

Executive Summary of the General Allegation to the Working Group on Enforced or Involuntary Disappearances concerning the Condition of Children and Adolescents Victims of Disappearance in Mexico

Submitted by

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Fuerzas Unidas por Nuestros Desaparecidos en Nuevo León

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I. Aim of the General Allegation

1. Pursuant to Art. 33 of the methods of work of the United Nations Working Group on Enforced or Involuntary Disappearances (“WGEID”), it regularly transmits to States a summary of allegations received or gathered from reliable sources with regard to obstacles encountered in the implementation of the Declaration on the Protection of All Persons from Enforced Disappearance (“the Declaration”), and requests the State to comment thereon.
2. The organisations subscribing this general allegation deem it appropriate to bring to the attention of the WGEID the **condition and the obstacles faced by children and adolescents victims of disappearance in Mexico**. The allegation concerns **both children and adolescents who are direct victims of disappearance** and those who are **relatives of disappeared persons**. The situation referred to in the general allegation encompasses victims of enforced disappearance and victims of acts of the same nature perpetrated by non-State actors. It must be pointed out that, **in the case of Mexico, the absence of thorough and effective investigations makes it often impossible to rule out the involvement, direct or indirect, of State agents**.
3. The organisations subscribing the general allegation are aware that the WGEID does not intervene in cases that are attributed to persons or groups not acting on behalf of, or with the support, direct or indirect, consent or acquiescence of, the government. Nevertheless, when the State violates its obligations to prevent and effectively investigate an alleged case, **this makes it impossible to rule out a potential enforced disappearance**, all the more so, in a country where there are several evidences of collusion of State agents with criminal organisations. In this scenario, **the State remains under an obligation to ensure, among others, the adoption of adequate measures of protection in favour of children victims of this practice**. For this reason, in the general allegation the phrase “children victims of disappearance” is used, in order to cover all the above-described situations, without prejudice to the State’s obligation to investigate and establish the corresponding criminal responsibilities.
4. The general allegation will refer in general to the obstacles encountered in the enjoyment of their rights by children and adolescents victims of disappearance across the whole country, and with a particular emphasis on the situation faced by **children and adolescents in the context of migration (towards or across Mexico)** and with details concerning the States of **Chihuahua, Coahuila, Jalisco and Nuevo León**. The choice of these subjects is due to the specific knowledge and expertise of the subscribing organisations. The exclusion of other matters does not imply by any means that the obstacles identified in the general allegation are

limited to those here illustrated. To the contrary, without prejudice for their peculiarities, the subjects at stake are **illustrative of a generalised situation**.

5. In its concluding observations on Mexico, the Committee on Enforced Disappearances declared that there is a “situation of widespread disappearances in much of the State party’s territory”.¹ The WGEID and the Inter-American Commission on Human Rights affirmed that they share this concern.² Although the precise number of victims of enforced disappearance in Mexico has not yet been established with certainty, reports issued by national and international institutions, as well as by civil society organisations, demonstrate that thousands of persons, including children, are directly affected.
6. Pursuant to international law, the condition of children and adolescents requires special protection and States must take specific measures in this regard, with greater attention and responsibility, in keeping with the principles of the child’s best interests. Moreover, the obligation to adopt special measures is even enhanced when migrant children are concerned, provided that they belong to an especially vulnerable group. As the WGEID has aptly pointed out, the effects of enforced disappearance are lived and faced in different ways by women and girls due to gender roles, which are deeply embedded in history, tradition, religion and culture and therefore a gender perspective should be incorporated in all measures, including legislative, administrative, judicial and others, taken by States.³ Unfortunately, in Mexico this is far from reality and the aim of the general allegation is to describe the obstacles faced on a daily basis by thousands of children and adolescents, especially girls, and their families and the flawed response provided by the State.
7. The integral version of the general allegation contains a detailed description of the phenomenon and its scope and characteristics. Moreover, the measures adopted by the State in terms of prevention, search, investigation, prosecution and sanction of those responsible, as well as reparation and assistance are analysed, assessing whether they can be regarded as compatible with the applicable international standards. The specific obstacles faced by children and adolescents relatives of disappeared persons are also illustrated. Finally, the integral version of the general allegation provides a comprehensive list of conclusions and concrete recommendations.

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

² 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; and Inter-American Commission on Human Rights (IACHR), *Report on the Situation of Human Rights in Mexico*, OEA/Ser.LN/II Doc. 44/15 of 31 December 2015, para. 105.

³ WGEID, *General Comment on Women Affected by Enforced Disappearances*, UN Doc. A/HRC/WGEID/98/2 of 14 February 2013, preamble.

8. This executive summary aims at illustrating the main subjects of concern that are thoroughly presented and analysed in the integral version of the general allegation, recapitulating the major conclusions and recommendations (for the complete list of recommendations, see para. 148 of the integral version of the general allegation). With regard to the recommendations, although they all must encompass also **migrant children and adolescents victims of disappearance, Mexico must adopt special measures that take into account the transnational dimension of the phenomenon and tackle the specific difficulties faced by this group of people, due to the fact that often their families reside outside Mexico.**
9. It is the view of the organisations subscribing the general allegation that Mexico breaches many of its international obligations and there are several serious obstacles to the full enjoyment of the rights enshrined in, among others, the Declaration. Hence, the subscribing organisations respectfully request that the WGEID:

Requests

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

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

II. The Nature and Scope of the Phenomenon

10. Despite several recommendations issued over the past years by international human rights mechanisms, including the WGEID, at the time of writing there is still a **lack of accurate statistical information on the number of persons subjected to disappearance.** There are serious **discrepancies in the information provided by the different authorities concerned and there is a general lack of transparency.** The fact that **the real universe of victims remains unknown generates insurmountable obstacles in the adoption of effective public policies and measures of search, investigation, prosecution and reparation.** The situation here described is aggravated by the **widespread impunity** enjoyed

across the country by those responsible of disappearances.

11. According to information from the National Registry of Disappeared or Missing Persons, at March 2017 there were more than **5,452 children and adolescents** (between the ages of 0 and 17) who disappeared in Mexico. This figure represents **18% of the total number of disappearances registered therein** in the same period. Pursuant to the data contained in the National Registry, **3,217 are girls (59% of the total) and 2,235 are boys**. The figure includes **41 migrant children and adolescents** reported as disappeared or missing. Information gathered by **civil society organisations provides higher rates and indicates an alarming increase in the number of disappeared children and adolescents**, including migrant children. The migrant children concerned are often **indigenous**. Moreover, **girls and adolescents are disproportionately affected**. Notably, the state of Mexico is the one where the highest number of disappeared children and adolescents has been registered.

For more details, please refer to paras. 11-38 of the integral version of the general allegation

Recommendations

When dealing with cases of disappearance, Mexico must **respect and guarantee children and adolescents' rights**, ensuring that this group obtains **adequate support in view of their age**, as well as access to justice and redress. Pursuant to the Convention on the Rights of the Child, the **best interests of the child** shall be a primary consideration in the design, adoption and implementation of national legislation and public policies. Accordingly, **full participation of children and adolescents must be guaranteed in every stage of the process of design, implementation, evaluation and decision-making** of public policies and legislation that may have an impact on them. In the same sense, relevant policies and legislation must be both **gender and culturally sensitive, considering that girls are disproportionately affected and that many migrant children or adolescents victims of disappearance are indigenous**.

Mexico must adopt and enforce adequate measures to **prevent, sanction and eradicate violence against children** and, in cases of disappearance, it must abide by its international obligations in terms of prevention, investigation, sanction and reparation, taking into account the **aggravating circumstances** determined by the age of the victim. It is essential to **put an end to the situation of generalised impunity in the country**.

An **International Mechanism against Impunity** shall be established in Mexico, mandated to **independently investigate and prosecute those accused of crimes under international law, gross human rights violation and corruption**.

Mexico must **improve the National Registry of Disappeared Persons and ensure accuracy and transparency with regard to the number of disappeared persons in the country, including migrants**. The National Registry must include **precise, reliable and disaggregated data concerning disappeared children and adolescents**. In

particular, data shall be **disaggregated by age (year per year) of children, avoiding regrouping them in ages' ranges** (e.g. 5-9 years, 10-14 years, 15-19 years), **improving the quality of the information collected** and avoiding the use of phrases such as “not available” o “unspecified”. It is essential to ensure that these data are **easily accessible**.

In cases involving migrant children and adolescents, Mexico must **strengthen the External Mechanism of Support for Search and Investigation** to guarantee that **reports of disappearance filed in Mexico or in any Mexican Embassy are promptly and efficiently dealt with. Relatives** of disappeared migrant children must be **regularly informed on the actions taken to search for their loved ones and to investigate into the reported crimes** and must be **enabled to proactively take part into the process**. Mexico must ensure an **effective cooperation with the countries of origin** of disappeared migrants and victims and their families must obtain adequate **measures of support and reparation. These measures must be enhanced when migrant children and adolescents are concerned**, taking into account their special needs and rights under international law.

III. **Obstacles in the Search of Disappeared Children and Adolescents and in the Establishment of Truth and in Access to Justice and Redress**

12. Currently **Mexico lacks any public policy designed to attend children and adolescents victims of disappearance that can be regarded as effective**. In particular, the **two existing programmes of early alert and urgent search in cases of disappearances of children and women** (namely the Amber Alert and the Alba Protocol) **are seldom applied and the procedure to activate them is overly complicated**. For instance, the Amber Alert can be activated only if the person reporting the disappearance of a child **demonstrates the existence of an imminent risk to suffer a grave harm to his or her personal integrity**. Authorities often consider that this requirement is not met, without taking into account the characteristics of certain states of the Federation and the situation of generalised violence in the country.
13. In general, **prosecutors fail to include lines of investigation that aim at searching and localising disappeared persons, including children and adolescents**, rather focussing solely on the identification of those responsible – and without achieving any significant result also in such domain. This is highly frustrating for the relatives of the disappeared persons, who feel abandoned to the official indifference of Mexican authorities in the face of their acute suffering and ongoing anguish.
14. The absence of effective public policies and legislation to deal with the disappearance of children and adolescents has been noted with concern by several international human rights mechanisms, including the WGEID. In this sense, **the**

adoption of a general law regulating all aspects of enforced disappearance and including a gender perspective, as well as provisions directed at children and adolescents and inspired by the best interest principle has been unanimously recommended. However, at the time of writing **this general law has not yet been adopted.**

15. On the occasion of a special session held in April 2016 before the Inter-American Commission on Human Rights on the subject of omissions vis-à-vis children victims of enforced disappearance, **Mexico acknowledged the inadequacy of the existing public policies on disappearance of children and adolescents, as well as the loopholes in the corresponding legislation.** The State publicly undertook a number of commitments that unfortunately so far have not yet been respected.

For more details, please refer to paras. 74-102 of the integral version of the general allegation

Recommendations

Mexico must **strengthen the existing mechanisms in terms of early alerts and urgent search in cases of disappearance of children and women**, ensuring their effective application at the federal and state level. In general, the **procedures to activate the Amber Alert and the Protocol Alba must be consistently simplified**, with a view to launching the search operations without delay. In particular, with regard to the activation of the Amber Alert, the **requirements must be redefined, taking into account the features and the context of each state of the Federation and without being unduly strict and formalistic.**

Mexico shall ensure the **standardization of police protocols of search** and once eventually approved and enacted the General Law on Enforced Disappearance and on Disappearance perpetrated by Non-state Actors and on the National System of Search, it must guarantee the **adequate functioning of the national system of search of disappeared persons, including the National Commission of Search.**

Mexico must guarantee that **prosecutors' offices across the country count on specialised sections staffed with personnel trained in human rights and non-discrimination** and that ensure **adequate participation of victims and their families** into proceedings.

Mexico shall guarantee, also by means of **regular and adequate programmes of training**, that the **prosecutors in charge of investigations in cases of disappearance undertake also actions directed at searching victims**, and do not limit themselves to the identification, prosecution and sanction of those responsible for the crimes. To this end, a **unified protocol of search of children and adolescents must be implemented.**

Mexico must ensure that the **General Law on Enforced Disappearance and on Disappearance perpetrated by Non-state Actors and on the National System of**

Search is enacted without further delay and includes: a) **specific measures** to deal with the disappearance of **children and adolescents, especially girls**; b) mechanisms that allow **children and adolescents to be proactively involved in the process of investigation and search**, and to have **access to information** on the progress of such processes before through effective prosecutorial authorities; c) a **National Register of Disappeared Persons**, with **disaggregated data** concerning gender, age, geographical location and whether it is an enforced disappearance or an act of similar nature perpetrated by non-State actors; d) design and implementation of **immediate search and social support that reflect the peculiarities of each case**; e) **measures of reparation** for relatives of disappeared persons that include **transportation fees, health-care, food and scholarships**, so that **children and adolescents victims of this crime are not re-victimised and are not forced to replace the disappeared breadwinner**.

Mexico must **strengthen the fundamental role of the Federal Prosecutor's Office for the Protection of Children and Adolescents** (*Procuraduría Federal de Protección de Niñas, Niños y Adolescentes*) as well as that of local Prosecutor's Offices so to ensure the adoption of special measures of protection of children and adolescents victims of crimes or relatives of disappeared persons.

Mexico must **respect the commitments undertaken in April 2016 at the special session on the State's omissions vis-à-vis children victims of enforced disappearance held before the Inter-American Commission on Human Rights**. In particular, the National System of Protection of Children and Adolescents must be improved at all levels.

IV. Obstacles Faced by Children and Adolescents Relatives of Disappeared Persons

16. In Mexico, **thousands of children and adolescents relatives of persons subjected to enforced disappearance are facing severe psychological and emotional traumas due to the acute suffering and anguish** generated by the absence of their loved ones, as well as **devastating economic and social consequences**. The same holds true for **children and adolescents living in the neighbouring counties whose relatives disappeared in their migratory route across Mexico**.
17. Children or adolescents with a disappeared relative are subjected to multiple violations of their fundamental rights. Provided that **oftentimes the disappeared was the breadwinner, children are forced to replace him or her in the household and are hence deprived of their childhood, forced to leave the school and begin to work**. Hence, these children and adolescents suffer **grave violations of their rights to education, health, social security and property**, besides being **frequently stigmatised and socially emarginated**.

18. Two areas where children relatives of disappeared people are especially affected concern **their right to identity and their right to education**. On several occasions, **mothers experienced significant difficulties in registering their children at birth, due to the absence of their disappeared father**. In some cases, they were forced to register the children with their own surname only – being this against the local customary uses –, because the competent authorities refused to recognise the fatherhood. With regard to the right to education, **children and adolescents relatives of disappeared persons suffer a severe trauma that often determines attention-deficits and disorders that lead to troubles in the learning process and, eventually, in an increased drop-out rate**. Moreover, **pursuing the regular academic career is often extremely expensive and children and adolescents relatives of disappeared persons are unable to afford the related costs**.
19. **Grandparents – and in particular grandmothers – are especially affected by the phenomenon at stake**. In many cases where both parents of a child were subjected to enforced disappearance, **grandparents had to take on the responsibility for their nephews, having to face, besides suffering and anguish, significant economic consequences**. In some cases, due to the absence of adequate State's support, although already retired, they were forced to **go back to work to provide to the household and address their nephews' basic needs, including food and education**.
20. In the face of this tragedy, instead of abiding by its international obligations, **Mexico fails to adopt effective measures, rather leaving the provision of support to children and adolescents relatives of disappeared persons to civil society organisations**. While these initiatives play a crucial role and are certainly welcome, **the State remains under an obligation to provide adequate support and integral reparation to children and adolescents whose relatives disappeared**.
21. Even in those states of the Federation where programmes of support and redress have eventually been adopted, **they do not count with the necessary human, material and financial resources, hence being ineffective and not sustainable**. Moreover, the measures of support for children and adolescents envisaged under these programmes **do not take into account the specific challenges and needs of this group of population and the process to obtain even meagre forms of support is lengthy, overly bureaucratic, and formalistic**.

For more details, please refer to paras. 103-146 of the integral version of the general allegation

Recommendations

Mexico must ensure that children and adolescents whose relatives were subjected to disappearance obtain without delay **measures of reparation and adequate psycho-**

social support that duly take into account the challenges they face and their specific needs. It is crucial to **ensure the necessary financial, human and material resources for the regular implementation and the sustainability of these programmes at the federal and state level.** Any reparation programme directed at children and adolescents victims of disappearance must **include access to education and carefully avoid any form of re-victimisation.** The **personnel in charge of providing these forms of support must be trained so that they can ensure high-quality and humane attention,** thus building confidence among the victims and their relatives. Where migrant children and adolescents are concerned, the **Executive Commission of Support to Victims** (*Comisión Ejecutiva de Atención a Víctimas*) must **identify competent institutions in the countries of origin of the victims and subscribe cooperation and coordination agreements to enable families to receive adequate support in their respective countries of residence.**

Mexico shall guarantee the adoption of **special measures to address the violations of the rights to identity and to education of children relatives of disappeared persons.** In cases where the father is registered as disappeared, this shall have **no implications on the recognition of the fatherhood and children must be registered at birth assigning their surname pursuant to the customary uses** (hence not precluding the inclusion of the father's surname). The specific harm endured by children relatives of disappeared persons in terms of **attention-deficits and disorders must be acknowledged and adequately addressed without delay, preventing by all means drop-out.** Mexico must ensure that **all expenses to ensure the regular continuation of the academic career for children relatives of disappeared persons are taken care of.** Where **children of disappeared migrants are concerned, Mexico must coordinate with the countries of origin** to ensure that these rights are duly guaranteed.

Mexico must **recognise the difficulties faced by grandparents, and especially grandmothers, of children relatives of disappeared persons.** **Adequate measures of financial support must be adopted without delay,** as well as measures aiming at regulating the **legal status of grandparents** in these circumstances so that, in the best interests of the child, they can exceptionally act as if they were the parents in fields such as social welfare, financial matters, family law and property rights.