

# The first attempts in Mexico and Central America to address the phenomenon of missing and disappeared migrants

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## Abstract

*The phenomenon of missing migrants, including victims of enforced disappearance, presents exceptional challenges due to its specific features and transnational scope. This article analyzes the case of missing and disappeared migrants in Mexico and illustrates the obstacles faced by their families, mostly residing in Central America, in their efforts to establish the fate and whereabouts of their loved ones and to obtain justice and redress. The article describes the process which led to the establishment of three mechanisms – a Forensic Commission, an Investigative Unit on Crimes against Migrants and an External Mechanism of Support for Search and Investigation – that aim at providing innovative responses and tackling the transnational dimension of the issue. The first significant achievements are presented, along with the remaining pitfalls.*

\* The views expressed here are solely those of the author and do not represent the views of TRIAL International or FEDEFAM. The author is grateful to Elena Carpanelli and Tullio Scovazzi for their invaluable comments on earlier drafts of this article, as well as to the anonymous reviewers for their constructive suggestions and to the editors for the generous support during the review process. The author can be contacted at [gabriella.citroni@unimib.it](mailto:gabriella.citroni@unimib.it).

**Keywords:** enforced disappearance, missing persons, migrants, Mexico, Central America, right to know the truth, forensic, impunity.

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## Introduction

The subject of migrants reported missing on their journey or within countries of destination is receiving increasing attention from international organizations,<sup>1</sup> scholars,<sup>2</sup> non-governmental organizations (NGOs)<sup>3</sup> and civil society associations.<sup>4</sup> Despite growing interest, however, the phenomenon is still under-studied and

- 1 Among others, the International Committee of the Red Cross (ICRC) has been actively following the subject in recent years; see ICRC, “Missing Migrants”, available at: [www.icrc.org/en/missing-migrants](http://www.icrc.org/en/missing-migrants) (all internet references were accessed in January 2018). Together with National Red Cross and Red Crescent Societies across Europe, the ICRC has set up a tracing system called Trace the Face, aimed at helping refugees and migrants finding missing family members; see ICRC, “Trace the Face: People Looking for Missing Migrants in Europe”, available at: [www.icrc.org/en/document/trace-face-people-looking-missing-migrants-europe](http://www.icrc.org/en/document/trace-face-people-looking-missing-migrants-europe). See also ICRC, *Missing Migrants and Their Families: The ICRC’s Recommendations to Policy-Makers*, August 2017, available at: [www.icrc.org/sites/default/files/document/file\\_list/missing-migrants-and-their-families.pdf](http://www.icrc.org/sites/default/files/document/file_list/missing-migrants-and-their-families.pdf). The International Organization for Migration (IOM) has launched the Missing Migrants project, available at: [missingmigrants.iom.int](http://missingmigrants.iom.int). The International Commission for Missing Persons (ICMP) has joined forces with the IOM to conduct a comprehensive assessment of the number of missing migrants in the Mediterranean region, and has also created an Online Inquiry Center to provide information about missing persons, including migrants, available at: [oic.icmp.int/index.php?w=intro&l=en](http://oic.icmp.int/index.php?w=intro&l=en). This tool uses an identification management system that collects data and information spanning different continents and time periods. Another initiative conducted by the IOM, in cooperation with the University of York and the City University of London, between 2015 and 2016, is the Mediterranean Missing project: see “Mediterranean Missing: Understanding Needs of Families and Obligations of Authorities”, available at: [www.mediterraneanmissing.eu/](http://www.mediterraneanmissing.eu/).
- 2 Iosif Kovras and Simon Robins, “Death as the Border: Managing Missing Migrants and Unidentified Bodies at the EU’s Mediterranean Frontier”, *Political Geography*, No. 55, 2016; Cristina Cattaneo and Marilisa D’Amico, *I diritti anegati – I morti senza nome del Mediterraneo*, FrancoAngeli, Milano, 2016; Tara Brian and Frank Laczko (eds.), *Fatal Journeys*, Vol. 2: *Identification and Tracing of Dead and Missing Migrants*, IOM, Geneva, 2016; Christina Oelgemöller, “The Illegal, the Missing: An Evaluation of Conceptual Inventions”, *Millennium: Journal of International Studies*, Vol. 46, No. 1, 2017.
- 3 Among others, see the websites of the Fundación para la Justicia y el Estado Democrático de Derecho, available at: [fundacionjusticia.org/](http://fundacionjusticia.org/); and the Regional Mixed Migration Secretariat, available at: [www.regionalmms.org](http://www.regionalmms.org).
- 4 In recent years, especially in Central America, various committees of relatives of missing migrants have been created, including the Comité de Familiares de Migrantes Desaparecidos del Progreso (COFAMIPRO) of Honduras, the Comité de Familiares de Migrantes Fallecidos y Desaparecidos de El Salvador (COFAMIDE), and the Comité de Familiares de Migrantes Desaparecidos del Centro de Honduras (COFAMICENH). For a similar initiative in the Mediterranean, Terre pour Tous (Tunisia) can be mentioned. Notably, several associations of support for relatives of missing migrants have been established in countries of destination, such as Carovane Migranti in Italy ([carovanemigranti.org](http://carovanemigranti.org)), the Movimiento Migrantes Mesoamericano in Mexico and Central America ([movimiento-migrantemesoamericano.org](http://movimiento-migrantemesoamericano.org)), and Caravana Abriendo Fronteras, which is organized in Spain but also active in France, Italy and Greece ([caravanaagrecia.info](http://caravanaagrecia.info)). In July 2017 the Permanent Peoples Tribunal on Human Rights of Migrant and Refugee Peoples (PPT) launched a process concerning violations of the human rights of migrants and refugees. During the first two sessions, held in Barcelona and Palermo, the issue of missing migrants was also dealt with; see the PPT website, available at: [transnationalmigrantplatform.net/migrantppt/](http://transnationalmigrantplatform.net/migrantppt/).

certainly under-reported, due to the exceptional challenges that it poses in terms of analysis and documentation and the practical difficulties in search operations and in the adoption of effective legal and humanitarian responses.

The very nature of the phenomenon of missing migrants implies the involvement of different countries. On the one hand, this entails the existence of different applicable jurisdictions and legal provisions, and the need for special measures of cooperation, including the activation of diplomatic and consular channels. On the other hand, families of missing and disappeared migrants face extraordinary obstacles in their struggle to determine the fate and whereabouts of their loved ones and, where appropriate, to obtain justice and redress for the harm that their relatives may have suffered. Hindrances vary from the impossibility of travel due to lack of resources or documents, to the *de facto* inability to file complaints or reports in other countries because of the pitfalls of domestic legislation that does not recognize any legal standing.<sup>5</sup> The existing legal framework and the mechanisms in place to facilitate search operations or the filing of complaints have so far proved incapable of fully seizing the transnational scope of the phenomenon and of adequately addressing the impediments described, thus demanding the adoption of new tools and innovative responses.<sup>6</sup>

Furthermore, the universe of migrants reported missing is a complex one: there are victims of fatalities, natural calamities or catastrophes, and unidentified victims of shipwrecks, but also victims of crimes that may include human-smuggling and human trafficking, arbitrary executions and massacres, as well as enforced disappearance. With regard to the latter, in its 2016 annual report, the United Nations (UN) Working Group on Enforced or Involuntary Disappearances (WGEID) included a specific section on the subject of enforced disappearance in the context of migration, outlining the main issues that it has identified surrounding the phenomenon.<sup>7</sup> Some of the issues acknowledged in the report are migration caused by enforced disappearances; enforced disappearance of migrants (including enforced disappearances for political reasons, cases occurring during the detention of migrants or the execution of deportation procedures, and enforced disappearance of migrants by private actors operating on behalf of, or with the direct or indirect support, consent or acquiescence of, the State); factors contributing to the enforced disappearance of migrants; and State obligations in the context of the enforced disappearance of migrants.<sup>8</sup> The WGEID observed that

5 Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (Special Rapporteur on Executions), *Unlawful Death of Refugees and Migrants*, UN Doc. A/72/335, 15 August 2017, para. 73.

6 Working Group on Enforced or Involuntary Disappearances (WGEID), *Report on Enforced Disappearances in the Context of Migration*, UN Doc. A/HRC/36/39/Add.2, 28 July 2017, paras 77–79. For more on this report and the WGEID, see the article by Bernard Duhaime and Adr anne Thibault in this issue of the *Review*.

7 WGEID, *2016 Annual Report*, UN Doc. A/HRC/33/51, 28 June 2016, paras 46–80.

8 *Ibid.*

the transnational nature of migration certainly complicates the efforts of the families of migrants who wish to obtain information concerning a disappeared relative. In many instances, it is reported that there is no established protocol for family members to denounce a disappearance abroad, in the country where the crime occurred. Similarly, there are no forensic data banks to register DNA for the disappeared or evidence contributing to the research of remains. If such mechanisms exist, they are often said to be ineffective, not ensuring that family members living abroad may access them. ... [B]roader obstacles ... may complicate the search for the truth, such as language and cultural barriers, lack of cooperation from the country of origin, corruption, lack of financial means, the impossibility of travelling to the country where the disappearance occurred, the lack of access to effective legal services, etc.<sup>9</sup>

Given the importance and complexity of the phenomenon, in 2017, the WGEID issued a report entirely devoted to the analysis of enforced disappearance in the context of migration. The WGEID outlined that there is a direct link between migration and enforced disappearance and denounced that the international community as a whole does not seem to be giving the necessary attention to the matter, while States turn a blind eye and prefer to transfer the blame elsewhere, be it to another State or to a criminal group.<sup>10</sup> Hence, the WGEID pointed out that this phenomenon is a modern-day reality that should not be ignored or underestimated and recalled that under international law States bear the obligations to prevent, punish and remedy enforced disappearance of migrants, and the unique features of migration trigger additional specific obligations in the areas of search, criminalization/investigation, reparation and international cooperation.<sup>11</sup>

While the situation of missing migrants in the Mediterranean region has obtained relatively more attention<sup>12</sup> and a number of projects<sup>13</sup> to tackle it have been launched (mostly concerning the very specific case of migrants reported missing at sea), the cases of migrants unaccounted for and subjected to enforced disappearance in Mexico are relatively less studied and documented.

This article aims at analyzing the situation of migrants reported missing and victims of enforced disappearance in Mexico and the obstacles faced by their families, who mostly reside in Central American countries. The first attempts to provide efficient legal and humanitarian responses and to put in place effective mechanisms to address the needs of relatives of missing and disappeared

9 *Ibid.*, paras 68–69.

10 WGEID, above note 6, para. 81.

11 *Ibid.*, paras 57, 80. For a detailed analysis of States' obligations in the context of the enforced disappearance of migrants, see *ibid.*, paras 58–79.

12 For scholarly writings about enforced disappearance, see above note 2.

13 For projects by NGOs and international organizations, see above note 1.

migrants will also be illustrated. It is concluded that the current situation in Mexico offers an opportunity to better grasp the specificities of the phenomenon of missing and disappeared migrants and allows an examination of good practices, outstanding practical difficulties and pitfalls.

After examining the scope and nature of the phenomenon of disappearance of migrants in Mexico and the concerns, observations and recommendations expressed in this regard over the past years by international human rights mechanisms, the article focuses on three major initiatives adopted to tackle this scourge and to provide adequate responses to thousands of families in the Americas. First, the Forensic Commission mandated to identify the mortal remains found in mass graves related to three massacres of migrants perpetrated between 2010 and 2012<sup>14</sup> and to return the remains to their families is presented. Second, the mandate and functioning of the recently established Investigative Unit on Crimes against Migrants and the Mechanism of External Support for Search and Investigation are described. These two mechanisms are taking their first steps, trying to find effective ways to conduct investigations on, among others, enforced disappearance of migrants, in a complex transnational context involving organized criminal groups operating on an international scale. Similarly, these mechanisms are exploring the possibilities of adapting already existing diplomatic and consular channels to the specific situation and to use them as a means to adequately assist the families of missing and disappeared migrants. This article examines some of their most relevant achievements, and in the final part highlights the remaining outstanding practical challenges that need to be faced to eventually provide an effective response to the needs of relatives of missing and disappeared migrants.

## Missing and disappeared migrants in Mexico

Mexico is a country of origin, transit and destination for migrants. It is also a country to which migrants return, and this is likely to increase in the near future. The migration flows to and across Mexico are made up of hundreds of thousands of people, including unaccompanied minors, who have the United States, and to a lesser extent Canada, as their destination.<sup>15</sup> These mixed flows comprise asylum-seekers, refugees and victims of human trafficking.<sup>16</sup>

14 In the states of Tamaulipas and Nuevo León, further discussed below.

15 Inter-American Commission on Human Rights (IACHR), *Human Rights of Migrants and Other Persons in the Context of Human Mobility in Mexico*, OEA/SER-L/V.II, Doc. 48/114, 30 December 2013, para. 3; Special Rapporteur on Executions, above note 5, para. 7.

16 IACHR, above note 15, para. 3.

At the same time, Mexico is undergoing a human rights crisis,<sup>17</sup> characterized by the perpetration of torture,<sup>18</sup> enforced disappearances<sup>19</sup> and widespread arbitrary killings.<sup>20</sup> The existence of considerable flows of drugs across the country, as well as of extremely violent organized criminal groups, including drug cartels operating on a regional scale from South and Central America reaching far beyond the northern borders of Mexico, further complicates the picture.<sup>21</sup> Corruption, infiltration of sectors of the government and armed forces, and impunity are rampant.<sup>22</sup> As an already vulnerable group, migrants have become an “easy target” for violence and abuse, including enforced disappearance, abduction, exploitation, trafficking and executions.<sup>23</sup>

The existence of a practice of individual and mass abductions of migrants in Mexico was denounced by the Mexican National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH) in two comprehensive reports published in 2009 and 2011.<sup>24</sup> In 2013, the Inter-American Commission on Human Rights (IACHR) observed the “massive and systematic abductions of migrants in transit through Mexico, *perpetrated by organized crime groups*

- 17 See, among others, IACHR, *Report on the Situation of Human Rights in Mexico*, OEA/SER.L/V/II, Doc. 44/15, 31 December 2015. The persistence of a severe human rights crisis in Mexico has been recently confirmed in *Preliminary Observations by the UN Special Rapporteur on Freedom of Expression and the Special Rapporteur on Freedom of Expression of the IACHR Following Their Joint Visit to Mexico*, 4 December 2017, para. 8, available at: [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22484&LangID=E). See also Open Society Justice Initiative, *Undeniable Atrocities: Confronting Crimes against Humanity in Mexico*, 2016, available at: [www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-2nd-edition-20160808.pdf](http://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-2nd-edition-20160808.pdf). In July 2017, a coalition of Mexican NGOs submitted a report to the International Criminal Court with the aim of triggering an investigation on this situation; see International Federation for Human Rights, *México: Asesinatos, desapariciones y torturas en Coahuila de Zaragoza constituyen crímenes de lesa humanidad*, June 2017, available at: [www.frayjuandelarios.org/blog/wp-content/uploads/2017/07/com.pdf](http://www.frayjuandelarios.org/blog/wp-content/uploads/2017/07/com.pdf).
- 18 Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Special Rapporteur on Torture), *Report on the Mission to Mexico*, UN Doc. A/HRC/28/68/Add.3, 29 December 2014, para. 23.
- 19 Committee on Enforced Disappearances (CED), *Concluding Observations on Mexico*, UN Doc. CED/C/MEX/CO/1, 13 February 2015, para. 10; WGEID, *Follow-Up Report to the Recommendations made by the Working Group: Missions to Mexico and Timor Leste*, UN Doc. A/HRC/30/38/Add.4, 11 September 2015, para. 7.
- 20 Special Rapporteur on Executions, *Report on the Mission to Mexico*, UN Doc. A/HRC/26/36/Add.1, 28 April 2014.
- 21 *Ibid.*, para. 8.
- 22 See, for example, Special Rapporteur on Torture, above note 18, para. 31; Special Rapporteur on Executions, above note 20, paras 9, 11; Special Rapporteur on Executions, *Follow-Up Report on the Visit to Mexico*, UN Doc. A/HRC/32/39/Add.2, 6 May 2016, paras 7, 25, 50; WGEID, *Report on the Mission to Mexico*, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, paras 18 and 66.
- 23 See IACHR, above note 15.
- 24 CNDH, *Informe especial sobre los casos de secuestro en contra de migrantes*, 5 June 2009, available at: [www.cndh.org.mx/sites/all/doc/Informes/Especiales/2009\\_migra.pdf](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2009_migra.pdf); CNDH, *Informe especial sobre secuestro de migrantes en México*, 22 February 2011, available at: [www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011\\_secmigra.pdf](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secmigra.pdf). In 2017 the CNDH issued a special report on disappeared persons and clandestine burial sites in Mexico, wherein some references to migrant victims of enforced disappearance can be found, although this is not the main focus of the document; see CNDH, *Informe especial de la comisión nacional de los derechos humanos sobre desaparición de personas y fosas clandestinas en México*, available at: [www.cndh.org.mx/sites/all/doc/Informes/Especiales/InformeEspecial\\_20170406.pdf](http://www.cndh.org.mx/sites/all/doc/Informes/Especiales/InformeEspecial_20170406.pdf).

*operating with the tolerance or even involvement of certain public officials*".<sup>25</sup> The fact that State agents are directly or indirectly – by means of support, tolerance or acquiescence – involved in the deprivation of liberty of migrants, followed by the concealment of their fate and whereabouts, brings these cases into the realm of enforced disappearance.

In a 2011 report, the WGEID noted:

Undocumented migrants are particularly vulnerable to enforced disappearances due to their undocumented status and the lack of financial resources, effective laws, protection schemes, and judicial remedies available to them. Many of the 150,000 migrants that travel through Mexico every year to the northern border cross through areas where there is crime and they easily fall prey to abduction or extortion. In 2009, [the CNDH] reported 9,578 cases of abduction of migrants over a period of six months, and at least 11,333 migrants were allegedly abducted between April and September 2010, primarily by criminal organizations. According to [CNDH] reports and other sources, public officials from different sectors, including the National Institute for Migration and the municipal, state and federal police forces, had in some cases collaborated with criminal organizations in the abduction of migrants, thereby committing the offence of enforced disappearance. [The CNDH] reported that 8.9 per cent of the documented abductions that occurred over a period of six months in 2010 involved the participation of Government authorities. Until a proper and comprehensive investigation is conducted, it will not be possible to accept that all abductions of migrants are carried out exclusively by criminal organizations or to rule out the possibility of the direct or indirect involvement of public officials.<sup>26</sup>

The WGEID denounced the failure to qualify cases of enforced disappearance as such, with many official reports instead invoking different offences or generic terms (including “missing” and “lost”), which has hindered search operations and doomed the outcome of criminal investigations.<sup>27</sup> In this sense, the WGEID emphasized that “a potential enforced disappearance may only be ruled out after a complete, independent and impartial investigation. Therefore, the number of cases of enforced disappearance cannot be fully established without proper investigation.”<sup>28</sup>

The existing terminological confusion makes it almost impossible to determine the exact number of missing migrants and victims of enforced disappearance in Mexico. Indeed, for families living abroad, it becomes even more complicated to understand under which category they should – when they can manage to – register their relatives, either as “victims of enforced disappearance”, “abducted”, “not localized” or “missing”. Most of these terms do

25 IACHR, above note 15, para. 109 (emphasis added).

26 WGEID, above note 22, para. 69.

27 *Ibid.*, para. 18.

28 *Ibid.*, para. 21.

not find any correspondence in existing legal categories and rather come from common parlance. In November 2017, a General Law on Enforced Disappearance of Persons, Disappearance Committed by Non-State Actors and the National System of Search of Persons was eventually enacted; this legislation explicitly refers to two categories, “disappeared persons” (“*personas desaparecidas*”) and “not localized” (“*personas no localizadas*”).<sup>29</sup> Pursuant to the 2017 General Law, a National Register of Disappeared and Not Localized Persons will be set up and will absorb the information previously scattered among different registers at the federal and State levels. The already vast group of migrants reported missing or unaccounted for in Mexico encompasses those who have been subjected to arbitrary killings and whose mortal remains have not been exhumed, identified and returned to families who, therefore, do not know the truth regarding their loved ones’ fate and whereabouts. Notably, between 2010 and 2012, three massacres where victims were largely migrants were perpetrated in the north of Mexico, in the states of Tamaulipas and Nuevo León. In August 2010, the bodies of seventy-two migrants were found in San Fernando, Tamaulipas.<sup>30</sup> Between April and May 2011, in the same municipality, forty-seven clandestine graves, containing the remains of 193 persons – including migrants – were located.<sup>31</sup> In May 2012, forty-nine mutilated bodies, some of which belonged to migrants from Honduras, Nicaragua and Guatemala, were found in Cadereyta, Nuevo León.<sup>32</sup> At the time of writing, impunity for these three incidents is still prevailing, although there are clear indications that State officials were directly or indirectly involved in the perpetration or concealment of these crimes.<sup>33</sup> Although not all mortal remains have been duly identified, it is now evident that the majority of victims were migrants travelling from Central America.<sup>34</sup> Besides the three mentioned notorious cases, many more migrants currently unaccounted for may have been

29 General Law on Enforced Disappearance of Persons, Disappearance Committed by Non-State Actors and the National System of Search of Persons, 17 November 2017 (entered into force 16 January 2018) (General Law on Disappeared Persons), available at: [www.diputados.gob.mx/LeyesBiblio/pdf/LGMDFP\\_171117.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGMDFP_171117.pdf). For the definition of the terms “disappeared” and “not localized”, see Art. 2. XV–XVI.

30 Secretaría de la Marina, *Personal de la Armada de México descubre rancho de presuntos delincuentes en San Fernando, Tamaulipas*, 24 August 2010, available at: [2006-2012.semar.gob.mx/sala-prensa/comunicados-2010/1436-comunicado-de-prensa-216-2010.html](http://2006-2012.semar.gob.mx/sala-prensa/comunicados-2010/1436-comunicado-de-prensa-216-2010.html).

31 Fundación para la Justicia y el Estado Democrático de Derecho, *Fosas clandestinas en San Fernando, Tamaulipas*, 2011, available at: [fundacionjusticia.org/47-fosas-con-193-restos-en-san-fernando-tamaulipas/](http://fundacionjusticia.org/47-fosas-con-193-restos-en-san-fernando-tamaulipas/).

32 Fundación para la Justicia y el Estado Democrático de Derecho, *El caso de 49 torsos encontrados en la carretera a Nuevo León*, 2012, available at: [fundacionjusticia.org/el-caso-de-49-torsos-encontrados-en-la-carretera-de-cadereyta-nuevo-leon/](http://fundacionjusticia.org/el-caso-de-49-torsos-encontrados-en-la-carretera-de-cadereyta-nuevo-leon/).

33 IACHR, above note 15, paras 179–183; Jesse Franzblau, “PGR entrega datos sobre participación de policías de San Fernando en masacre de migrantes”, *Animal Político*, 22 December 2014, available at: [www.animalpolitico.com/2014/12/policias-de-san-fernando-participaron-en-masacre-de-migrantes-pgr-entrega-datos-del-caso/](http://www.animalpolitico.com/2014/12/policias-de-san-fernando-participaron-en-masacre-de-migrantes-pgr-entrega-datos-del-caso/).

34 See, for example, CNDH, *Recomendación sobre la investigación de violaciones graves a los derechos humanos a la seguridad ciudadana y de acceso a la justicia en su modalidad de procuración, en agravio de las 49 personas halladas sin vida en el Municipio de Cadereyta, Nuevo León*, 18 October 2017, available at: [www.cndh.org.mx/sites/all/doc/Recomendaciones/ViolacionesGraves/RecVG\\_008.pdf](http://www.cndh.org.mx/sites/all/doc/Recomendaciones/ViolacionesGraves/RecVG_008.pdf).

subjected to arbitrary killings in Mexico.<sup>35</sup> Those who have not yet been identified must be counted among the ranks of missing or disappeared migrants.

In 2014, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions pointed out that

undocumented migrants who transit through Mexico put their lives at serious risk, although it is difficult to obtain reliable figures on the numbers killed. Reportedly, there is a direct link between disappearances and killings of migrants, organized crime, and complicity of law enforcement, investigative and other authorities.<sup>36</sup>

The gravity of the situation of missing and disappeared migrants in Mexico, and their extreme vulnerability, coupled with the inadequate response from State authorities, have been increasingly denounced by NGOs<sup>37</sup> and international organizations.

Due to the spike in crimes committed against migrants, including enforced disappearance, and the stark increase in the number of missing and disappeared migrants, thousands of families – mostly residing in Central America – are struggling to unveil the truth regarding the fate and whereabouts of their loved ones and to obtain justice and redress.<sup>38</sup> In this ordeal, they are confronted with unprecedented legal, judicial and administrative difficulties, mostly determined by the complex transnational nature of the phenomenon at stake and the fact that, from abroad, access to justice is further complicated by practical obstacles such as the need for a visa to enter the country and undertake the necessary activities and the overall ordeal of navigating a foreign jurisdiction without adequate assistance. In Mexico, families of disappeared persons in general are left without effective answers from the State, search operations are not effective, and impunity is rampant.<sup>39</sup> Relatives of disappeared and missing migrants find themselves in an even worse position.<sup>40</sup> In the words of the IACHR,

35 Special Rapporteur on Executions, above note 20.

36 *Ibid.*, para. 74.

37 See, for example, Amnesty International, “Mexico Becoming a ‘No-Go Zone’ for Migrants as Gruesome Massacre Remains Unresolved Five Years On”, 2015, available at: [www.amnesty.org/en/latest/news/2015/08/mexico-becoming-a-no-go-zone-for-migrants-as-gruesome-massacre-remains-unresolved-five-years-on/](http://www.amnesty.org/en/latest/news/2015/08/mexico-becoming-a-no-go-zone-for-migrants-as-gruesome-massacre-remains-unresolved-five-years-on/); Human Rights Watch, *Mexico’s Disappeared: The Enduring Cost of a Crisis Ignored*, 20 February 2013, available at: [www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored](http://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored); Open Society Justice Initiative, above note 17.

38 Special Rapporteur on Executions, above note 5, para. 70.

39 Grupo Interdisciplinario de Expertos Independientes, *Informe Ayotzinapa*, Mexico City, 2015, pp. 347–359; Grupo Interdisciplinario de Expertos Independientes, *Informe Ayotzinapa II*, Mexico City, 2016, pp. 555–605. See also IACHR, *Violence, Children and Organized Crime*, OEA/SER.L.V/II, Doc. 40/15, 11 November 2015, paras 400–401 (on the specific situation of migrants, see paras 319–326, 340–342).

40 It must be pointed out that families of Mexican missing or disappeared migrants are exposed to a particularly harsh situation and may find themselves somewhat “overshadowed” by relatives of other Mexican disappeared. Among others, see Caterina Morbiato, “Prácticas resistentes en el México de la desaparición forzada”, *Trace*, No. 71, 2017; Aaron Nelson and Julysa Sosa, “The Search for Missing Migrants”, *Pulitzer Center*, 24 July 2017, available at: [pulitzercenter.org/reporting/search-missing-migrants](http://pulitzercenter.org/reporting/search-missing-migrants); José Ignacio de Alba, “23 migrantes mexicanos, cuatro años desaparecidos y las familias los siguen buscando”, *Animal Político*, 25 March 2015, available at: [www.animalpolitico.com/2015/03/23-migrantes-mexicanos-cuatro-anos-desaparecidos-y-las-familias-que-los-siguen-buscando/](http://www.animalpolitico.com/2015/03/23-migrantes-mexicanos-cuatro-anos-desaparecidos-y-las-familias-que-los-siguen-buscando/).

*de jure* and *de facto* impediments put justice out of reach to migrants in an irregular situation. Most of the crimes and human rights violations committed against them go unpunished, which reveals just how vulnerable they are and how unprotected they are by the system of justice.<sup>41</sup>

A first evident stumbling block is the place of residence of families, added to the fact that they often pertain to socially marginalized groups, living in precarious economic conditions or in remote areas. Filing complaints or reports from their place of residence through diplomatic or consular channels has so far been virtually impossible, as the process is plagued by gaps and delays that make it extremely inefficient.<sup>42</sup> The existing coordination mechanisms seem unsuitable for complying with States' international obligations, especially with regard to the search for and location of disappeared and missing migrants and, in the event of their death, the exhumation, identification and return of their remains.<sup>43</sup> In particular, relatives of missing migrants residing abroad face severe restraints in their access to justice.<sup>44</sup> Those relatives who envisage travelling to Mexico in order to file complaints *in loco* and be directly involved in operations of search or in the conduct of criminal investigations frequently lack the necessary documents to do so, and are denied temporary humanitarian visas that would enable them to legally enter Mexican territory.<sup>45</sup> Even when these bureaucratic problems are overcome, and the necessary resources to embark on the journey can be gathered,

41 IACHR, above note 15, para. 93.

42 See, among others, Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report to the CED in View of the Adoption of the List of Issues*, May 2014, available at: [tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_ICO\\_MEX\\_17773\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_ICO_MEX_17773_S.pdf); Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report to the CED in View of the Periodic Exam of Mexico*, December 2014, available at: [tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_NGO\\_MEX\\_19217\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_NGO_MEX_19217_S.pdf).

43 Concerning cases of enforced disappearance, a number of conventions provide obligations for States to cooperate with regard to criminal proceedings, locating and releasing disappeared persons and, in the event of death, exhuming and identifying them and returning their remains. See International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006 (ICPPED), Arts 9(2), 11(1), 14, 15, 25(3). The ICPPED entered into force on 23 December 2010; Mexico ratified it on 18 March 2008 and, among Central American States mostly concerned by the phenomenon of migration to Mexico, only Honduras is a State party, having ratified the Convention on 1 April 2008. See also the Inter-American Convention on Forced Disappearance of Persons, 9 June 1994, which has been in force since 28 March 1996 and has been ratified – among the States analyzed in this article – by Guatemala, Honduras and Mexico, respectively on 22 February 2000, 11 July 2005 and 9 April 2002. This convention establishes an obligation to cooperate in order to “prevent, punish and eliminate the forced disappearance of persons” (Art. I(c)), and to “provide one another mutual assistance in the search for, identification, location, and return of minors who have been removed to another State or detained therein as a consequence of the forced disappearance of their parents or guardians” (Art. XII). The Inter-American Court of Human Rights (IACtHR) has elaborated on the obligation to cooperate among States vis-à-vis cases of enforced disappearance, in particular with regard to the conduct of investigations, extradition of suspects and mutual legal assistance. See IACtHR, *Goiburú and Others v. Paraguay*, Judgment, 22 September 2006, paras 130–132.

44 Ximena Suárez, Andrés Díaz, José Knippen and Maureen Meyer, *El acceso a la justicia para personas migrantes en México: un derecho que existe sólo en el papel*, July 2017, available at: [fundacionjusticia.org/cms/wp-content/uploads/2013/06/Accessoalajusticia\\_Versionweb\\_Julio2017.pdf](http://fundacionjusticia.org/cms/wp-content/uploads/2013/06/Accessoalajusticia_Versionweb_Julio2017.pdf).

45 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, *Follow-up Report to the CED*, February 2017, para. 49, available at: [fundacionjusticia.org/cms/wp-content/uploads/2013/06/FINAL-InfomedeseguimientoCED-MEX2017-2.pdf](http://fundacionjusticia.org/cms/wp-content/uploads/2013/06/FINAL-InfomedeseguimientoCED-MEX2017-2.pdf).

relatives of missing and disappeared migrants who manage to enter Mexico struggle with loopholes in the domestic legislation. In particular, their legal standing and status as victims have often not been formally recognized, therefore hindering them from claiming their rights, including the right to be actively involved in operations of search and associated to criminal investigations (the latter being known in Mexico as *coadyuvancia*).<sup>46</sup> Appointing a legal counsel or representative in Mexico has also become extremely difficult, if not virtually impossible, for families of missing and disappeared migrants residing abroad, due to bureaucratic and administrative obstacles posed by Mexican authorities, including a great amount of formalism.<sup>47</sup>

While the rule of law requires the respect of certain formalities, the situation of relatives of missing migrants calls for greater flexibility due to the specific features of the phenomenon. Further, access to files containing data and information on the progress of investigations concerning missing and disappeared migrants is one of the biggest problems faced by families residing abroad, thus jeopardizing their rights to know the truth, to access justice and to obtain redress.<sup>48</sup> The impossibility of acquiring information on the fate and whereabouts of loved ones is a source of great suffering and anguish for families, often amounting to inhumane treatment and an impairment of their mental integrity.<sup>49</sup> In this case, this feeling is further exacerbated by the physical distance involved and the practical barriers encountered by families.<sup>50</sup> Out of despair, some relatives decide to leave their countries of residence and enter Mexico without documents, often relying on smugglers, thus exposing themselves to the same security risks already faced by their loved ones.<sup>51</sup>

With regard to mortal remains located in the mass graves related to the three above-mentioned massacres, having access to information concerning the exhumation and identification process and providing DNA samples proved almost impossible for families residing in Central America.<sup>52</sup> In the face of this ordeal, instances where Mexican authorities made mistakes in the identification

46 Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report in View of the Adoption of the List of Issues*, above note 42, paras 81–98. See also UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council Res. 1989/65, 24 May 1989, Principle 16, available at: [www.ohchr.org/Documents/ProfessionalInterest/executions.pdf](http://www.ohchr.org/Documents/ProfessionalInterest/executions.pdf).

47 X. Suárez *et al.*, above note 44; Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Follow-Up Report to the CED*, February 2016, para. 34, available at: [tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT\\_CED\\_NGS\\_MEX\\_23956\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_NGS_MEX_23956_S.pdf).

48 WGEID, “General Comment on the Right to the Truth in Relation to Enforced Disappearance”, in *Report of the Working Group on Enforced or Involuntary Disappearances*, UN Doc. A/HRC/16/48, 26 January 2011, para. 39 (in particular see para. 3 of the General Comment, on the right of relatives of disappeared persons to be closely involved with the investigations). Article 24(2) of the ICPPED recognizes the victims’ right to know the truth regarding the circumstances of the enforced disappearance, the progress and results of the investigation and the fate of the disappeared person.

49 See, for example, IACtHR, *Gutiérrez and Family v. Argentina*, Judgment, 25 November 2013, paras 97, 138–139.

50 IACHR, above note 15, paras 192, 195.

51 WGEID, above note 6, paras 11–13.

52 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, para. 63.

of mortal remains and returned wrongly identified bodies to families have been registered.<sup>53</sup> In other cases, relatives living in Central America received information that the remains of their loved ones had been found in Mexico (without any precision on the reliability of the process of exhumation and identification conducted) and would be cremated due to hygienic and public health reasons. When they tried to oppose this before the Mexican authorities, arguing that they had no certainty whatsoever on the credibility of the identification and that cremation was against their religious beliefs and customs, they were told that they had no legal standing to do so.<sup>54</sup> In some cases, while complaints were still pending, cremation was carried out anyway.<sup>55</sup> The majority of relatives who have been exposed to this form of re-victimization have so far been unable to obtain justice and redress from the Mexican authorities for the harm suffered, and in exceptional cases where their rights were acknowledged in court, the relevant judgments remained unimplemented.<sup>56</sup> These episodes have fostered a climate of distrust towards the Mexican authorities among families, in particular vis-à-vis the forensic services and the Attorney General's Office, who some have regarded as being incapable or unwilling to establish the truth and to conduct thorough and effective investigations.<sup>57</sup>

Not only did the applicable domestic legal frameworks in Mexico and the neighbouring countries fail to offer adequate responses, but also in some cases the traditional means offered by international human rights mechanisms proved

53 Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report to the Committee against Torture*, May 2012, available at: [tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/INT\\_CAT\\_NGO\\_MEX\\_12976\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/INT_CAT_NGO_MEX_12976_S.pdf), paras 136–150 (reference to the return of the wrong mortal remains at para. 139).

54 Among others, the case of Ms Bertila Parada, mother of Mr Carlos Osorio Parada, can be cited. Mr Osorio Parada left El Salvador in March 2011, heading to the United States. His mother heard from him for the last time on 26 March 2011, when he was in Monterrey (Mexico), allegedly almost ready to cross the border. Ms Parada reported the disappearance of her son to the Salvadorian authorities. In 2012, she received a communication through the Salvadorian Ministry of Foreign Affairs, according to which the remains of her son had been located among the dead bodies found in San Fernando, Tamaulipas, and were going to be incinerated. Ms Parada expressed her wish to obtain more information on the process of identification and to oppose the cremation. In order to halt this process, Ms Parada, represented by a Mexican NGO, filed an appeal before the Mexican authorities. She eventually obtained the suspension of this measure, but her case reached the Supreme Court of Justice of Mexico with regard to the refusal to acknowledge her status as a “victim” and to grant her access to data and information on the progress of the investigation. It was not until 2 March 2016 that the Supreme Court of Justice of Mexico issued a landmark verdict acknowledging the legal status as victims – along with the ensuing rights – of relatives of missing migrants. Zorayda Gallegos, “México emite un fallo histórico en el caso de los migrantes masacrados en San Fernando”, *El País*, 3 March 2016, available at: [internacional.elpais.com/internacional/2016/03/03/mexico/1456968766\\_847064.html](http://internacional.elpais.com/internacional/2016/03/03/mexico/1456968766_847064.html). See Supreme Court of Justice of Mexico, *Amparo en revisión*, Case No. 382/2015, 30 January 2017, available at: [www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=178853](http://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=178853).

55 Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report in View of the Adoption of the List of Issues*, above note 42, paras 164–170.

56 César Contreras León, “Sentencias que no se cumplen: El derecho de papel y la justicia que no llega”, 18 September 2017, available at: [eljuegodelacorte.nexos.com.mx/?p=6904#\\_ftn1](http://eljuegodelacorte.nexos.com.mx/?p=6904#_ftn1).

57 See, for example, Red Regional Verdad y Justicia para las Personas Migrantes, *Las personas migrantes como grupo vulnerable*, February 2014, available at: [fundacionjusticia.org/cms/wp-content/uploads/2013/06/INFORME-RELATOR-EJECUCIONES-EXTRAJUDICIALES-140413.pdf](http://fundacionjusticia.org/cms/wp-content/uploads/2013/06/INFORME-RELATOR-EJECUCIONES-EXTRAJUDICIALES-140413.pdf); CNDH, above note 34.

insufficient. For instance, a Mexican NGO representing families of missing and disappeared migrants, both from Mexico and from Central America, lodged a request before the IACHR for the adoption of precautionary measures directed at the preservation of burial sites and mass graves and the carrying out of exhumation and identification operations in accordance with international standards, in order to provide opportunities for families to know the truth.<sup>58</sup> Given the features of the phenomenon of missing migrants and its transnational character, the petitioners requested that the IACHR address measures to be taken by the various States concerned. The Commission rejected the request, holding, among other things, that precautionary measures had always been directed at one State at a time and in situations where at the very least the precise nationality of the beneficiaries of the measures could be determined beforehand.<sup>59</sup> This situation revealed an unpreparedness to adapt the existing tools to the specific features of the issue of missing and disappeared migrants in a transnational context.

In recent years, the existence of these obstacles has been gradually acknowledged by international human rights mechanisms that have addressed several recommendations to Mexico. Notably, the IACHR recommended that Mexico:

Put into practice mechanisms to search for migrants who are disappeared, missing, kidnapped, or otherwise deprived of liberty. These mechanisms must be coordinated among the States, federal government, and the migrants' countries of origin in Central America and the countries of destination, primarily the United States[;]

Develop effective and regionally coordinated investigative mechanisms that enable aggrieved migrants and their family members to have effective access to justice, irrespective of their immigration status or their provenance[;] ...

Put into practice a nationwide mechanism that makes it easier to share forensic information on the unidentified remains of Mexican persons and Central Americans who disappeared in Mexico, with the forensic databanks on disappeared migrants that have been developed within the region, such as those in El Salvador, Guatemala, Honduras and the state of Chiapas, and any others that may develop in the future. This national mechanism should be merged with a like regional mechanism enabling forensic information to be shared among the countries of Central and North America. Civil society

58 Fundación para la Justicia y el Estado Democrático de Derecho, *Migrantes y mexicanos asesinados y desaparecidos en San Fernando, Tamaulipas, México en relación con Estados Unidos Mexicanos, El Salvador, Guatemala, Ecuador y Honduras*, Request for Precautionary Measures to the IACHR, 2011 (on file with author).

59 IACHR, Letter to the Petitioners of Request MC-214-11, REF: *Migrantes y mexicanos presuntamente asesinados y desaparecidos en México/Solicitud de medidas cautelares*, 19 October 2011 (on file with author).

organizations should be instrumental in running both the national and regional databanks[;] ...

Develop regional instruments and mechanisms to combat the criminal activities of transnational organized crime groups involved in the abduction of migrants, human trafficking and smuggling of migrants.<sup>60</sup>

Similar recommendations, emphasizing the need to establish specific mechanisms able to deal with the transnational scope of the phenomenon, have also been issued by other international bodies.<sup>61</sup> In particular, the Committee on Enforced Disappearances (CED) has expressed special concern for this situation and has been very vocal in recommending that Mexico,

in conjunction with countries of origin and countries of destination, and with input from victims and civil society, ... 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;<sup>62</sup> 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.<sup>63</sup>

From the above it appears that the mechanisms existing in Mexico for the search for missing and disappeared persons, as well as those in charge of conducting investigations, were not sufficient to deliver the desired results. Generally understaffed, lacking the needed financial and human resources, and incapable of meeting the international standards of due diligence,<sup>64</sup> they proved inadequate to deal with the extraordinarily complex cases of missing and disappeared migrants. New organs, with a regional, transnational nature and focus, were needed. Prompted by the reiterated recommendations received from international human

60 IACHR, above note 15, para. 409, Recommendations 14, 15, 27, 39. The IACHR holds periodic thematic audiences on the subject of access to justice for migrants in Mexico; see Organization of American States, “Audiencias y otros eventos públicos de la CIDH”, available at: [www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=20](http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=es&Topic=20).

61 See *Report of the Working Group on the Universal Periodic Review*, UN Doc. A/HRC/25/7, 11 December 2013, paras 148.58, 148.79, 149.89, 148.131, 148.146, 148.173, 148.174, 148.175, 148.176; Special Rapporteur on Executions, above note 20, para. 74; WGEID, above note 22, paras 62, 69–70, 110.

62 In 2008, the ICRC made available an ante-mortem/post-mortem (AM/PM) database; see ICRC, “Ante-Mortem/Post-Mortem Database: An Information Management Application for Missing Persons/Forensic Data”, available at: [www.icrc.org/eng/assets/files/2013/amprm-database-information-sheet-icrc-2012.pdf](http://www.icrc.org/eng/assets/files/2013/amprm-database-information-sheet-icrc-2012.pdf). Since 2014, the ICRC has supported the Mexican authorities in the implementation of the AM/PM database; see ICRC, “Actions and Results – Mexico”, January–August 2014, available at: <https://tinyurl.com/y7ow6lvq>. See also Ute Hofmeister, Shuala Martin, Carlos Villalobos, Juliana Padilla and Oran Finegan, “The ICRC AM/PM Database: Challenges in Forensic Data Management in the Humanitarian Sphere”, *Forensic Science International*, Vol. 279, 2017.

63 CED, above note 19, para. 24.

64 IACHR, above note 15, paras 182–199, 247–248.

rights bodies and by advocacy campaigns led by Mexican NGOs and committees of families of missing and disappeared migrants from Central America,<sup>65</sup> between 2013 and 2016 Mexico eventually set up three mechanisms aimed at providing effective humanitarian, forensic, legal and judicial responses, duly taking into account the transnational character of these enforced disappearances and the need for regionally coordinated efforts.

## The Forensic Commission

In the wake of the three massacres of migrants discussed above, the problems concerning operations of exhumation, identification and return of mortal remains to families residing abroad became evident and, fuelled by instances of mistaken identifications, a climate of distrust towards the Mexican authorities and the concerned consular and diplomatic channels spread. To tackle this situation, at the initiative of civil society organizations from Mexico, Honduras, El Salvador and Guatemala,<sup>66</sup> in August 2013 a Forensic Commission mandated to exhume, identify and return the mortal remains located in the burial sites related to the three massacres was established.

The Agreement setting up the Forensic Commission for the identification of remains in San Fernando and Cadereyta was signed by the Attorney General's Office of Mexico, the Argentine Forensic Anthropology Team (Equipo Argentino de Antropología Forense, EAAF), committees of families of missing and disappeared migrants, and NGOs from El Salvador, Honduras, Guatemala and Mexico.<sup>67</sup> The mixed composition of this body and the proactive involvement of civil society from the early stages of its design, as well as the cooperation between State-appointed and independent forensic experts (such as the EAAF) aimed at reconstructing trust towards the authorities among families of missing and disappeared migrants, represent a significant novelty.<sup>68</sup> Pursuant to Articles 4–9 and 15 of the Agreement, the Attorney General's Office and the EAAF are in

65 *Ibid.*, paras 192, 208. See also Olga Aikin and Alejandro Anaya Muñoz, “Crisis de derechos humanos de las personas migrantes en tránsito por México: Redes y presión transnacional”, *Foro Internacional*, Vol. 53, No. 1, 2013. A short film on the advocacy campaign “Por un mecanismo transnacional de justicia para migrantes” is available at: [www.youtube.com/watch?v=MeewNACYVOQ](http://www.youtube.com/watch?v=MeewNACYVOQ).

66 The organizations involved were COFAMIDE, COFAMIPRO, the Fundación para la Justicia y el Estado Democrático de Derecho, Casa del Migrante de Saltillo, Centro Diocesano de Derechos Humanos Fray Juan de Larios, Asociación Civil Voces Mesoamericanas, Mesa Nacional para las Migraciones en Guatemala, Asociación Misioneros de San Carlos Scalabrinianos en Guatemala, Centro de Derechos Humanos Victoria Diez, and Foro Nacional para la Migración en Honduras.

67 Texto oficial del Convenio de Colaboración para la Identificación de Restos Localizados en San Fernando, Tamaulipas y en Cadereyta, Nuevo León, 22 August 2013 (Agreement on the Forensic Commission), available at: [fundacionjusticia.org/proyectos-home/texto-oficial-del-convenio-de-colaboracion-para-la-identificacion-de-restos-localizados-en-san-fernando-tamaulipas-y-en-cadereyta-nuevo-leon/](http://fundacionjusticia.org/proyectos-home/texto-oficial-del-convenio-de-colaboracion-para-la-identificacion-de-restos-localizados-en-san-fernando-tamaulipas-y-en-cadereyta-nuevo-leon/).

68 IACHR, above note 15, paras 173, 234 and 322. See also Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), *Concluding Observations on Mexico*, UN Doc. CMW/C/MEX/CO/3, 13 September 2017, para. 31; Olivier Dubois and Rocio Maldonado de la Fuente, “Armed Violence and the Missing in Mexico and Central America”, *Humanitarian Exchange*, No. 69, 2017.

charge of the scientific aspects, while civil society organizations provide data and information, and committees of families facilitate the establishment of contacts with relatives of missing and disappeared migrants.

Notably, even before the establishment of the Forensic Commission, the EAAF had been working on the setting up of genetic databases, called Bancos de Información Forense de Migrantes Desaparecidos, in El Salvador, Honduras and the Mexican state of Chiapas.<sup>69</sup> These databases gather information collected by governmental and non-governmental organizations including committees of families of missing and disappeared migrants, national human rights institutions, attorney generals' offices in the different countries concerned, consular and diplomatic services, ministries of foreign affairs, and the EAAF.<sup>70</sup> The systematic collection of DNA by morgues in the countries concerned can enable search operations, discovery and identification via matching.<sup>71</sup> The existence of a wider basis for comparison and matching increases the chances for identification.

While the mandate of the Forensic Commission at present refers solely to exhumation and identification of the remains linked to the three massacres of migrants,<sup>72</sup> since the beginning of its mandate the Forensic Commission has been trying to establish good practices in the process of exhumation, identification, return of mortal remains, and notification of families.<sup>73</sup> The establishment of such protocols should be beneficial for the authorities involved in view of the thousands of other cases of unidentified remains, even those not necessarily concerning migrants or mass casualties.<sup>74</sup>

The Forensic Commission has achieved significant results since its inception, establishing a standardized procedure to be followed to collect data, to carry out DNA matching, to respect the chain of custody, and to notify the identification of the body of a missing migrant to his or her relatives in a dignified manner that provides elements of certainty and avoids to the extent possible instances of re-traumatization.<sup>75</sup> Among the many interesting aspects of

69 IACHR, above note 15, paras 199–204.

70 *Ibid.*; Agreement on the Forensic Commission, above note 67, Arts 12, 14.

71 IACHR, above note 15, paras 199–204.

72 The very title of the Agreement establishing the Forensic Commission refers to “cooperation for the identification of remains found in San Fernando, Tamaulipas and Cadereyta, Nuevo León”; see Agreement on the Forensic Commission, above note 67. See below on the ongoing attempts to further expand the mandate of the Forensic Commission.

73 *Ibid.*, Arts 4, 9; IACHR, above note 15, paras 207–208, 322.

74 In 2017, the Mexican government acknowledged the disappearance of more than 32,000 people; see “México, el país donde hay más de 32.000 desaparecidos”, *CNN Español*, 13 September 2017, available at: [cnn.espanol.com/2017/09/13/mexico-el-pais-donde-hay-mas-de-32-000-desaparecidos/#0](https://www.cnn.espanol.com/2017/09/13/mexico-el-pais-donde-hay-mas-de-32-000-desaparecidos/#0). As of February 2018, the number of persons registered in the National Database on Missing and Disappeared Persons was 35,410; see: [secretariadoejecutivo.gob.mx/rnped/datos-abiertos.php](https://secretariadoejecutivo.gob.mx/rnped/datos-abiertos.php).

75 At the end of August 2017, the Forensic Commission had identified sixty-eight persons, although the number of notifications is slightly lower, as some have been scheduled for the near future. See Asociación de Familiares de Migrantes Desaparecidos de Guatemala *et al.*, *Report to the CMW*, August 2017, para. 86, available at: [tbinetnet.ohchr.org/Treaties/CMW/Shared%20Documents/MEX/INT\\_CMW\\_NGO\\_MEX\\_28672\\_S.pdf](https://tbinetnet.ohchr.org/Treaties/CMW/Shared%20Documents/MEX/INT_CMW_NGO_MEX_28672_S.pdf). On 4 September 2013, the Forensic Commission adopted a specific Protocol on the Notification of Identification of Remains of People Located in San Fernando, Tamaulipas and Cadereyta, Nuevo León (Protocol on Notification), available at: <https://tinyurl.com/y9ftx8pt>.

the process, particularly notable is the reversal of roles: when interviews must be conducted, DNA samples collected or an identification notified, it is no longer the responsibility of the families to travel to Mexico; rather, the responsibility is on the institutional actors and the EAAF to travel to the country of origin of the migrant.<sup>76</sup> This is also the case for the return of duly identified remains.<sup>77</sup> The Mexican authorities are in charge of taking all necessary measures – including the issuing of documents and humanitarian visas, and covering of expenses – to facilitate the presence of relatives of missing migrants in Mexico, when it is exceptionally required.<sup>78</sup> Consular and diplomatic channels have been alerted and are adapting their traditional operation system to favour this process.<sup>79</sup>

This is a paradigm shift that has greatly contributed to lessening the psychological trauma and material burdens for families of missing and disappeared migrants, and to rebuilding an environment of trust vis-à-vis the authorities. Nevertheless, some drawbacks in the functioning of the Forensic Commission and in the smooth conduct of the process remain, and these will be analyzed below.

## **The Investigative Unit on Crimes against Migrants and the Mechanism of External Support for Search and Investigation**

Prior to the establishment of the Forensic Commission, the IACHR had found the Mexican authorities in breach of their international obligations not only in terms of searching for missing migrants, but also with regard to the carrying out of effective investigations capable of leading to the identification of those responsible for the crimes concerned and to their prosecution and sanction.<sup>80</sup> Hence, in addition to the creation of a mechanism mandated to deal with the scientific and forensic aspects and the provision of humanitarian responses to families of missing and disappeared migrants, the need remained to establish a similar body in charge of criminal investigations aimed at identifying perpetrators of crimes committed against migrants and capable of dealing with transnational organized criminal groups. Similarly, pursuant to the recommendations directed at Mexico by various international human rights bodies, the creation of an effective channel of communication and coordination among the different authorities, states and families was also required.<sup>81</sup>

76 Agreement on the Forensic Commission, above note 67, Arts 4, 9. See also Protocol on Notification, above note 75, Art. VIII.

77 Protocol on Notification, above note 75, Art. VII.

78 Cámara de Diputados del H. Congreso de la Unión, Ley de Migración, 25 May 2011, Arts 41, 52.V, available at: [www.diputados.gob.mx/LeyesBiblio/ref/lmigra.htm](http://www.diputados.gob.mx/LeyesBiblio/ref/lmigra.htm); Cámara de Diputados del H. Congreso de la Unión, Ley General de Víctimas, 9 January 2013 (General Law on Victims), Arts 7.XI, 120.VII, available at: [www.diputados.gob.mx/LeyesBiblio/pdf/LGV\\_030117.pdf](http://www.diputados.gob.mx/LeyesBiblio/pdf/LGV_030117.pdf); General Law on Disappeared Persons, above note 29, Art. 53.XVIII.

79 General Law on Victims, above note 78, Arts 107, 112.

80 IACHR, above note 15, paras 182–199, 247–248.

To answer to these demands, on 16 December 2015, the Attorney General's Office of Mexico adopted an agreement establishing an Investigative Unit on Crimes against Migrants (Investigative Unit) and a Mechanism of External Support for Search and Investigation (Mechanism of External Support).<sup>82</sup>

The Investigative Unit depends on the Human Rights Section of the Attorney General's Office, and its mandate includes facilitation of access to justice and effective remedies for migrants and their families; carrying out the search for missing and disappeared migrants; investigation and prosecution of those responsible for crimes committed against migrants; and directing, monitoring and coordinating actions aimed at granting reparation to migrants and their families for the harm suffered.<sup>83</sup> The work of the Investigative Unit will be facilitated by the Mechanism of External Support, which is meant, through the use of consular and diplomatic channels, to allow families of missing and disappeared migrants to have access to, and be in communication with, Mexican authorities competent to address the cases of their loved ones, whether administrative, judicial or responsible for social support, directly from their countries of residence.<sup>84</sup> The Mechanism of External Support hence aims at being a channel through which relatives of missing and disappeared migrants can be informed on the progress of the investigation and be closely involved with the operations of search and, where appropriate, in the identification of perpetrators of crimes against their loved ones.<sup>85</sup> Moreover, the Mechanism is in charge of ensuring that relatives of missing and disappeared migrants who fall under the definition of "victim" set forth under the Mexican General Law on Victims of 9 January 2013 can obtain measures of social support (including medical and psychosocial assistance) and reparation directly in their country of residence.<sup>86</sup> The Mechanism of External Support is also meant to facilitate families of missing and disappeared migrants in the process of appointment of a legal representative of choice in Mexico.<sup>87</sup>

The agreement to establish the two mechanisms was adopted in December 2015. The Investigative Unit had commenced its work by the end of February 2016 and the Mechanism of External Support was used for the first time in the autumn of 2016, after the guidelines on its functioning were adopted in September 2016.<sup>88</sup>

81 CED, above note 19, para. 24; CMW, above note 68, paras 31–32. See above on the identification of existing gaps and the corresponding recommendations in general.

82 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, 18 December 2015 (Agreement on the Establishment of the Investigative Unit and the Mechanism of External Support), available at: [www.dof.gob.mx/nota\\_detalle.php?codigo=5420681&fecha=18/12/2015](http://www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015).

83 *Ibid.*, Arts 1, 6.

84 *Ibid.*, Art. 8.

85 *Ibid.*, Art. 11.

86 General Law on Victims, above note 78, Arts 8, 9, 21, 34; Protocol on Notification, above note 75, Art. 9.

87 Agreement on the Establishment of the Investigative Unit and the Mechanism of External Support, above note 82, Art. 11(5).

88 Investigative Unit on Crimes against Migrants, *Primer informe estadístico (First Report)*, 2017, available at: [www.gob.mx/cms/uploads/attachment/file/241119/UIDPM-1er\\_Informe\\_Estadi\\_stico\\_FINAL\\_ahora\\_si.pdf](http://www.gob.mx/cms/uploads/attachment/file/241119/UIDPM-1er_Informe_Estadi_stico_FINAL_ahora_si.pdf).

The Investigative Unit and the Mechanism of External Support have been conceived and designed in the context of a participative process in which civil society associations and committees of families of missing and disappeared migrants have been actively involved since the beginning.<sup>89</sup> As pitfalls in the operation of the Unit and the Mechanism have emerged, civil society has called for further consultations in an attempt to be more engaged in decision-making and in the strengthening of the process.<sup>90</sup>

## The pitfalls of the three mechanisms and the challenges ahead

The establishment of the Forensic Commission, the Investigative Unit and the Mechanism of External Support has been regarded as a positive development by international human rights mechanisms.<sup>91</sup> However, it has been pointed out that there are still gaps and areas that require improvement.<sup>92</sup>

Since the beginning of the work of the Forensic Commission, there has been an ongoing call from civil society organizations to expand its mandate beyond the three massacres of migrants that took place in 2010–12.<sup>93</sup> On the one hand, this expansion is regarded as a means to increase the possibilities of identification: the broader the pool of mortal remains and DNA samples that can be compared, the higher the chances of identifying the bodies and unveiling the truth for the families. In this regard civil society organizations have stressed that, at the very least, it is indispensable to also include in the work of the Forensic Commission the cases registered in the states in Mexico that are known to be part of the migratory routes towards the United States.<sup>94</sup> On the other hand, associations of relatives of Mexican disappeared persons have been advocating for also having their cases dealt with by the Forensic Commission, arguing that this would increase their chances of learning the truth on the fate and whereabouts of their loved ones and that it would offer them more reliability in view of the high standards applied and the presence of independent forensic experts.<sup>95</sup>

89 *Ibid.*, pp. 4, 10, 31.

90 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, paras 34, 106.

91 Among others, see CED, *Report on Follow-up to the Concluding Observations*, UN Doc. CED/C/11/2, 8 November 2016; and WGEID, above note 19.

92 CMW, above note 68, paras 31–32. See also Washington Office on Latin America (WOLA), *Denunciando delitos cometidos contra migrantes en México desde el extranjero*, 12 April 2017, available at: [www.wola.org/es/analisis/denunciando-delitos-cometidos-contra-migrantes-en-mexico-desde-el-extranjero/](http://www.wola.org/es/analisis/denunciando-delitos-cometidos-contra-migrantes-en-mexico-desde-el-extranjero/).

93 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, paras 86–89.

94 *Ibid.*

95 *Ibid.* While a structural and general expansion of the Forensic Commission's mandate beyond cases of missing or disappeared migrants continues to be considered, significant progress can be registered in the northern state of Coahuila, where on 18 December 2016, with the support of the ICRC, a new law on the exhumation, identification and return of mortal remains has been adopted, available at: [http://congresocoahuila.gob.mx/transparencia/03/Leyes\\_Coahuila/coa246.pdf](http://congresocoahuila.gob.mx/transparencia/03/Leyes_Coahuila/coa246.pdf). This law entitles relatives of missing or disappeared persons to appoint independent forensic experts who can participate in the exhumation and identification process and to review the operations carried out by State authorities in case of doubt (see Arts 13, 40, 100).

At the time of writing, despite a general expression of interest from the Attorney General's Office in studying the amendment and expansion of the mandate of the Forensic Commission, this has not yet occurred.<sup>96</sup> This must be read in conjunction with the lack of coordinated efforts and measures at the State level, given that neither a map nor a unified database of all the clandestine burial sites and mass graves located in Mexico, let alone a national programme of exhumation of such sites, has yet been adopted. The lack of a national strategy on these matters also hinders the possibility of understanding and addressing crime patterns and the real scope of the issues at stake. In this sense, search operations and forensic work are still characterized by a high level of fragmentation that eventually lowers the identification rate and may even increase the families' suffering and anguish.<sup>97</sup> Adequate human and financial resources are needed in order to provide an effective answer, especially in view of the appalling number of common graves and human remains that have recently been located in certain states of Mexico.<sup>98</sup>

Despite the adoption by the Forensic Commission of the Protocol on the Notification of Identification of Remains of People Located in San Fernando, Tamaulipas and Cadereyta, Nuevo León,<sup>99</sup> episodes where this Protocol was not respected were registered in 2014 and 2015, resulting in tensions and the re-traumatization of relatives. For instance, in July 2014 the Forensic Commission conducted the first notifications of identification of the mortal remains of eleven Honduran migrants among the bodies located in Cadereyta and San Fernando.<sup>100</sup> On this occasion, the evident lack of communication and coordination between Honduran and Mexican authorities led to delays in the repatriation of the mortal remains and to the leaking of information through the press that made the forthcoming news public before the families were notified.<sup>101</sup> Moreover, authorities sought to carry out a ceremony for the return of the remains in the barracks of the Honduran Air Forces and in the presence of the media. Families were not previously consulted and they strongly opposed these ideas, considering them unnecessarily spectacular and traumatic and indicating that they would

96 The only expansion of the Forensic Commission's mandate took place on 8 April 2014, when the General Attorney's Offices of the states of Tamaulipas and Nuevo León respectively signed the institutive agreement of the Commission (above note 67). Nevertheless, this is still related to the three massacres of migrants, due to the competence of the two mentioned authorities that is concurrent to that of the Attorney General's Office at the federal level. Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, paras 86–89; Asociación de Familiares de Migrantes Desaparecidos de Guatemala *et al.*, above note 75, para. 93.

97 Asociación de Familiares de Migrantes Desaparecidos de Guatemala *et al.*, above note 75, paras 87–92.

98 “¿Ocultan en Coahuila el mayor campo de exterminio de México, con miles de restos humanos?”, *Sin Embargo*, 7 October 2016, available at: [www.sinembargo.mx/07-10-2016/3101385](http://www.sinembargo.mx/07-10-2016/3101385).

99 Above note 75.

100 Fundación para la Justicia y el Estado Democrático de Derecho *et al.*, *Alternative Report in View of the Periodic Exam of Mexico*, above note 42, paras 82–85.

101 COFAMIPRO and COFAMICENH, *Report to the CMW*, April 2015, paras 23–27, available at: [tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT\\_CMW\\_ICS\\_HND\\_20029\\_S.pdf](http://tbinternet.ohchr.org/Treaties/CMW/Shared%20Documents/HND/INT_CMW_ICS_HND_20029_S.pdf). See also Honduprensa, *Cancillería recibe cuerpos de Hondureños víctimas de masacre en Cadereyta*, 23 July 2014, available at: [honduprensa.wordpress.com/2014/07/23/cancilleria-recibe-cuerpos-de-hondurenos-victimas-de-masacre-en-cadereyta/](http://honduprensa.wordpress.com/2014/07/23/cancilleria-recibe-cuerpos-de-hondurenos-victimas-de-masacre-en-cadereyta/).

have preferred a more private event. Further problems emerged when the families tried to coordinate with the authorities the transfer of the mortal remains to their villages of origin and claimed for expenses from the Mexican Commission of Support to Victims, which is the competent institution pursuant to the law.<sup>102</sup> These first test cases showed the tendency of the consular and diplomatic authorities and of the Commission of Support to Victims to rigidly apply traditional schemes and protocols that do not adequately reflect the reality of missing and disappeared migrants and the needs of their families. Similar instances have been reported more recently,<sup>103</sup> and underscore the necessity to abandon overly rigid bureaucratic formalities<sup>104</sup> and to adapt the process to the complex reality at hand, further enhancing regional cooperation and communication.

While the creation of the Investigative Unit and the Mechanism of External Support was aimed precisely at overcoming some of these obstacles, they struggle with certain shortcomings and practical difficulties. First, the Investigative Unit is relatively understaffed (it currently counts on thirteen prosecutors, none of whom has previous experience working in fields relating to crimes against migrants or crimes of a transnational nature),<sup>105</sup> especially considering the magnitude of the tasks at hand. So far, the operation of the Investigative Unit very much resembles that of other units of the Attorney General's Office, being based mostly on the collection of documentary evidence and not employing *in loco* investigations or a comprehensive analysis of the transnational criminal context and patterns.<sup>106</sup> Furthermore, the Investigative Unit does not have access to any structured mechanism of coordination with other Mexican authorities (such as the Commission of Support to Victims) that may be involved in dealing with the families of missing and disappeared migrants in the countries of origin.<sup>107</sup>

Although the Mechanism of External Support has begun collecting complaints from families of missing and disappeared migrants through the Mexican consulates and embassies in Honduras, El Salvador and Guatemala,<sup>108</sup> it struggles with some material constraints. First, the authority mandated to collect these complaints and to coordinate the process is an *attaché* to the Mexican Attorney General's Office, and at present the only *attaché* of the Attorney

102 General Law on Victims, above note 78, Art. 31. See Fundación para la Justicia y el Estado Democrático de Derecho et al., *Alternative Report in View of the Periodic Exam of Mexico*, above note 42, para. 97; COFAMIPRO and COFAMICENH, above note 101, para. 23.

103 Fundación para la Justicia y el Estado Democrático de Derecho et al., above note 47, paras 37–38.

104 Episodes where families living in Central America have been requested to show that they have a bank account in Mexico in order to receive the reimbursement of burial expenses have been registered, showing the inconsistency of the process, which relatives considered to be overly complicated and, eventually, re-traumatizing. Asociación de Familiares de Migrantes Desaparecidos de Guatemala et al., above note 75, para. 97.

105 Investigative Unit on Crimes against Migrants, above note 88, p. 14. See also Centro Diocesano para los Derechos Humanos Fray Juan de Larios et al., above note 45, para. 43.

106 Asociación de Familiares de Migrantes Desaparecidos de Guatemala et al., above note 75, paras 42–69.

107 Centro Diocesano para los Derechos Humanos Fray Juan de Larios et al., above note 45, paras 46, 48; Asociación de Familiares de Migrantes Desaparecidos de Guatemala et al., above note 75, para. 72.

108 Investigative Unit on Crimes against Migrants, above note 88, p. 23.

General's Office for Central America is based in Guatemala.<sup>109</sup> This implies that whenever actions relating to the Investigative Unit and the Mechanism of External Support must be undertaken in countries such as El Salvador and Honduras, the *attaché* must travel there, taking care of all the relevant practical and logistical arrangements. In practice, this equates the situation to that prior to the establishment of the Mechanism of External Support. While the aim of the latter was precisely to speed up the process of collection and transfer of data and complaints among the different countries, the registration of claims and their formal transfer to Mexico continue to take months. The work of the Investigative Unit is consequently slowed and the object and purpose of the Mechanism of External Support seem to be in jeopardy.

The second major shortcoming of the two mechanisms is that access to measures of social support and reparation for relatives of missing and disappeared migrants is hardly ensured. As a matter of fact, they encounter mostly bureaucratic difficulties in exercising these rights in their respective countries of residence and are frequently requested to travel to Mexico,<sup>110</sup> with all the ensuing, and often insurmountable, practical difficulties that this entails. Moreover, the collection of complaints through the Mechanism of External Support has so far been shown to lack sound guarantees in terms of protection of victims, witnesses and their relatives, particularly with regard to keeping sensitive data confidential.<sup>111</sup> This is especially worrisome considering that families and witnesses often live close to smugglers or members of organized criminal groups or cartels, who may have been involved in the disappearance of their loved one in the first place.

Finally, Mexican embassies and consulates in the Americas are not yet fully familiar with the existence of the Mechanism of External Support and its mandate.<sup>112</sup> This scarce awareness ultimately undermines the use of the Mechanism and leaves families of missing and disappeared migrants to face the obstacles that the Mechanism should remove.

It is evident that the creation of the Forensic Commission, the Investigative Unit and the Mechanism of External Support is to be regarded as a first step, and seemingly in the right direction – but much remains to be done.

## Conclusion

The example of mechanisms set up to address the phenomenon of missing migrants in Mexico and its neighbouring countries confirms that appropriately and effectively dealing with missing and disappeared migrants and their families presents unique challenges and requires innovative responses.

109 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, para. 45.

110 *Ibid.*, para. 48.

111 Asociación de Familiares de Migrantes Desaparecidos de Guatemala *et al.*, above note 75, para. 73.

112 Centro Diocesano para los Derechos Humanos Fray Juan de Larios *et al.*, above note 45, para. 65; Asociación de Familiares de Migrantes Desaparecidos de Guatemala *et al.*, above note 75, para. 72; WOLA, above note 92.

First, the transnational scope of the phenomenon necessarily calls for the setting up of regional mechanisms of search, support and investigation that overcome the traditional national approaches and are capable of enhancing the level of cooperation among States' authorities, with a view to offering effective humanitarian, forensic, legal and judicial responses that meet the needs of families. These mechanisms must be adapted to the specific regional contexts within which they are operating, duly taking into account the peculiarities of migration flows in specific geopolitical settings.

Second, data collection, data sharing, data analysis and related measures to help resolve the fate of missing and disappeared migrants must be improved, standardized and better coordinated. They should not be limited to the documentation of fatalities, but must focus on the collection and circulation of information that can be used to help relatives find their loved ones.

Third, the issue of missing and disappeared migrants should not be addressed without considering the potential role played by organized criminal groups operating on an international scale. This requires the adoption of measures of protection against ill-treatment and intimidation for relatives of missing and disappeared migrants, their representatives and defence counsels, and witnesses that reflect the transnational dimension of the phenomenon and of the threats. Access to justice, redress and measures of social support to families must be granted also to those residing in a country different from the one in which the person was reported missing or was subjected to enforced disappearance.

The attempts made by Mexico and Central American countries can be regarded as first steps in this direction and deserve to be studied in order to single out good practices and learn from mistakes. One important lesson is that all initiatives aimed at dealing with this extremely complex subject greatly benefit from the active involvement of civil society organizations and, in particular, of associations of relatives of missing and disappeared migrants. Any successful mechanism mandated to search, establish the truth, and conduct effective investigations on missing and disappeared migrants requires the full participation of families and their representative associations in the phases of design, implementation, evaluation and decision-making.

Migration flows are not likely to decrease in the near future. Emerging trends that aim at putting in place higher barriers to entry to deter migrants, and which criminalize and scapegoat the latter, are only going to force thousands of people into using more dangerous channels to travel, thus exposing their lives to greater risk. In this grim scenario, it is not improbable that the figure of missing and disappeared migrants will increase. The adoption of adequate legal, administrative, humanitarian and judicial measures cannot be postponed and should be inspired by the need to find the responses that are most conducive to the protection of all persons from such suffering. Wishing to overcome mere rhetoric and to contribute to the development of actual policies, this article aims at nourishing debate and inspiring new ideas to effectively address the issue of missing and disappeared migrants.

