **redouble its efforts to search for, locate and release disappeared persons and, in the event of death, locate, respect and return their remains**. In particular, it should: (a) Guarantee in practice that when news of a person's disappearance is received **the search is initiated ex officio without delay in order to increase the chances of finding the person alive**; (b) Ensure that the search is conducted by the **competent authorities with the involvement of the relatives of the person concerned**; (c) **Strengthen the ante-mortem/post-mortem database**, ensure that it is fully operational in all states as quickly as possible and guarantee that it contains the relevant information on all cases of disappeared persons, without exception, in strict conformity with the relevant protocols; (d) Strengthen the **genetic database of the Office of the Attorney General of the Republic to ensure that it contains information on all the persons that have disappeared in the State party**; (e) Guarantee effective **coordination, cooperation and cross-referencing between the agencies responsible for searching for disappeared persons and for identifying their remains in the event of death, and ensure that they have the necessary economic, technical and human resources**.

14. With regard to this specific recommendation, the associations subscribing this follow-up report consider that **the adequate assessment of its level of implementation would be "C", given that the action taken by the State is only partially satisfactory**.

15. In particular, **investigations on cases of alleged enforced disappearance**

and operations of search remain highly ineffective and plagued by lulls. In many cases, the **authorities in charge do not conduct field visits or a thorough examination of the potential crime scene and evidences are not preserved in an adequate manner**. Furthermore, there seems to be a **lack of effective cooperation among different State's agencies that do not exchange information among them, thus hampering the overall outcome of the investigation**. Moreover, when the crime scene is indeed examined and **evidences are collected, there is an endemic delay in the analysis of such elements that results in the lack of a clear investigative hypothesis**. The authorities in charge of the investigation tend to limit the scope of their analysis, without exploring the potential connections between different cases. The situation has unfortunately **not improved with the adoption of the Homologated Protocol for the Investigation of the Crime of Enforced Disappearance.**

16. In general, the authorities in charge of searching disappeared persons and conducting investigations **do not have enough financial and human resources to effectively carry out their work**. This **is true also for the Special Prosecutor's Office for the Search of Missing and Disappeared Persons**.

17. The above-described situation is even worse when migrants are concerned, due to the inherent difficulties related to this especially vulnerable category. To overcome this impasse, civil society organisations and associations of relatives of disappeared migrants have been advocating over the past three years for the establishment of a Special Commission and Plan of Search in San Luis Potosí (a key State in the migratory route). At the time of writing, neither the Attorney General's Office nor the Migrants Unit have undertaken the necessary steps to formally enact this Plan and establish the Special Commission.

18. With regard to operations of **localisation, exhumation, identification and return of mortal remains, the situation remains critical**. The **existing databases and personnel are inadequate and incapable of providing an effective response** in the face of the exceptional gravity and scope of the phenomenon. The **AM/PM database has not been established yet** and the **Genetic Database of the Attorney General's Office is plagued by gaps**. Notwithstanding the remarkable results achieved by the **Forensic Commission**[6] **in the past years, all the attempts to expand its mandate have so far been**

[6] Created in August 2013 on the basis of an agreement among the Office of the Attorney General of Mexico, civil society organisations, and the Argentine Forensic Anthropologic Team (EAAF) and mandated to identify the mortal remains found in the mass graves concerning three major massacres (known as "the massacre of 72 migrants in Tamaulipas", "the 49 common graves of San Fernando", and "the 49 trunks of Cadereyta").

frustrated. Similarly, while the adoption of a **Law on the Localisation, Exhumation and Identification of Mortal Remains in the State of Coahuila** in December 2016 is certainly a welcome progress, the fact that **no adequate financial and human resources have been allocated to guarantee its implementation is a source of concern**. Overall, **Mexico has not set up a unified database and map of common graves and clandestine sites of burial**, thus making it impossible to develop a national strategy and to have a clear understanding of criminal patterns and of the real scope of the phenomenon.

19. Finally, it must be stressed that **Mexican authorities do not fulfil their obligation to conduct ex officio investigations whenever there are reasonable grounds to believe that an enforced disappearance has been committed**. They rather show a passive attitude and leave the relatives of disappeared persons or their representatives the burden to prompt the adoption of actions. Moreover, the **few existing mechanisms meant to conduct an urgent search of persons reported missing** (such as the *prealerta Amber*) **have not proved to be effective** so far. Finally, despite several recommendations from international human rights mechanisms, including the Committee, and continuing advocacy from civil society organisations, at the time of writing the **General Law to Prevent and Sanction Crimes related to Enforced Disappearance has not yet been enacted**.

For more details, please refer to paras. 69-99 of the integral version of the follow-up report

V. Other Matters of Concern

20. Besides the subjects analysed above, there are other matters that the associations subscribing the follow-up report would like to bring to the attention of the Committee, in particular with regard to the **lack of implementation of the interim measures ordered by the Committee pursuant to Art. 30, para. 3, of the Convention**.

21. During 2016, the number of urgent measures addressed to Mexico pursuant to Art. 30 of the Convention increased, as well as the request to adopt interim measures to locate and protect the persons concerned (Art. 30, para. 3). However, **Mexican authorities failed to take meaningful actions in this regard and repeatedly affirmed, also on the occasion of public events, that they do not consider the said interim measures of a binding nature**. The associations subscribing the follow-up report are especially concerned by this situation, in particular in view of the urgent and grave nature of the measures at stake. Furthermore, they consider that **this attitude amounts to a breach by Mexico of its obligation to perform in**

good faith the treaty and the obligations stemming from it.

For more details, please refer to paras. 100-103 of the integral version of the follow-up report

VI. Conclusions and Recommendations

22. Mexico has done very little to implement the Committee's recommendations as contained in paragraphs 18, 24 and 41 of the February 2015 concluding observations. Furthermore, at the time of writing, many more recommendations contained in the Committee's concluding observations remain unimplemented, including those concerning the adoption of a general law on enforced disappearance, the amendment of the criminal codes at all levels to ensure that the definition of the crime is not at odds with international standards, and the carrying out *ex officio* of prompt, thorough, impartial and independent investigations that lead to the identification of those responsible for the crimes, their prosecution and sanction. The described situation is all the more alarming in view of the existence of a widespread practice of disappearances across the country, as denounced by the Committee itself.

23. In light of the above, the associations subscribing the follow-up report respectfully call on the Committee to:

- Pursuant to Art. 54, paras. 2 and 3, of its rules of procedure, **designate one or more Rapporteurs to regularly** follow-up with Mexico on its implementation of the concluding observations and who are entitled to periodically assess the status of enforcement.

- **Modify the grades assigned to Mexico** on the occasion of the evaluation of the implementation of the Committee's recommendations contained in paragraphs 18, 24 and 41 of its concluding observations as suggested in the follow-up report.

- Strongly **encourage once more Mexico to recognise the Committee's competence to receive and consider individual and inter-State communications** under Arts. 31 and 32 of the Convention.

- **Conduct a visit to Mexico** pursuant to Art. 33 of the Convention, as already requested on multiple occasions.

- Pursuant to Art. 34 of the Convention, **seek from Mexico all relevant information on the situation** and **urgently bring the matter to the attention of the General Assembly of the United Nations, through the Secretary-General of the United Nations.**

- **Urgently request Mexico to clarify its position on the binding nature of the Committee's recommendations and interim measures in the context of the**

urgent procedure pursuant to Art. 30 of the Convention; and **issue a statement on the binding force** of these actions and the State's obligation to perform them in good faith.

24. Moreover, the Committee should recommend to Mexico to:

- Implement **without any further delay all the recommendations issued by different international human rights mechanisms**. In particular those adopted by the Committee in February 2015 and those issued by the Working Group on Enforced or Involuntary Disappearances in 2011 and reiterated in 2015.

- Guarantee that the data included in the RNPED are **gathered in a transparent and coherent manner** and ensure that the **RNPED is regularly updated, easily accessible, and user-friendly**. Besides the Committee's recommendations that remain to be implemented by Mexico, it is crucial to ensure the reliability of the sources of information and to **guarantee that relatives of disappeared persons are duly consulted in this regard**, as well as other credible sources, such as NGOs and universities. A system to **regularly monitor the accuracy of the data included in the RNPED** must be established.

- Establish a **dialogue with victims, Committees of relatives of disappeared migrants, and civil society organisations** to discuss the State's policy of search of disappeared migrants and the strengthening of the MAE in terms of effective access to justice.

- Ensure that a new round of **consultations with victims, civil society organisations, and Committees of relatives of disappeared migrants is conducted in order to review and amend the Guidelines on the functioning of the MAE**, making sure that the concerns spelled out in the follow-up report are duly taken into account and addressed, and that the previous proposal put forward by civil society is reconsidered.

- Establish a **mechanism to monitor the functioning of the MAE,** ensuring the participation of Committees of relatives of disappeared migrants and civil society organisations. Regular monitoring shall ensure that relevant amendments and modifications can be made. The National Human Rights Commission must be included in this monitoring system to guarantee that victims' rights are respected by the MAE.

- **Raise awareness on the mandate and functioning of the MAE** in the countries of origin of disappeared migrants.

- Ensure that **Mexican Embassies and Consulates count on duly trained personnel** that can guarantee the proper functioning of the MAE and provide adequate support to victims and their relatives.

- Adopt **adequate IT-systems that facilitate the communication** among Embassies, Consulates, and the competent authorities that are based in Mexico and are dealing with specific cases.

- Ensure that **relatives of disappeared migrants have access in their countries of residence to the measures of social support and reparation to which they are entitled** pursuant to the General Law on Victims. In this regard, the necessary cooperation agreements must be concluded with the countries concerned.

- Establish **effective cooperation and coordination among the MAE, the Attorney General's Office, the Ministry of Foreign Affairs, the National Institute on Migrants, the National Human Rights Commission, and the Executive Commission for the Support to Victims** (hereinafter, "CEAV"), **the judiciary and any other competent authority** to guarantee the effectiveness of the MAE and adequate support to victims.

- Ensure that **personnel from the CEAV take part to all the operations of the MAE.**

- **Investigate all alleged irregularities concerning the functioning of the MAE** that may be reported.

- Ensure that the **Migrants Unit is adequately funded and staffed**. The **personnel must be duly trained and hired through a transparent process** and according to clear requirements that are in line with the mandate of the MAE and of the Migrants Unit.

- Ensure that the **irregularities related to the lack of progress of investigation on cases of enforced disappearance that are registered as *actas circunstanciadas*** before the Attorney General's Office and local authorities are **thoroughly investigated and clarified**.

- Establish **search commissions and plans that are adequately funded and staffed** and that duly analyse the context of the region, prioritise the investigation *in loco*, and that, where appropriate, can be supported by international experts, taking into account the specific features of each case and the requests of the victims.

- Ensure that the **8 minimum requirements spelled out by relatives of**

disappeared persons and civil society organisations are included in the General Law to Prevent and Sanction Crimes related to Enforced Disappearance and that such law is adopted without further delay.

- Guarantee the **effectiveness of the implementation of the prompt search mechanisms** established by federal and local governments (such as the *prealerta Amber*).

- Guarantee the **effective implementation of the laws enacted to ensure the localisation, exhumation, identification and return of mortal remains** (including the Law on the Localisation, Exhumation and Identification of Remains in Coahuila), ensuring the **allocation of adequate financial and human resources** for their enforcement.

- Ensure that the **mandate of the Forensic Commission**, whose work has been acknowledged by the Committee and relatives of disappeared persons, **is expanded** so that forensic data concerning disappeared migrants can be crossed and matched beyond those related to the three massacres already covered.

- **Adopt without delay all the measures that may be necessary to ensure the implementation of the Committee's requests** in the context of its urgent actions' procedure and interim measures pursuant to **Art. 30** of the Convention.