



Human Rights Law Clinic Papers 2017

HUMAN RIGHTS IMPLICATIONS OF THE MASS BURIAL OF UNIDENTIFIED BODIES IN MEXICO

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Introduction

Over 150,000 people were intentionally killed in Mexico between 2006 and 2015 according to the Open Society Justice Initiative (OSJI) report, 'Undeniable Atrocities. Confronting Crimes Against Humanity in Mexico', and an untold number have disappeared. The victims include criminal cartel members, "false positives"¹ and civilians.² By a conservative estimate, Mexican State and municipal authorities buried en masse a total of 24,000 unidentified bodies in public cemeteries.

As a matter of law, officials are obliged to identify all bodies and human remains found in the country, and none of these should be buried without an official death certificate. Administrative and prosecutorial authorities are required to inform each other of cases that may necessitate the opening of a criminal investigation or the issuance of a death certificate, in addition to notifying each other of potential cases of violent death. In practice, however, lawful procedures on the handling of unidentified bodies and human remains are not enforced and authorities lack adequate records of these cases. The UN Committee on Enforced Disappearances has noted with concern the dearth of accurate information on the number of persons subjected to enforced disappearances as well as the lack of implementing regulations for the National Register of Missing and Disappeared Persons Act 2014, with corresponding recommendations made.

This memorandum seeks to address the obligations of Mexican authorities to investigate the identity of unidentified corpses and whether corresponding State laws and practices concerning the location and organization of public common graves comply with those obligations, with particular emphasis on the State of Morelos in the period between 2007 and 2015; the steps taken by the State of Morelos to implement relevant recommendations of the Committee on Enforced Disappearances; and the type of effective remedies and reparation that families of victims of enforced disappearance are entitled to, with particular regard to the mass burial of unidentified bodies in the State of Morelos.

In order to address these issues, the memorandum will focus on the human rights implications of the mass burial of unidentified corpses and the authorities' duty of due diligence to investigate the identity of bodies, viewed from the following perspectives:

1. The State duty to undertake prompt and effective investigations of unidentified corpses;
2. The right of victims' families to effective remedies, including the right to truth as to the fate and whereabouts of their family; and
3. The impact on families of a failure by authorities to exercise due diligence, including whether this may amount to cruel, inhuman or degrading treatment.

The structure of the memorandum begins with a general description of the increasing violence in the State of Morelos, and how this situation has caused thousands of unlawful deaths. The document then focuses on the State duty to undertake prompt and effective investigations of unidentified bodies as a matter of due diligence within the international and national human rights framework. Furthermore, the paper highlights the obligations that must be fulfilled during the process by competent authorities, such as giving effect to the right to truth, prosecution of those responsible and reparation to families for harm suffered.

¹ Open Society Justice Initiative considers the "false positives" as ordinary citizens who are killed, disappeared or tortured by federal government agents, either because they were targeted as suspected cartel members on the basis of little or no evidence, or just because they were framed as such after their victimization in order to justify the crimes committed.

² Open Society Justice Initiative, *Undeniable Atrocities, Confronting Crimes Against Humanity in Mexico* (2016).

Background

In 2011, the State of Morelos became the centre of media attention. The poet, Javier Sicilia, had been notified about the murder of his son. Like many other victims in the region and the country, Javier looked for justice, but the State's apparatus did not address his situation. The result was a mass demonstration of support that articulated an organised movement to claim justice and dignity.³ Since then, awareness of the systematic violence in Morelos has increased and, despite the efforts of the civil society to push back on the former and the current Government, the problem persists.

The State of Morelos is one of the 32 federal entities in Mexico. In 2014, Morelos was considered one of the five entities with the highest number of high impact crimes, such as homicide, extortion and kidnapping.⁴ In order to understand the situation, the Autonomous University of the State of Morelos produced the *Atlas de la Seguridad y Violencia en Morelos*. The document contains statistics about criminal violence, the role of the Morelos's authorities, the importance of NGOs and analysis on how the violence became one of the main issues in the State. The investigation aimed to provide quantitative, as well as qualitative information, in order to consider how to reduce the number of victims and address appropriate responsibility for the authorities. It is important to highlight that the violence in Morelos is a reflection of the situation at the National level, which have been deteriorating since 2006, when the then current President, Felipe Calderón, ordered military forces to combat the drug cartels, with the objective of legitimizing his mandate. Presently, the current administration in Mexico led by President Enrique Peña Nieto, has facilitated the culture of impunity by promoting corruption at the institutional level.

Together, these situations have resulted in a climate of uncertainty for people's lives, with authorities' malfeasance contributing to diminished trust in the justice system. In November 2015, a mass burial grave was exposed as a result of negligence by the authorities of the State of Morelos. Oliver Wenceslao Navarrete Hernández, who had been murdered and identified by his family, was mistakenly buried in a public mass grave in Tetelcingo.⁵ The Autonomous University of the State of Morelos revealed that at least 117 corpses remained unidentified within this public grave and the protocols applicable to their burial had not been complied with. As a matter of human rights, the lack of professionalism in Oliver Wenceslao's case, and the other 117 corpses, exhibited a normalized dynamic which rejected the basic principles of due diligence, established by the international community to uphold people's dignity.

These principles involve the State's duty to undertake prompt, thorough, independent and impartial investigations to clarify the reasons of the death and, where necessary, to prosecute and punish perpetrators and other participants. The aim of due diligence is linked with the protection and enjoyment of the right to an identity, the recognition as a person before the law, the right to liberty and security of the person, the right not to be subjected to torture, inhuman or degrading treatment or punishment. In addition, the international protocols aimed to provide aspects of reparation for the harm suffered by the victims' families, such as the right to effective remedies and reparation, including compensation, truth and protection and assistance to the family.

³ 'El Movimiento por la Paz de Javier Sicilia cumple dos años', *El País*, 28 March 2013, available at URL: http://internacional.elpais.com/internacional/2013/03/28/actualidad/1364503748_248838.html (accessed 31 March 2017).

⁴ Aguayo, Sergio (coord.), *Atlas de la violencia en el Estado de Morelos*, Universidad Autónoma del Estado de Morelos, México, 2014, p. 11.

⁵ 'Un informe revela que el Gobierno de Morelos enterró cuerpos en una fosa al estilo de Los Zetas', *El País*, 24 August 2016, available at URL: http://internacional.elpais.com/internacional/2016/08/23/mexico/1471988440_516313.html (accessed 31 March 2017)).

The international and regional instruments useful to address these rights include:

- a) Universal Declaration of Human Rights (UDHR);
- b) International Covenant on Civil and Political Rights (ICCPR);
- c) International Covenant on Economic, Social and Cultural Rights (ICESCR);
- d) Declaration on the Protection of all Persons from Enforced Disappearance;
- e) International Convention for the Protection of All Persons from Enforced Disappearance (ICPAPED); and
- f) Inter-American Convention on Enforced Disappearance.

At the domestic level, reference is made in this memorandum to:

- a) Political Constitution of the United Mexican States;
- b) Law for the Location, Recuperation and Forensic Identification of Persons; and
- c) Mexican Victims' Law (General Victims' Law).

Other documents to address the issue of effective remedies and reparation for victims' families include:

- a) Report by the Human Rights Council Advisory Committee on best practices in the matter of missing persons;⁶
- b) UN Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (UN Basic Principles);⁷
- c) Minnesota Protocol on the Investigation of Potentially Unlawful Death;⁸
- d) Open Society Justice Initiative report "Undeniable Atrocities. Confronting Crimes Against Humanity in Mexico";⁹ and
- e) "Tetelcingo's clandestine graves. Preliminary interpretations".¹⁰

The State duty to undertake prompt, independent and effective investigations of the mass burial of unidentified bodies

From a human rights approach, every State that recognises the principles of the UDHR, and which has become party to the ICCPR, as well as the ICESCR, is compelled to take positive steps for the realization of the ideals of freedom, equality, justice and human dignity. In order to do that, States have committed to respect, protect, fulfil and promote these ideals, contained in international treaties. Every State is obliged to develop mechanisms to comply with the international standards.

Mexico is one of these States.¹¹ However, the protection of individuals - at least in current context - has not been addressed. The National Institute of Statistics and Geography in Mexico has registered 195,900 homicides from 2006 to 2015.¹² The situation is critical, and worsens still if one takes into account that the official number does not consider missing persons, victims of enforced disappearance or unidentified bodies. From a human rights perspective, this failure of the State puts society as a whole in danger, strengthens the cycle of violence and allows for rampant impunity.

⁶ UNHRC 'Report by the Human Rights Council Advisory Committee on best practices in the matter of missing persons' (21 February 2011) UN Doc A/HRC/16/70.

⁷ UNGA Res 60/147 (21 March 2006) UN Doc A/Res/60/47.

⁸ UN Human Rights OHCHR 'The Minnesota Protocol on the Investigation of Potentially Unlawful Death' (2016).

⁹ Open Society Justice Initiative, *Undeniable Atrocities, Confronting Crimes Against Humanity on Mexico* (2016)

¹⁰ Universidad Autónoma del Estado de Morelos, 'Fosas Clandestinas de Tetelcingo, Interpretaciones Preliminares', en *Resiliencia*, No. 3, (Julio-Septiembre 2016)

¹¹ Mexico adhered to the ICCPR and the ICESCR on 23 March 1981. (Available at: http://proteo2.sre.gob.mx/tratados/consulta_nva.php)

¹² See Instituto Nacional de Estadística y Geografía (INEGI). The number corresponds to the sum of homicides per year (2006-2015) in Mexico. (Available at: <http://www.inegi.org.mx/sistemas/olap/proyectos/bd/continuas/mortalidad/defuncioneshom.asp?s=est>)

International mechanisms have defined the gravity of these crimes as ‘an offence to human dignity’.¹³ When a person is killed, his or her plans of realization disappear. This crime is reinforced when the State apparatus fails to commence an investigation aimed at holding perpetrators accountable and understanding the circumstances in which it was perpetrated. By doing so, the State not only declares its failure to protect the right not to be arbitrarily deprived of life, but it also denies its interest in acknowledging its failure and nullifies the materialization of human dignity for victims and their families.

Therefore, the deprivation of life triggers, under any circumstance, the State’s obligation to undertake appropriate investigation to address the reasons of the death. The omission of these actions diminishes the symbolic value of human beings. Whether the State fails to guarantee the right to life, it should not finish its task at this point. By denying an appropriate investigation into the circumstances of the killing, the State produces a message in which the symbolic recognitions of the human being are annulled. In particular, the ICCPR recognizes in Article 6 that ‘every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’. In the Draft General Comment No. 36 on the right to life, the UN Human Rights Committee remarked that:¹⁴

The duty to protect by law the right to life also requires States parties to prescribe and regulate measures necessary to protect lives, and to organize all State organs and governance structures through which public authority is exercised in a manner consistent with the need to respect and ensure the right to life.¹⁵ This protective legal framework must include effective criminal prohibitions on all forms of arbitrary deprivations of life, including extrajudicial killings,¹⁶ murder, homicide, disproportionate use of firearms,¹⁷ negligent manslaughter, disappearance, femicide, infanticide,¹⁸ honor killings,¹⁹ lynching,²⁰ terrorism, violent hate crimes,²¹ blood feuds,²² death threats and other manifestations of violence or incitement to violence that are likely to result in a deprivation of life. The criminal sanctions attached to these crimes must be commensurate with their gravity.²³

As stated, in order to respect, protect and fulfil the right to life, the State must ensure the appropriate conditions for its enjoyment. Furthermore, when the State fails to accomplish this right, it has to address which were the circumstances that interrupted it. In Mexico’s case, the number of arbitrary killings during the last decade reflects a systematic pattern of violence against the population, amongst civilians, and the security forces. The lack of a robust strategy, duly implemented, to fight against this situation has changed the dynamic to address appropriate responsibility for the State and non-State actors. The threat, fear, uncertainty, indifference and corruption have become the core elements of the last years.

In 2015, Tetelcingo, Morelos, was the centre of the debate about clandestine graves and the lack of interest by the authorities to address appropriate investigations to identify the corpses within it. Even though there were 117 human bodies, the State apparatus did not undertake

¹³ A/RES/47/133 Declaration on the Protection of All Persons from Enforced Disappearance, Art. 1

¹⁴ UNCCPR ‘General comment No. 36 Article 6 (Right to life)’ (2015) UN Doc CCPR/C/GC/R.36/Rev.2, para 24.

¹⁵ C.f. *González v Mexico*, IACtHR judgment 16 November 2009, para. 236.

¹⁶ Human Rights Committee, ‘Concluding Observations: Dominican Republic’, UN Doc CCPR/C/DOM/C/05 (2012), para. 13.

¹⁷ Human Rights Committee, ‘Concluding Observations: Liechtenstein’, UN Doc CCPR/CO/81/LIE (2004), para. 10.

¹⁸ Human Rights Committee, ‘Concluding Observations: Madagascar’, UN Doc CCPR/C/MDG/CO/3 (2007), para. 17.

¹⁹ Human Rights Committee, ‘Concluding Observations: Turkey’, UN Doc CCPR/C/SR/2944 (2012), para. 13.

²⁰ Committee Against Torture, ‘Concluding Observations: Mozambique’, UN Doc CAT/C/MOZ/CO/1(2013), para. 22; Committee Against Torture, ‘Concluding Observations: Guatemala’, UN Doc CAT/C/GTM/CO/5-6 (2012), para 18.

²¹ Human Rights Committee, ‘Concluding Observations: Indonesia’, UN Doc CCPR/C/IDN/CO/1(2013), para. 17; Human Rights Committee, ‘Concluding Observations: Russia’, UN Doc CCPR/C/RUS/CO/6 (2009), para. 11.

²² Human Rights Committee, ‘Concluding Observations: Albania’, UN Doc CCPR/C/ALB/CO/2 (2013), para. 10.

²³ Human Rights Committee, ‘Concluding Observations: Russia’, UN Doc CCPR/C/RUS/CO/6 (2009), para. 15.

the necessary measures to investigate the reasons for their deaths. The Autonomous University of the State of Morelos examined the procedures and concluded that the lack of due diligence by the authorities is linked with deficient professional practice at the administrative level, as well as at the scientific and forensic levels. Every person in this mass burial site was treated like trash. By doing this, the authorities dehumanized the bodies and denied their appropriate recognition before the law.

The University highlighted the lack of due diligence by the Morelos authorities in the following terms:²⁴

- a) The authorities did not comply with their duty to investigate, find, identify and present the victims to their families;
- b) There are multiple errors and gaps in the identification of the corpses;
- c) There are no clear intentions to trace and notify victims' families;
- d) There is a lack of protocols to examine the corpses and human remains;
- e) There is a lack of appropriate records;
- f) The personnel involved do not take appropriate steps to identify the corpses and they buried the bodies without a death certificate;
- g) The identification of the corpses lack of promptly response. Every day without appropriate identification, these corpses become unrecognizable;
- h) In case of exhumation, the personnel used heavy machinery; and
- i) Through the exhumation of the corpses there was no clear roles and functions, and the delimitation of the work area was inexistent.

It is important to note that, since 2011, Mexico reformed its Constitution to recognise the international human rights treaties as a core value within its jurisdiction. By recognizing these, the Mexican authorities are obliged to prevent, investigate and sanction any human rights violations within its territory, and must perform due diligence in order to address the harm suffer by the victims and make appropriate reparations for them.²⁵

In addition, Mexico has ratified the American Convention on Human Rights "Pacto of San José, Costa Rica"²⁶, which in Article 1 establishes that 'The States Parties of this Convention undertake to respect the rights and freedoms recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition'.²⁷ By doing this, Mexican authorities must guarantee the right to life, the right to juridical personality, the right to humane treatment, the right to compensation, the rights of the family, the right to equal protection, and the right to judicial protection.

Because of the increasing violence in Mexico, these elements have become fundamental. The mass burial of unidentified bodies denied the recognition of humanity and contradict the enjoyment of the right to recognition as a person before the law. The State apparatus must respect and guarantee human rights at every institutional level. The respect is 'the State's obligation, as well as its agents, whatever its character or condition, not to violate, directly or indirectly, by actions or omissions, the rights and freedoms recognized in the Convention'²⁸ The IACtHR has highlighted that 'as a consequence of this obligation, States must prevent, investigate and punish any violation of the rights recognized by the American Convention;

²⁴ Universidad Autónoma del Estado de Morelos, 'Fosas Clandestinas de Tetelcingo, Interpretaciones Preliminares', en Resiliencia, No. 3, (Julio-Septiembre 2016)

²⁵ Constitución Política de los Estados Unidos Mexicanos, Artículo 1, DOF 24-02-2017 <<http://www.diputados.gob.mx/LeyesBiblio/ref/cpeum.htm> > (accessed 11 May 2017).

²⁶ Mexico adhered to this on 24 March 1981

<http://proteo2.sre.gob.mx/tratados/muestratratado_nva.sre?id_tratado=1278&depositario=D> (accessed 9 May 2017)

²⁷ American Convention on Human Rights, Article 1

²⁸ Héctor Gros, *La Convención Americana y la Convención Europea de Derechos Humanos. Análisis Comparativo* (Editorial Jurídica de Chile 1991), p. 65

seeking, in addition, the restoration, if possible, of the violated right and, as the case may be, reparation for the damages caused by the violation of human rights'.²⁹

Moreover, the Inter-American Court of Human Rights (IACtHR) has stated that: 'each act of the State that forms part of the investigative process, as well as the investigations as a whole, should have a specific purpose: the determination of the truth, and the investigation, pursuit, capture, prosecution and, if applicable, punishment of those responsible for the facts'.³⁰ The aim of the State to exercise due diligence is an essential element of this obligation. Because of that, 'investigations must be carried out... without delay, and be thorough, effective, impartial and independent and make use of the legal means available and involve all relevant state institutions'.³¹

In Morelos' case, this objective is important. From 2007 to 2015, homicides in this State reached 3,739 persons.³² Once again, the number does not include the people who were subjected to enforced disappearance or remain unidentified within public or clandestine mass graves. The aim of due diligence in cases like Mexico, and in particular the State of Morelos, is to prevent impunity. Even though authorities could claim they lack of resources and technical capacity to properly address the identification of the corpses, there is no excuse not to comply with the obligations. The UN Human Rights Committee has defined due diligence in the following way:

"Due diligence means that the investigation must be undertaken using all available legal means and taking into account all the facts, the complexity of the crimes, the contexts in which they were committed and the various participants in the crimes. In that vein, the Human Rights Committee has stated that "perfunctory and unproductive investigations whose genuineness is doubtful" did not meet the standard of the obligation to undertake investigations with due diligence."³³

In this regard, the Committee on Enforced Disappearances³⁴ had highlighted positive and negative aspects relating to Mexico. One of the main concerns of the Committee is the lack of accurate statistics about the number of persons subjected to enforced disappearance. It highlights the importance of the need to acknowledge these numbers by establishing a 'single nationwide register of disappeared persons'.³⁵

The Committee emphasized that the recognition of these crimes is relevant to create better programs to prevent similar situations in the future. Thus, the databases should be disaggregated as much as possible to establish, sex, age, nationality and gender of every person subjected to enforced disappearance, and the statistics must consider the place and the date in which the person was disappeared. Also, the Committee established that the relatives of the persons who were subjected to enforced disappearance should take part in the investigations. This point is important to consider for mass graves, because in most cases in Mexico, victims' families are the ones who pointed out the location of them, before the Government.

²⁹ Eduardo Ferrer y Carlos Pelayo, 'The Obligation to "respect" and "ensure" Human Rights in the Light of the Jurisprudence of the Inter-American Court of Human Rights. Analysis of article 1 of the Convention of San Jose as a conventional source of Mexican constitutional procedural law', *Estudios Constitucionales* 2012 10(2) pp. 141-192.

³⁰ *Cantoral-Huamani and Garcia-Santa Cruz v. Peru*, IACtHR judgment of 10 July 2007, Series C No. 167, para 131.

³¹ ICJ Practitioners Guide, op cit, p. 128

³² See Instituto Nacional de Estadística y Geografía (INEGI). The number corresponds to the sum of homicides per year (2006-2015) in Mexico. (Available at: <http://www.inegi.org.mx/sistemas/olap/proyectos/bd/continuas/mortalidad/defuncioneshom.asp?s=est>)

³³ See, inter alia, *Abubakar Amirov and others v. The Russian Federation*, Communication No. 1447/2006, UN Doc CCPR/C/95/D/1447/2006 para 11.4 et seq.

³⁴ See UNCEF 'Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention' (5 March 2015) UN Doc CED/C/MEX/CO/1

³⁵ Ibid.

At the national level, Mexico created several mechanisms to acknowledge these crimes. In particular, the General Victims Act was created to ensure due diligence by the authorities to address the victims of human rights violations. The law contemplates the obligation of the Mexican authorities at every institutional level to protect victims, and offer them assistance and integral reparation. Failing to comply with those obligations subjects the authorities to administrative, civil or penal responsibilities.³⁶ The law considers as victims every person that, directly or indirectly, has suffered damage as a consequence of human rights violations.³⁷ The damage takes into account the death of the persons, as well as physical injuries, material and non-material loss.³⁸

Furthermore, the law contemplates aspects of assistance and protection for the victim, the right to the truth, access to justice, integral reparation and due diligence as a human rights matter established at the Constitutional level, as well as the International Treaties ratified by the Mexican State. The guiding principles³⁹ of the law observe human dignity as a fundamental value, due diligence as the procedure to achieve the protection and reparation for the victims who suffered the harm, non-criminalization of the victims, transparency during the investigation, accountability of the procedures, and a transformative approach to guarantee the non-repetition of the human rights violations.

The law recognises the following rights for the victims:⁴⁰

- An effective and prompt investigation, and which corresponds to, the identification and prosecution of those responsible for the human rights violations;
- An appropriate reparation which takes into account a differentiated treatment and transformative actions as a consequence for the harm suffered;
- To know the truth about the circumstances in which the human rights were violated;
- To be treated with humanity and dignity by the authorities and the personnel involved during the procedure; and
- To ask and receive precise information related to the victim treatment and the human rights violation implicated.

Also, the law establishes the obligation of the State to use all available means to determine the location of missing persons, and where necessary, to make exhumations in cemeteries, clandestine graves or other locations where there are substantial grounds to believe the whereabouts of the victims. The exhumation must comply with the due diligence established in the international protocols. In order to locate, recover and identify the corpses and human remains by using scientific standards.

The right of victims' families to effective remedies

Violation of the right to life must be accompanied by legislative, administrative and judicial measures by the State to ensure that victims' families have access to justice for the harm suffered through reparation. As a consequence of the systematic violence in the region, while clarifying the deaths, authorities are obliged to elucidate whether there was an enforced disappearance, and exercise due diligence to identify the bodies.

The UDHR considers in article 8 that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted one by the constitution or by law. Also, the International Convention for the Protection of All Persons

³⁶ Cámara de Diputados del H. Congreso de la Unión, 'Ley General de Víctimas' [2017] DOF 03-01-2017, Artículo 1

³⁷ *ibid.* Article 6.

³⁸ *ibid.*

³⁹ *ibid.* Article 5.

⁴⁰ *ibid.* Article 7.

from Enforced Disappearance, ratified by Mexico on 18 March 2008,⁴¹ establishes that the victims are any person 'who has suffered harm as the direct result of an enforced disappearance'.⁴² This includes the dead persons buried in the mass grave, and their families. In this regard, the States must ensure the right to know the truth and 'shall take appropriate measures to search for, locate and release disappeared persons and, in the event of death, to locate, respect and return their remains'.⁴³ The right to reparation recognises that the State must 'cover material and moral damages and, where appropriate, other forms of reparation such as restitution, rehabilitation, satisfaction, including restoration of dignity and reputation, and the guarantees of non-repetition'.⁴⁴

By denying the juridical personality of the unidentified bodies, the State fails to redress the recognition as a person before the law and denies appropriate restoration for the victims' families. In this regard, the scope of the rights for victims' families must ensure the right to effective remedies and reparation, including: compensation; the right to know the truth regarding the circumstances of a disappearance; the right to protection and assistance to the family, the right to an adequate standard of living; the right to health; the right to education; and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment.⁴⁵

The right to know the truth is related with the exercise of due diligence by the authorities. The rights of the victims' families 'include the rights of access to information relevant to the investigation, the right to present evidence and require expert opinions and forensic examination, as well as the right to be informed of the progress, evolution and results of the investigation'.⁴⁶

The ICJ has highlighted that the refusal to provide information is a limitation of the right to the truth. Thus, in all cases and circumstances:

- The relatives of victims of enforced disappearance or extrajudicial executions or secret executions and burials have the right to be informed about the progress and results of the investigation into the fate and whereabouts of their loved ones;⁴⁷
- The families of the victims and their legal representatives have the right to request and submit and challenge evidence;
- The families of the victims and their legal representatives shall be informed of the results of the investigation, the decision on whether or not to prosecute the alleged perpetrators and have the right to legally challenge such a decision.

During the investigation:

- The families of the victims should be treated with humanity and respect for their dignity and human rights, and the authorities must take appropriate measures to ensure their physical and psychological well-being and privacy;⁴⁸

⁴¹ Mexico ratified the CPAPED on 18 March 2008 <available at: http://proteo2.sre.gob.mx/tratados/muestratratado_nva.sre?id_tratado=1355&depositario> (accessed 8 May 2017)

⁴² Un Committee on Enforced Disappearance, International Convention on the Protection of All Persons from Enforced Disappearance (20 December 2006) A/RES/61/177, Article 24 paragraph 1

⁴³ Ibid. Article 24 paragraph 3

⁴⁴ Ibid. Article 24 paragraph 5

⁴⁵ Enforced or Involuntary Disappearances, Fact Sheet No. 6/Rev.3. pp. 3-4.

⁴⁶ ICJ Practitioners Guide, op cit, p. 159.

⁴⁷ Article 24(2) of the International Convention on the Protection of All Persons from Enforced Disappearance; and Principle 4 of the Updated Set of Principles for the protection and promotion of human rights through action to combat impunity.

⁴⁸ See: Principle 10 of the UN Basic Principles; Guidelines On Justice In Matters Involving Child Victims And Witnesses Of Crime; Articles 4, 6, 14, 15, 16 and 17 of the Declaration Of Basic Principles Of Justice For Victims Of Crime And Abuse Of Power; Article 24(6) of the International Convention For The Protection Of All Persons

- The investigation authorities should take into account the cultural, ethnic, linguistic, gender and sexual orientation of the victims and their families and adopt working methods and a differentiated approach according to these specificities;⁴⁹
- The families of victims are entitled to legal advice, social, medical, psychological and psychosocial assistance and counselling including from social workers and mental health professionals, and to the reimbursement of expenses - as well as legal aid and translation services where necessary;
- In cases of extrajudicial execution, relatives of the victim have the right to have a doctor or other qualified representative be present at the autopsy;
- The families have a right to have the body or skeletal remains of their murdered loved one be delivered to them;
- In cases of enforced disappearance, the authorities should take the necessary measures to safeguard the rights of the disappeared person and his or her family, in particular regarding the legal status of the disappeared person and their relatives, in matters such as social protection, financial matters, family law and property rights;⁵⁰
- Investigating authorities should take appropriate measures so that the investigatory activities involving the families of the victims (such as testimonies, statements, lawyers and forensic practices) do not cause new trauma for them or result in re-victimization.

In addition, the UN Basic Principles, unanimously adopted by the General Assembly in 2005, establish that 'restitution should, whenever possible, restore the victim to the original situation before the gross violations of international human rights law. Restitution includes, as appropriate: restoration of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property'.⁵¹

Amongst the elements of satisfaction after the loss of their loved ones, the victims' families can ask for the verification of the facts, a public disclosure to the truth, reburial of the body according with their cultural practices, an official declaration or a judicial decision restoring the dignity, the reputation and the rights of the victim and of persons closely connected with the victim, a public apology, including acknowledgement of the facts and acceptance of responsibility, the appropriate sanctions for those who resulted responsible, and commemorations and tributes to the victims if they are considered appropriate.

In the case of Mexico, the General Victims' Act considers, amongst the integral reparation,⁵² the restoration of the identity, the right to know the truth for the victims and the society as a whole.⁵³ Also, the law determines, as a measure of non-repetition⁵⁴ the supervision of the authorities and appropriate human rights training. Where necessary, the Federal Government shall take appropriate measures to guarantee the well-being and health of the victims of human rights violations. The Judiciary must dictate corrective measures to

From Enforced Disappearance; and Principle 10 of the Updated Set Of Principles For The Protection And Promotion Of Human Rights Through Action To Combat Impunity.

⁴⁹ See: World Congress on Psychosocial Work in Search and Exhumation Processes related to Forced Disappearance, Justice and Truth; and Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, ECOSOC/RES/2005/20

⁵⁰ Article 24(6) of the International Convention for the Protection of All Persons from Enforced Disappearance; and UN Working Group on Enforced and Involuntary Disappearances, "General Comment on the right to recognition as a person before the law in the context of enforced disappearances", UN Doc A/HRC/19/58/Rev.1 (2012), para. 42.

⁵¹ UNGA Res 60/147 (2006), para.7.

⁵² Cámara de Diputados del H. Congreso de la Unión, 'Ley General de Víctimas' [2017] DOF 03-01-2017,

Artículo 61

⁵³ Ibid. Artículo 20.

⁵⁴ Ibid. Artículo. 75.

address appropriate responsibility for the State agents involved in these human rights violations.⁵⁵

Conclusion

Given the current situation of violence in Mexico, it is urgently required to identify bodies in public mass graves as a matter of human rights. The lack of due diligence by the authorities denies the juridical personality and the right to humane treatment for the dead people, and the right to judicial protection and the right to compensation for the victims' families. In this regard, every personnel of the State apparatus should be trained in the importance of human rights, and how the lack of due diligence violates the national and the international law framework.

It is crucial to consider that the dignity of a person does not end with her or his death. The recognition of humanity is essential to protect individuals and society as a whole. In this situation, the Federal Government should follow the steps of Coahuila, to create a General Act which regulates the activities for the location, recuperation and forensic identification of persons, as well as conduct of the authorities on the identification of human bodies in its territory.

By giving appropriate recognition to the dead persons and giving compensation and reparation for the victims' families, the State reflects its responsibility to ensure the human dignity of those it was not capable to protect in the first place.

⁵⁵ Ibid. Artículo 124.