



House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
ENFORCED DISAPPEARANCE IN LATIN AMERICA

October 1st, 2020 –
10:00am to 11:30am
Webcast

Statement of GRACE FERNANDEZ

BUSCAME, Mexico

Thank you so much Congressman McGovern and other members of the Tom Lantos Human Rights Commission for the opportunity to talk about disappearances in Mexico. Even though this is not a new problem, not even of this decade, today I am going to talk about the very significant problem of disappearances in the context of the war on drugs.

My bother Dan Jeremeel was 34 years old, the father of 5 children when he was forcibly disappeared by soldiers that also worked for a criminal organization named the Zetas. This happened in Coahuila in 2008 and in those times, for citizens but also for authorities, when somebody was taken but the perpetrators didn't ask for money you could not say it was a kidnapping, they called it "levantones," which means to lift up. This was what the authorities used to justify that there was not a crime to investigate.

As has happened to a thousand families, my mother and my sister- in-law tried to report the crime to the police, but they asked them to return in 72 hours because for sure he was hanging out with friends or maybe he could be with a lover and he will come back home. We were worried because he was supposed to pick up his younger daughter from a friend's house and he never arrived, that was not normal, but the authorities didn't pay attention or care about our concerns. We went to hospitals, jails, shelters, and morgues but we could not find him. When those 72 hours arrived, my mom went to the police again but it was just to hear that she should take care because for sure my brother was a junkie and for sure he owed money to the dealers, for sure he has a lot of debts and he did not want to pay, for sure he has a lover and had run away with her, for sure.....anything but that something bad could have happened to him.



It was clear for us that the authorities did not want to take the report, to investigate, to search, to find.... we had to pay a lawyer in order to help us to make the authorities work, but they only focused on personal issues and three weeks after he disappeared, in an operation against a kidnapping ring, they found my brother's car being used by a member of the military. Two days after this operation, the other members of this criminal group, which also included three more soldiers, were detained. About 10 days after that, the soldier and his partners in crime were killed inside the jail in a very targeted attack by a criminal group.¹

A lot of irregularities happened in the investigation, a lot of information disappeared, they never linked my brother with those men involved in the kidnapping ring that had his car. Even though we spoke with the military attorney general's office, they never helped us to obtain information about the soldiers or confirmed if they were on duty when this happened.

The only way we could find to press the authorities to work was to join other victims and become a collective. We realized that the authorities did not have experience working with disappearances, even the classification of the crime was difficult for them to understand. The biggest problem was that there were many different authorities working for the criminal organizations, as corruption was the common modus operandi for these organizations.

The first collective battle we won was the classification of forced disappearances as crime in the code of criminal procedures in Coahuila. But this was not enough because the prosecutors did not know how to search for and find people, they were afraid of the Zetas but also of many corrupt authorities. Now we know that Humberto Moreira, who was the Governor of Coahuila at the time, could also have been involved with those criminals.²

We worked for so many years to help the prosecutor find the disappeared, a lot of families of the victims had to do their own investigation in order to get information. Even though families have had to risk their lives getting this information, most of it was dismissed without follow-up, review, or care. We are talking about places where families had information about clandestine graves and authorities did not explore those places; the families had to take shovels, to walk, to expose themselves to risk, to explore, find, and report any kind of forensic discovery. There are several numbers of collectives doing that job, they go and do the research, find the graves, and in the

¹ For more information on the case, see the following articles: <https://vanguardia.com.mx/articulo/pgr-publica-recompensa-por-desaparecido-en-torreon-hace-10-anos>; <https://www.proceso.com.mx/112702/comando-irrumpe-en-penal-de-torreon-mata-a-tres-internos-y-se-lleva-a-ocho>; <https://www.jornada.com.mx/2012/05/08/opinion/019a1pol>

² Individuals with close ties to the governor, such as Juan Manuel Muñoz Luevano, pleaded guilty in the United States for conspiracy to launder money and his former secretary of finance has also been charged with money laundering, see for example: <https://www.mysanantonio.com/news/local/article/Politically-connected-Mexican-accused-of-being-13861397.php>; <https://www.justice.gov/usao-sdtx/pr/former-mexican-governor-extradited-money-laundering-charges>



beginning, they used to take out the bones from underground. This kind of search began in 2013-2014 and continues growing day by day. Today there are hundreds of thousands of human bones and bone fragments that have been recovered by collectives of families, without authorities making the effort to identify them.

From 2015 to 2017, more than 70 collectives of families of the disappeared as part of the national movement of victims, worked closely and diligently with authorities in order to create the General Law on the Forced Disappearance of Persons, Disappearances Committed by Individuals and the National Search System. Our hope is that the National Search Commission, which is part of the system, will be able to search and find disappeared people without bureaucratic complications and that with a humanitarian focus there will be more chances to rescue people. However, it was not until 2020 that finally all state commissions were created, unfortunately most of them just have a budget from the federal government, but not from their states, which shows that disappearances are not their priority and that they are not even interested. The national citizen council made an assessment that shows that only one third of local search commissions have the infrastructure, financial and human resources and technological capacity to effectively search for disappeared people.³

Although the National Search Commission has made great progress, including the National Registry of Disappeared Persons, the main problem persists, disappearances still occur. As of the end of September 2020, there were more than 75,000 disappeared people in the registry, more than 11,000 just from December 1, 2019 to September 2020. This shows that even in this new administration under President Andrés Manuel López Obrador, even when this is a human rights priority, the efforts have not yet been enough. Talking about justice, we just have 30 convictions at the federal level⁴ of enforced disappearance in the entire country, that is more than 99.9% of impunity.

Corruption and impunity make disappearances possible. How it is that after more than 15 years of hard work of families and authorities in the fight against criminal organizations, there is a lot of training, new laws, procedures, protocols, skills, strategies, etc.... and despite all of this, criminals have been stronger than the entire government. This can't happen without help from inside the government, as you can see with the arrest by the U.S. Department of Justice of the former

³ The national citizen's council of the National Search Commission developed a framework for analyzing the progress of state level Search Commissions: <http://consejonacionalbusqueda.org/mapa>

⁴ The head of the National Search Commission announced in 2019 that there were only 30 convictions for forced disappearances nationally: <https://www.elsiglocoahuila.mx/coahuila/noticia/281644.a-nivel-nacional-solo-hay-30-sentencias-por-desaparicion-forzada.html>



Secretary for Public Security, Genaro García Luna, for charges of corruption and for being a collaborator of the Sinaloa Cartel.⁵

There is not a government strategy focused on the fight against impunity, there is no strategy to combat disappearances with the full power and structure of the state. A very clear example is the National Prosecutor's Office (*Fiscalía General de la República*, FGR). Last month the standardized search protocol was approved by the National Search System, but the federal and state prosecutors' offices rejected it arguing two main things: first that the right of every person to be searched for does not apply to the disappeared but to their relatives because the disappeared are not able to demand it. Second, that only the 21st article of the Mexican Constitution can require them to do anything. The FGR has been refusing to do those tasks that only the prosecutors can ask of judges. Without their cooperation the National Commission and the state-level commissions cannot get valuable information for searches such as the register of calls, bank account activity, geolocation, and other information that is so important during the first 72 hours after a disappearance in order to have real chances to rescue people.

In the area of forensic identification, the government is not helping as much as we had expected. We had a promise from President Lopez Obrador to identify most of the 38,891⁶ unidentified remains and all the bone fragments recovered from clandestine graves. The national movement has been working for more than two years on the Extraordinary Mechanism for Forensic Identification (MEIF), whose objective is to identify those people and return them to their families. The Mechanism is a semi-autonomous government body that is linked to the National Search System. It will be made up of national and international experts tasked with addressing the backlog of unidentified remains.

We planned to include the cause of death in the forensic report, however, the FGR refused to accept that external experts do this important job, which is something that must be included in a criminal investigations into homicides. The families decided to accept those terms to establish the Mechanism, and to allow the FGR the sole responsibility to determine the cause of death, because we want to be able to identify all of these people. But a big question remains, why? Why doesn't the FGR want to let the Mechanism's experts know how people die?

After a lot of years of having unidentified remains and an inefficient and unprepared forensic system whose difficulties have not been addressed, the MEIF has a huge challenge. For example,

⁵ Genaro Garcia Luna, who served as the secretary of public security under Felipe Calderon (2006-2012) was indicted by a court in New York on charges related to drug trafficking.

https://elpais.com/internacional/2019/12/10/mexico/1575997429_061837.html

⁶ This article highlights both the scale of the crisis as well as issues with how the many remains that have been discovered have been handled: <https://www.quintoelab.org/crisis-forense/crisis-forense-cuando-las-funerarias-suplieron-al-semefo/>



in some states the authorities made an agreement with funeral homes to keep the bodies and they were asked to help with forensic identification even though they are unqualified to do so, they even have to pick up the bodies at the crime scene.⁷ This incapacity to address the forensic crisis has made it impossible to identify the bodies, mainly because of bad practices. Each state has different kinds of inefficiencies, some have capacity problems such as Jalisco⁸, another example is at Colinas de Santa Fe in Veracruz where there were a lot of mistakes, problems of control over the evidence, and delays for identification.⁹ In Coahuila there is an exhumation program and their registry showed that they had more than 400 bodies in graves but, as the exhumation process moved forward, that number increased to over 900 bodies; now that more exhumations are taking place it has been shown that the number might be even bigger.¹⁰

One other issue is how the government attends to victims, their needs, and how they guarantee the access to justice. The General Victims Law was another collective achievement, however, there is not enough financial, human, and institutional resources to attend to the victims. There is not sufficient medical assistance granted to victims, and most of the time what is granted is limited and conditioned upon proving that the health problem is a direct consequence of the disappearance, for example cancer, diabetes, hypertension, depression, stress, etc. Also, there are not enough scholarships for children and teenagers so that those who have a disappeared relative are able to have a chance to keep studying. Families of the disappeared also face challenges for adequate housing and food because of the economic crisis that happens when a family member disappears, but also because of the work families do to investigate the case and search for their loved ones. There's so much need for this support from the government, but in October there will be a reform to eliminate the trust fund that supports the families of victims.

There is a lot of work to do to have answers and to really have chances to find all of the disappeared people. Mexico needs a lot of help, even if the government is not always able to recognize that need. I am sure that U.S. government can assist us, that the U.S. Congress can assist us by:

1. Continuing to support the Extraordinary Mechanism for Forensic Identification. We expect the Mechanism to start to work in 2021, and it will need a lot of money, but also forensic

⁷ Private funeral service providers were asked to help with forensic identification though they are unqualified to do so, putting at risk the successful identification of remains: <https://www.quintoelab.org/crisis-forense/crisis-forense-cuando-las-funerarias-suplieron-al-semefo/>

⁸ This article highlights the state of Jalisco's struggles to identify hundreds of bodies, some of which had to wait outside forensic examination facilities, due to a lack of capacity: <https://www.proceso.com.mx/648637/jalisco-la-verdad-de-los-traileres-de-la-muerte>

⁹ This article highlights the overwhelming task collectives face when investigating what happened to their loved ones, in the context of the discovery of a staggering number of the bodies of the disappeared: <https://www.proceso.com.mx/545787/el-colectivo-solecito-dos-anos-de-escarbar-en-el-narcocementerio-mas-grande-de-latinoamerica>

¹⁰ In Coahuila, searches in clandestine graves turned up many more bodies than expected: <https://piedepagina.mx/coahuila-los-cuerpos-de-los-que-nadie-sabia/>



experts, forensic laboratories, DNA experts, technology, and infrastructure. USAID is supporting this mechanism in their new human rights and accountability activity and this and other U.S. support should continue. There are big and important DNA laboratories in the United States that might also be able to assist.

2. It will be important for the forensic mechanism to have access to databases about migrants that died at the U.S. border and were not identified, as a lot of these remains could be some of the people we are looking for.
3. In 2017 the human rights clinic at the University of Texas in Austin, investigated some trials in Austin, San Antonio, and Del Rio, Texas. In these trials more than 24 witnesses testified that Humberto Moreira and other government officials were involved with the Zetas, but they also talk about people who were disappeared.¹¹ Unfortunately, the judges did not have them talk about these crimes because it was not of the interest of the prosecutor. These witnesses have a lot of information that can help to find our disappeared relatives; however, the Mexican government has not shown the political will to ask for the American's to help to obtain this information. Maybe this will need a special agreement of cooperation with those accused, or some other legal instrument that could help families to get information about people disappeared or murdered by the Zetas.
4. The trade agreement between Mexico and the European Union has a democratic clause, it includes respect for human rights for the Mexican and European governments but also for European companies. I know that the new USMCA does not have a human right clause and I think that there should be a way for U.S. companies to examine how they invest in Mexico. They should assess the human rights impact of their operations, how they can protect their workers or at least to help their families to demand security and protection of their rights. It is not just matter of labor rights, which is part of the USMCA, the companies and the governments must care about dignity, integrity, security, and justice access for all people that live in places where they have an investment.
5. Keep human rights requirements in U.S. assistance to Mexico. One of the requirements to receive part of U.S. security assistance is that the Mexican government is searching for victims of forced disappearances and credibly investigating and prosecuting those responsible for such crimes. This is an important way to continue to raise this issue with Mexican authorities and to measure how much progress they are making.
6. Provide international political pressure. For families of disappeared people, media and political pressure are some of the best instruments to make authorities address human rights. We need external pressure on our government at the federal and state level. When the international community is watching for human rights, the government must do something. When you ask for the participation of families with authorities in searching for the disappeared, they have to involve us. When you show interest in what is going on in Mexico, they worry about how to look their best. Please keep an eye on disappearances in Mexico.

¹¹ "Control...Over the Entire State of Coahuila: An analysis of testimonies in trials against Zeta members in San Antonio, Austin, and Del Rio, Texas," University of Texas School of Law Human Rights Clinic, November 2017, <https://law.utexas.edu/wp-content/uploads/sites/11/2017/11/2017-HRC-coahuilareport-EN.pdf>



Thank you so much for the opportunity to talk about what we are living in Mexico. All of us are worried that we do not have enough time to find our disappeared relatives, not enough time to obtain justice for them, not enough time to put an end to disappearances in Mexico, this is why we need support. We are partners but also brothers and sisters of land, we have had suffering because of the drugs, the blood, and the pain it causes in both countries. We are thankful for the help we received by USAID, the Justice Department, the State Department and other U.S. agencies that work human rights in Mexico. We are thankful for the engagement of the U.S. Congress on human rights in Mexico and your concern about disappearances. Without that help, believe me, this problem could be worse.

Because they were taken alive, we want them back alive.