

# Coordination between the search and criminal investigations concerning disappeared persons

Case studies on Bosnia and Herzegovina and Mexico

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## Summary

The relationship between the criminal investigation of and the search for disappeared persons is often referred to as a matter of considerable concern because of the potential tension between the different objectives pursued by these two processes. However, to date, the concrete challenges arising when the two processes are at odds with each other and the ways to overcome them have not been analyzed in-depth. This study aims to close this gap by analyzing two contexts with different approaches to conducting and coordinating searches and criminal investigations concerning disappeared persons. Based on extensive desk research and 22 interviews with representatives of institutions involved in the processes of search and criminal investigations in Bosnia and Herzegovina (BiH) and Mexico, the study encompasses different perspectives on the coordination in both countries. By illustrating the specificities of both contexts and showing how they have influenced coordination, the key objective of this study is to extend the relevance of their experiences to countries with similar or different institutional contexts.

The experiences of BiH and Mexico reveal different approaches to the coordination and the interplay between the search and criminal investigations: in BiH, the search and criminal investigations are seen as two inherent parts of the same process. Despite the existence of specialized institutions for the search and others whose mandate is to investigate crimes related to missing and forcibly disappeared persons, the interdependence and relationship between the search and criminal investigations is duly reflected in domestic legislation and practice. In Mexico, the approach adopted is not *per se* the opposite to that of BiH: the investigative authorities lead the criminal investigation, but also bear the obligation to establish the fate and whereabouts of the disappeared person. At the same time, the search has been assigned to a separate, autonomous mechanism, with the objective of improving previous practices in this domain.

The different experiences in coordination in Mexico and BiH are linked to specific characteristics and peculiarities of the individual countries. In BiH, the analyzed context is narrowed down to the disappearances related to the 1992-1995 war, as this was the only period when enforced disappearances were committed on a massive scale and, unlike in previous conflicts, they were reported and documented. Furthermore, the functions and mandate of BiH's institutions involved in the search and in criminal investigations are clearly defined and strongly interrelated. The representatives of these institutions perceive coordination as an obligation, which is settled on strong legal grounds and mutual respect. The sense of legal obligation among the institutions and well-defined mandates contribute to a more efficient coordination. In addition, the presence and support received from international organizations in BiH has been crucial for establishing a solid interplay between search and criminal investigation, not only because of funding, but also due to their essential role in implementing the two processes (e.g. the identification of mortal remains would not have been possible without the assistance provided by the International Commission on Missing Persons). Moreover, institutions in BiH in principle benefit from the trust of the families of missing and forcibly disappeared persons, whose direct participation is seen as essential for the functioning of both processes.

The key peculiarities of the Mexican context are: First, the numerical and temporal scope of the phenomenon of disappearance (which goes far beyond enforced disappearances) spans a long period of time with ensuing difficulties for the institutions involved in coordination, in particular those in charge of the search, whose mandate has no temporal limitation. The high number of cases of disappearances and the various contexts in which they occurred add a layer of complexity. Second, the search and criminal investigations are being conducted while disappearances continue occurring, and, in some cases, the institutions bearing the responsibility to investigate the crimes concerned are themselves involved in their perpetration. Third, the impunity rate is extremely high, suggesting that the rule of law is embedded differently from BiH, in the sense that obeying existing rules and regulations is of relatively low importance and breaking the law without serious consequences. Fourth, the current approach to

coordination between the search and criminal investigations is relatively new and is the result of the “failure” of a previous one, in which investigative authorities were in charge of both processes. It thus remains to be seen what the consequences and outcomes of the creation of specialized search mechanisms will be in the long term. Another specific feature is the size and the federal structure of the State, which makes coordination and cooperation among institutions at all levels extremely difficult, in particular because of the constant reforms and fragmentation of institutions. Finally, Mexico is an appealing example of how international organizations and strong social movements can exert pressure, which eventually bring States closer to compliance with their international obligations (e.g. the Inter-American Commission on Human Rights in the Ayotzinapa case).

Acknowledging the difficulties that may arise with respect to coordination in both countries, the study identifies various challenges and lessons learned. Most importantly, it concludes that there is no one-size-fits-all approach to the coordination between the search for disappeared persons and criminal investigations, and that none of the approaches adopted by the two countries analyzed is rendering such coordination impossible *per se*. More importantly, the study of the two cases is not meant to be a comparison, as this would hardly be possible: on one hand, the existing system in BiH has been in place since 2004, while only approximately three years have passed since the first elements of the current framework for coordination entered into force in Mexico. The study also highlights that the two processes must be interrelated whether the search and criminal investigations are conducted by the same institution or not. Thus, coordination should be seen as pivotal for achieving meaningful results in both and as an opportunity for increasing the credibility of the institutions and authorities involved. Finally, the study points to the importance of context specificity, meaning that effective coordination depends on a broad range of circumstances, which in turn determine the nature and the scope of the challenges. In order to prepare the grounds for and to ensure effective coordination in the long run, the specificities of each context must be carefully examined by the institutions that bear the ultimate responsibility for the implementation of both processes.

# Imprint

## Disclaimer

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## About this study

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The study provides a detailed analysis of the coordination between the search and criminal investigations concerning disappeared persons in Bosnia and Herzegovina and Mexico. It is based on a desk study and information gained from interviews. While the names of the interviewees are not disclosed in this study, the list of the institutions the interviewees belonged to at the time of the interview is included at the end. Nevertheless, the views of the interviewees expressed for the purpose of this study do not necessarily represent those of their organizations.

## Publisher

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation.

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## List of abbreviations

BiH	Bosnia and Herzegovina
CAH	Crime(s) against humanity
CEAV	Executive Commission of Support to Victims ( <i>Comisión Ejecutiva de Atención a Víctimas</i> )
CED	Committee on Enforced Disappearances
CEN	Central Records of Missing Persons
CNB	National Search Commission ( <i>Comisión Nacional de Búsqueda</i> )
CNDH	National Human Rights Commission ( <i>Comisión Nacional de los Derechos Humanos</i> )
EAAF	Argentinian Forensic Anthropology Team ( <i>Equipo Argentino de Antropología Forense</i> )
ECtHR	European Court of Human Rights
EU	European Union
FAFG	Guatemalan Forensic Anthropology Team ( <i>Fundación de Antropología Forense de Guatemala</i> )
FEBPD	Federal Prosecutor's Office Specialized in the Search for Disappeared Persons ( <i>Fiscalía Especializada de Búsqueda de Personas Desaparecidas</i> )
FEIDDF	Federal Prosecutor's Office/Attorney General's Office Specialized in the Investigation of Enforced Disappearances ( <i>Fiscalía Especializada en Investigación de los Delitos de Desaparición Forzada</i> )
FEMDH	Attorney General's Office Specialized in Human Rights ( <i>Fiscalía Especializada en Materia de Derechos Humanos</i> )
FEMOSPP	Special Federal Prosecutor's Office for Social and Political Movements of the Past ( <i>Fiscalía Especial para Movimientos Sociales y Políticos del Pasado</i> )
FGR	Office of the Attorney General of the Republic ( <i>Fiscalía General de la República</i> )
GIEI	Interdisciplinary Group of Independent Experts ( <i>Grupo Interdisciplinario de Expertos Independientes</i> )
GP	Guiding Principle(s) for the Search for Disappeared Persons
HRCtee	Human Rights Committee
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICMP	International Commission on Missing Persons
ICPED	International Convention for the Protection of All Persons from Enforced Disappearance
ICRC	International Committee of the Red Cross
ICTY	International Tribunal for the Former Yugoslavia
IHL	International humanitarian law

IHRL	International human rights law
INM	National Institute for Migration ( <i>Instituto Nacional de Migración</i> )
INTERPOL	International Criminal Police Organization
IRMCT	International Residual Mechanisms for Criminal Tribunals
JEP	Joint Exhumation Process
LMP	Law on Missing Persons
MAE	External Mechanism of Support for Search and Investigation ( <i>Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación</i> )
MEIF	Extraordinary Mechanism for Forensic Identification ( <i>Mecanismo Extraordinario de Identificación Forense</i> )
MESA	Follow-Up Mechanism for the Ayotzinapa Case ( <i>Mecanismo Especial de Seguimiento al Asunto Ayotzinapa</i> )
MPI	Missing Persons Institute
NGO(s)	Non-governmental organization(s)
NN	No Name (lat. <i>nomen nescio</i> )
OHCHR	Office of the High Commissioner for Human Rights
OHR	Office of the High Representative
OSA	Intelligence and Security Agency
OSCE	Organization for Security and Cooperation of Europe
PGR	Office of the Federal Prosecutor of the Republic ( <i>Procuraduría General de la República</i> )
PHB	Harmonized Search Protocol ( <i>Protocolo Homologado de Búsqueda</i> )
PO BiH	Prosecutor's Office of Bosnia and Herzegovina
RENAVI	National Register for Victims ( <i>Registro Nacional de Víctimas</i> )
RND	National Register for Detention ( <i>Registro Nacional de Detenciones</i> )
RNPDNO	National Register of Disappeared and Missing Persons ( <i>Registro Nacional de Personas Desaparecidas y No Localizadas</i> )
RNPED	National Register of Missing or Disappeared Persons ( <i>Registro Nacional de Datos de Personas Extraviadas o Desaparecidas</i> )
SDHPDSC	Deputy Federal Prosecutor's Office/Attorney General's Office for Human Rights, Crime Prevention and Community Services ( <i>Subprocuraduría de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad</i> )
SEGOB	Ministry of the Interior ( <i>Secretaría de Gobernación</i> )
SEIDO	Deputy Federal Prosecutor's Office/Attorney General's Office Specialized in Investigation of Organized Crime ( <i>Suprocuraduría Especializada en Investigación de la Delincuencia Organizada</i> )
SFRY	Socialist Federal Republic of Yugoslavia



SINPEF	National Information System on Unidentified Missing and Deceased Persons ( <i>Sistema de Información Nacional de Personas Extraviadas y Fallecidas No Identificadas</i> )
SIPA	State Investigative and Protection Agency
SIRED	Detainee Registration System ( <i>Sistema de Registro de Detenidos</i> )
UEBPD	Unit Specialized in the Search for Disappeared Persons ( <i>Unidad Especializada de Búsqueda de Personas Desaparecidas</i> )
UN	United Nations
UNDP	United Nations Development Program
WGEID	Working Group on Enforced or Involuntary Disappearances

# 1 Introduction

Adequately addressing a case of disappearance poses a broad range of challenges.<sup>1</sup> Many of them relate to two obligations that are at the forefront in the struggle against enforced disappearances: the search for the disappeared (meaning determining the fate and whereabouts of the disappeared)<sup>2</sup> and the criminal investigation (meaning identifying the perpetrators)<sup>3</sup> of enforced disappearances. Both obligations are nowadays well established in international law and arise from, *inter alia*, the International Convention for the Protection of All Persons from Enforced Disappearances (ICPED); Arts. 12, 14, 15 and 24 (paras. 2, 3 and 6). However, the relation between the search for disappeared persons and criminal investigations is, to a certain extent, the subject of discrepancies of opinions and interpretations. In this regard, the Guiding Principles for the Search for Disappeared Persons (GP) adopted by the United Nations (UN) Committee on Enforced Disappearances (CED) stipulate that searches and criminal investigations concerning disappeared persons should be mutually reinforcing and interrelated (GP 13).<sup>4</sup> This is also affirmed in the study on standards and public policies for an effective investigation of enforced disappearances of the UN Working Group on Enforced or Involuntary Disappearances (WGEID).<sup>5</sup> While acknowledging that such formulation of the relationship is an important step forward in clarifying how the two processes should interact, further research is desirable to understand how this question has been regulated by different States in practice and how the coordination between the two can be enhanced.

By referring to the “coordination between the search and criminal investigations concerning disappeared persons” in the present text, we seek to describe processes of interaction and exchange between different institutions (authorities and mechanisms) involved in the search and criminal investigations concerning disappeared persons.<sup>6</sup> The subject matter dealt with in this study has been chosen on the basis of the discussions held at the International Expert Working Meeting for the Search for Missing Persons, including Victims of Enforced Disappearance, which swisspeace organized together with the International Committee of the Red Cross (ICRC) at the Dead Sea, Jordan in September 2019. As reflected in the executive summary of the Working Meeting, participants in the meeting agreed that coordination between the search and criminal investigations has to be further researched.<sup>7</sup> As a follow-up activity, in view of the importance and controversies around this topic, swisspeace organized another International Expert Working Meeting with a specific focus on coordination. This meeting convened experts, practitioners and academics from different parts of the world and was held on 27 and 28 February 2020 in Basel, Switzerland. On that occasion, it became clear that in-depth analysis of the coordination between the search and criminal investigations could contribute to a better understanding of

<sup>1</sup> The term “disappeared” person used in this study corresponds to its use in the UN Guiding Principles for the Search for Disappeared Persons and encompasses “enforced disappearance” as defined in Art. 2 of the International Convention for the Protection of All Persons from Enforced Disappearance (ICPED) as well as “disappearance” as defined in Art. 3 of the ICPED. Art. 2 of the ICPED defines enforced disappearance as “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. When acts defined in Art. 2 of the ICPED are committed by “persons or groups of persons acting without the authorization, support or acquiescence of the State”, Art. 3 of the ICPED imposes the obligation of each State to take appropriate measures to investigate such acts and bring the perpetrators to justice.

<sup>2</sup> “Determining the fate and the whereabouts” should be understood in the broadest sense, meaning that it may also encompass location of graves, exhumation and all consequent steps needed to determine the identity of the disappeared person with certainty.

<sup>3</sup> “Identifying the perpetrators” does not only refer to the mandates of the prosecutors’ offices as an institution that is usually in the lead of criminal investigations but encompasses any other authority to the extent that it has investigative powers in a given legal framework (e.g. the police).

<sup>4</sup> CED, “[Guiding principles for the search for disappeared persons](#)”, UN Doc. CED/C/7, 8 May 2019.

<sup>5</sup> WGEID, “[Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances](#)”, UN Doc. A/HRC/45/13/Add.3, 7 August 2020, para. 56.

<sup>6</sup> Unless otherwise stated explicitly, the term “authority” refers to the institutions concerned with the investigation or prosecution of any person against whom proceedings are brought in connection with an offense of enforced disappearance (in the case of Mexico, also disappearance perpetrated by private individuals), whereas “mechanism” is meant to cover institutions dealing with processes of search for disappeared persons. “Institution” is another term used in the study and covers both search mechanisms and investigative authorities.

<sup>7</sup> swisspeace and ICRC, “[The Search for Missing Persons, including Victims of Enforced Disappearance](#)”, Executive Summary on the [International Expert Meeting](#), 3-4 September 2019.

common challenges and ways to overcome them. Thus, in the Basel meeting outcome report,<sup>8</sup> swisspeace committed to conduct two country case studies on this topic. Given the rich scenarios and essentially different approaches towards coordination activities in Bosnia and Herzegovina (BiH) and Mexico, they were chosen as case study countries.

This publication is based on the premise that, notwithstanding the challenges arising in coordinating search and criminal investigation, coordination is a legal obligation for the institutions involved which cannot be avoided under any circumstance. By identifying existing challenges, as well as good practices and lessons learned, the aim of this study is to provide entry points to improve the coordination between the two processes and thereby the fulfillment of the obligations to search for disappeared persons and to conduct criminal investigations. The purpose is not only to improve coordination practices in the analyzed countries, but also to contribute to existing studies and expertise on this topic in general, hoping that this could assist countries facing similar situations worldwide. By analyzing how GP 13 is operationalized in BiH and Mexico, the goal of the study is also to support the CED in the dissemination of the GP and to increase their practical relevance. Given the close link between the examined topics, the study aims at validating and elaborating certain parameters examined in the WGEID study on standards and public policies for an effective investigation of enforced disappearances.<sup>9</sup> The findings are based on desk research and interviews, which were conducted via video conference and, in some cases, also in writing, between July 2020 and January 2021. In total, 14 persons were interviewed for the analysis of Mexico and 8 for BiH.<sup>10</sup>

The study examines two country cases. In both country contexts, the structure is as follows: first, the context of disappearances is described, including an introduction of the results achieved in terms of the search and criminal investigations. Second, the legal framework and institutions for the search and criminal investigations concerning missing and forcibly disappeared persons in BiH and disappeared persons in Mexico are analyzed in depth. This is followed by the examination of coordination between all institutions involved in the search and criminal investigations. Then, challenges and lessons learned with respect to coordination between the search for disappeared persons and criminal investigations are presented, together with examples of good practice. These parts of the study provide no background of the context examined and should thus be read together with the respective country analysis for the purposes of gaining a broader understanding of the information presented. Fourth, conclusions that can be drawn from the experiences of both countries and an evaluation of their approaches to coordination is presented in the final part of each of the case studies. Last, general conclusions, based on the experiences of both countries analyzed and with potential relevance for other contexts, are presented. The purpose of this chapter is to make the experiences of BiH and Mexico relevant and useful for other contexts worldwide. Although drawn from the contexts analyzed, the general conclusions are formulated such that they hopefully assist not only those involved in the process of coordination in BiH and Mexico, but also elsewhere.

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<sup>8</sup> swisspeace, [“Coordinating the Search and Criminal Investigations concerning Disappeared Persons”](#), International Expert Working Meeting, 27-28 February 2020.

<sup>9</sup> WGEID, [“Report of the Working Group on Enforced or Involuntary Disappearances on standards and public policies for an effective investigation of enforced disappearances”](#), UN Doc. A/HRC/45/13/Add.3, 7 August 2020, see in particular paras. 24-26; 32; 54-56.

<sup>10</sup> Given that the order and substance of questions varied depending on the expertise of each interviewee, the questionnaires used in the interviews were adjusted for each interview and are thus not annexed to the study.

## 2 Bosnia and Herzegovina

### 2.1 Context

The violent breakdown of the Socialist Federal Republic of Yugoslavia (SFRY) in 1991 and the subsequent wars for independence of its former republics generated a huge amount of suffering in the region. Amongst other interpretations, the ethnic conflict between Serbs, Bosniaks and Croats lies at the root of the war.<sup>11</sup> It is estimated that more than 40,000 persons went missing over a period of four years.<sup>12</sup> The hostilities had a devastating impact on all the countries involved – a legacy of violence that they struggle with to this day. The war in BiH came to an end on 14 December 1995, when the Dayton Peace Agreement was signed between BiH, the Republic of Croatia and the Federal Republic of Yugoslavia.<sup>13</sup> This agreement brought a major change in the constitutional framework of BiH: since then, BiH is a democratic State composed of two largely independent entities (Federation of Bosnia and Herzegovina and Republika Srpska) and one semi-autonomous unit (Brčko District).<sup>14</sup>

BiH is the country of the Western Balkans most affected by the war with hostilities beginning in 1992 and lasting more than three and a half years. When the war ended, the estimated number of missing persons<sup>15</sup> in the country amounted to more than 30,000.<sup>16</sup> BiH has continuously strived to clarify the fate of missing persons who disappeared during and in the aftermath of the war, and has achieved significant results in this domain. As of February 2021, the search efforts continue for approximately 25 percent of missing persons, while over 75 percent have been accounted for.<sup>17</sup>

The passage of time and the context play a crucial role in the search strategy adopted in BiH. Almost 25 years have passed since the end of the war and the chances of finding a missing person alive are low. Thus, the search is almost always directed at locating mass graves or burial sites, carrying out exhumations and performing identifications. Another factor that influences the search and criminal investigations in BiH is the context in which the persons went missing, i.e. armed conflict. Difficulties regarding the clarification of facts and evidence collection arise due to the large number of persons who disappeared in blurred situations (e.g. it might be unclear if the person is really missing or her/his absence is due to a death on the battlefield). Despite various challenges, the accounting for missing persons in BiH is generally regarded as successful.<sup>18</sup> The same cannot be said to an equivalent extent for domestic criminal proceedings. The impunity for war crime,<sup>19</sup> including for persons responsible for crimes

<sup>11</sup> The use of the term "Bosniacs" (Bosniaks in American English) in this context follows the definition adopted by the European Court on Human Rights (ECtHR) in its judgments concerning BiH: "Bosniacs were known as Muslims until the 1992-95 war. The term 'Bosniacs' (*Bošnjaci*) should not be confused with the term 'Bosnians' (*Bosanci*) which is commonly used to denote citizens of Bosnia and Herzegovina irrespective of their ethnic origin." See, e.g. *Baralija vs. BiH*, App. No. 30100/18 (ECtHR, 29 October 2019), en. 5.

<sup>12</sup> Parliamentary Assembly, Committee on Legal Affairs and Human Rights, "The International Convention for the Protection of All Persons from Enforced Disappearance", Doc. AS/Jur (2011) 45, 4 November 2011, Introduction, p. 7, para. 3. These "4 years of war" do not include Kosovo, where the hostilities were ongoing until 1999.

<sup>13</sup> The Dayton Peace Agreement is available [here](#).

<sup>14</sup> WGEID, "Working Group on Enforced or Involuntary Disappearances: Mission to Bosnia and Herzegovina", UN Doc. A/HRC/16/48/Add.1, 28 December 2010, paras. 6-7.

<sup>15</sup> At the outset, a remark must be made concerning the examination of the topic in BiH. The terminology used is adapted to domestic practice/legislation/policy (which refers to "the missing"), without prejudice to the fact that, in certain cases, the most adequate legal terminology would require a reference to "enforced disappearance" and "forcibly disappeared persons".

<sup>16</sup> There are different estimations of how many persons went missing in BiH during the war. The WGEID noted in its report from 2010 that the number is somewhere between 28,000 and 30,000. UN Doc. WGEID, "Working Group on Enforced or Involuntary Disappearances: Mission to Bosnia and Herzegovina", UN Doc. A/HRC/16/48/Add.1, 28 December 2010, para. 21.

<sup>17</sup> More recent findings introduced by the ICMP as well as data gathered through the interviews suggest that the fate of about 23,000 missing persons has been determined, while 7,000 missing persons are still to be found. See, e.g. ICMP, "[Implementation of the BiH Law on Missing Persons must be expedited, say members of BiH Missing Persons Institute Advisory Board](#)", 17 January 2020.

For statistics of missing persons per municipality in BiH, see ICMP, "[Statistics of Missing Persons per Municipality of Disappearance](#)".

<sup>18</sup> ICMP, "[25 years after Dayton: Bosnian experts and families of the missing take stock of achievements, next steps in finding the missing](#)", December 2020.

<sup>19</sup> In this publication, "war crime" and "war crimes case" are used interchangeably. These terms should be understood as they are used in colloquial language, meaning that they encompass not only serious violations of IHL but also other international crimes that can be committed in the context of war (e.g. genocide or crimes against humanity).

See also the definition from the National War Crimes Strategy: "The term 'war crimes' as used in the Strategy refers to criminal offences committed during the war in BiH (1992-1995), prescribed under Chapter XVII of the Criminal Code of Bosnia and Herzegovina 'Crimes against humanity and values protected by international law' committed in relation to the war in BiH". "[National War Crimes Strategy](#)", December 2008.

related to missing persons, has been acknowledged as one of the central problems in BiH.<sup>20</sup>

It must be noted that BiH has always refers to victims of enforced disappearance in the broader context of “missing persons”.<sup>21</sup> It has not differentiated between the categories of missing persons depending on the cause of their disappearance, neither were specific processes for forcibly disappeared persons established. This, however, does not mean that enforced disappearances have not taken place in BiH during the war. In fact, there are claims that enforced disappearances were systematically used as a tool of war.<sup>22</sup> Despite this, not many convictions for the crime of enforced disappearance as a crime against humanity (CAH) have been issued by the competent domestic court until today (according to one source,<sup>23</sup> there have been 12 convictions for 14 perpetrators).<sup>24</sup> As for the advances of the International Tribunal for the Former Yugoslavia (ICTY) in this regard, albeit having dealt with cases that involved enforced disappearances, it has not convicted anyone of such crimes specifically.

## 2.2 Legal framework and institutions

### 2.2.1 Search prior to the Law on Missing Persons

The first efforts to search for missing persons in BiH began during the war, in 1992. At the State level, the State Commission for Exchange of Prisoners of War (Commission) was among the first search commissions.<sup>25</sup> It searched for three different categories of missing persons: a person considered to be alive, dead, or without information on their fate.<sup>26</sup> While the Commission was supposed to adopt a non-discriminatory policy regarding the different entities in its working strategy, this was to a certain extent impossible due to the existence of separate databases and other autonomous search commissions operating at the local level.<sup>27</sup> Since the Commission depended on receiving information from local search commissions, their willingness to collaborate was a necessary precondition for the Commission’s work.

With the end of the war, the search practices changed. The Dayton Peace Agreement did not make any explicit reference to missing persons. However, it mentioned the obligation of the Parties to cooperate with the ICRC in the search process of “persons unaccounted for”.<sup>28</sup> The ICRC was present in BiH throughout the war and, with respect to missing persons, its main task was to register tracing requests (i.e. requests for the search) from families.<sup>29</sup> In 1996, the ICRC took on a crucial role in the search process by creating and chairing the Working Group for Missing Persons (Working Group),<sup>30</sup> whose ultimate aim was to improve the search for the persons unaccounted for and the communication with their

<sup>20</sup> US Department of State, “Bosnia and Herzegovina 2019 Human Rights Report”, March 2020, p. 3.

<sup>21</sup> The term “missing” in this report is broader than that of “enforced disappearance” and it follows the working definition used by the ICRC. It encompasses anyone whose fate and whereabouts are unknown to their relatives and/or who, on the basis of reliable information, has been reported missing in connection with an international or non-international armed conflict, another situation of violence, a disaster, or any situation that may require action by a neutral and independent body. ICRC, “Guiding Principles/Model Law on the Missing”, The Domestic Implementation of International Humanitarian Law: A Manual, Annex IV, Part 1 – General Provisions, September 2015.

<sup>22</sup> Amnesty International, “Bosnia and Herzegovina. Honouring the ghosts: challenging impunity for ‘disappearances’”, March 2013, pp. 2-3. One of the most comprehensive reports issued on the situation of missing persons in the territory of former Yugoslavia also mentioned the systematic scale of disappearances in BiH. Commission on Human Rights, “Report by Manfred Nowak: Question of enforced or involuntary disappearances. Special process on missing persons in the territory of former Yugoslavia”, UN Doc. E/CN.4/1996/36, 4 March 1996, paras. 51-52; 55.

<sup>23</sup> However, the final number of the sentences issued for enforced disappearances as CAH is unknown. For example, a different source suggests that at least 15 sentences for at least 21 perpetrators have been issued until February 2021. Information gathered through various written exchanges.

The Court of BiH is currently working on a new database for war crimes which will contain summaries and judgements of all war crime cases. It will be available on the Court’s website and open to the general public. Information gathered through written exchange, 21 January 2021.

<sup>24</sup> Further details on the sentences might be found on the [BiH War Crimes Map](#). The War Crimes Map is a tool designed by the Organization for Security and Cooperation of Europe (OSCE) Mission to BiH in 2014. In 2019, it was handed over to the High Judicial and Prosecutorial Council of BiH.

<sup>25</sup> Decision on Establishment of the State Commission for Exchange of Prisoners of War, Official Gazette of BiH, No. 10/92.

<sup>26</sup> ICMP, “Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING”, 2014, p. 27.

<sup>27</sup> The term “local” is used for institutions which operate at the level of entities or Brčko District.

<sup>28</sup> Art. V of Annex 7 of the Dayton Peace Agreement.

<sup>29</sup> In this publication, terms “tracing” and “searching” are used interchangeably.

<sup>30</sup> The remaining members of the Working Group were the local Red Cross, family associations of missing persons, the Office of the High Representative and former belligerents’ representatives.

families.<sup>31</sup> In addition to this Working Group, various search commissions were established in BiH, first at the State level and then also at the level of the entities.<sup>32</sup> The search commissions were tasked with the location, exhumation and identification of the mortal remains of missing persons. Yet, these commissions allegedly often conducted the search in a discriminatory manner, depending on which ethnic group they belonged to.<sup>33</sup> With the purpose of facilitating dialogue and alleviating tensions, the Working Group organized regular exchanges of information between local search commissions.

The Working Group continued its work until 1999, and then again from 2003 to 2007, when the domestic authorities of BiH took over the search, which resulted in the conclusion of its mandate.<sup>34</sup> Its greatest achievement was to open a space for discussions on missing persons in BiH. The search results were moderate,<sup>35</sup> the main reason being the unwillingness of local institutions to collaborate with institutions of the opposite entity and to share information on mass graves or burial sites unless a similar amount of information was disclosed by the opposite entity.<sup>36</sup>

Another very pressing issue at stake immediately after the war consisted of allowing each entity to conduct exhumations in the other's territory, given that most of the mortal remains of residents of one entity were located in the territory of the other. Thus, in order to guarantee a more efficient collaboration between different search commissions in BiH, two agreements were signed in 1996.<sup>37</sup> In the first agreement signed in Banja Luka, the entities decided to make a "priority list" for the identification of unburied bodies and for the exhumation of clandestine and mass graves.<sup>38</sup> As this process did not bear results, a new agreement was signed in Sarajevo the same year. It provided guidelines on how to conduct inter-entity exhumations, e.g. courts were allowed to issue orders for exhumation in the other entity and to monitor the storage of mortal remains.

In February and March 1996, the Expert Group on Exhumations and Missing Persons (Expert Group on Exhumations) was created in order to coordinate exhumations and identification activities among the different international institutions working in BiH, but only in a supporting capacity to the local authorities responsible for addressing the issue of missing persons.<sup>39</sup> The Office of the High Representative (OHR) established and led the Expert Group on Exhumations.<sup>40</sup> The OHR was also in charge of controlling and coordinating the Joint Exhumation Process (JEP) launched in 1997, which represented a more comprehensive solution for the whole territory of BiH.<sup>41</sup> Nevertheless, all these efforts did not put an end to ethnic tensions, much to the detriment of cooperation between different entities.<sup>42</sup> The International Commission on Missing Persons (ICMP), which had been created to help to account for persons missing as a result of the 1990s armed conflict in 1996, took over the leadership of the Expert Group on Exhumations and the coordination of the JEP in 2001.<sup>43</sup>

The ICTY was another institution involved in the search by conducting exhumations for criminal investigations between 1993 and 2001.<sup>44</sup> While its contribution to achieving justice in the region has been

<sup>31</sup> For a more detailed description on which basis this Working Group was created and how was the proposal received by the Parties, see Marco Sassòli, "Armed Conflicts in the Former Yugoslavia", Case Study, August 1998, para. 22.

<sup>32</sup> ICMP, "Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, pp. 31-32.

<sup>33</sup> Data gathered through interview, 6 July 2021.

<sup>34</sup> ICMP, "Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, pp. 30-31.

<sup>35</sup> Ibid., p. 31.

<sup>36</sup> Data gathered through interview, 23 July 2020.

<sup>37</sup> For a detailed description of Banja Luka's and Sarajevo's agreements, see ICMP, "Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 33.

<sup>38</sup> Especially the agreement signed in Banja Luka is recognized as a huge success, because it was signed soon after the war (in June 1996).

<sup>39</sup> For more detail on the creation and work of this Expert Group, see Amnesty International, "BOSNIA-HERZEGOVINA: "To bury my brothers' bones", Report No. 63/15/96, July 1996, pp. 18-19.

<sup>40</sup> The OHR is an institution which still functions today and was created in the framework of the Dayton Peace Agreement as an *ad hoc* international institution. Its main task is to monitor the implementation of civil aspects of the Dayton Peace Agreement.

<sup>41</sup> ICMP, "Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 33.

<sup>42</sup> Kirsten Juhl, "The Problem of Ethnic Politics and Trust: The MPI of BiH", *Genocide Studies and Prevention*, Vol. No. 4, Issue No. 2, August 2009, p. 240.

<sup>43</sup> ICMP, "Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 34.

<sup>44</sup> The search was indisputably instrumental to the ICTY's main mandate, i.e. investigation and prosecution of the perpetrators.

"The ICTY conducted exhumations of mass graves and other clandestine graves for the purpose of collecting evidence for its ongoing war crimes prosecutions until 2001." Ibid., p. 49.



regarded as vital, the ICTY has often been subjected to criticism for the approach it adopted towards the issue of missing persons: it focused solely on its criminal law mandate and did not use the evidence obtained in the course of criminal investigations to contribute to the search for missing persons from the former SFRY.<sup>45</sup>

## 2.2.2 [Search after the Law on Missing Persons](#)

### I. State and local levels

The crucial change with respect to the search for missing persons happened in 2004 with the adoption of the Law on Missing Persons (LMP).<sup>46</sup> Pursuant to Art. 2 of the LMP, a “missing person is a person about whom his family has no information and/or is reported missing on the basis of reliable information as a consequence of the armed conflict (...)”, whereas institutions responsible for tracing missing persons are those which have such obligation under the regulations of BiH or international agreements. The LMP provided the basis for the establishment of a search mechanism at the State level, which replaced the previously existing local search commissions.<sup>47</sup> This mechanism is known as the Missing Persons Institute (MPI) and was co-founded by the ICMP and the executive authority of BiH, the Council of Ministers.<sup>48</sup> The MPI was established in 2005 and became fully operational as an independent institution in 2008. Today, there are in total 5 regional and 10 field MPI offices in BiH.<sup>49</sup>

According to the LMP, the MPI is in charge of searching any missing person from the conflict, notwithstanding his/her ethnic origins, gender or any personal circumstances or status.<sup>50</sup> Some of the activities that fall within the MPI’s mandate are: the collection of information on missing persons and location of mass graves, technical assistance to domestic institutions, particularly with respect to the search and related activities, and the exhumation and identification of mortal remains throughout BiH’s territory. Furthermore, the MPI’s work includes different ways of supporting the families of missing persons and family associations (e.g. bearing of funeral costs) as well as the coordination of the search process with other institutions involved. In order to maintain a non-discriminatory approach in the search activities and to ensure the participation of families, the MPI’s organizational structure includes a special advisory board, which is elected on the basis of candidates proposed by the family associations in BiH.<sup>51</sup> The advisory board’s members are in charge of promoting the interests of the families of missing persons within the MPI’s work.<sup>52</sup>

In addition to the MPI as a State institution for the search, there is a local institution dealing with the search and the investigation of war crimes in Republika Srpska, the Republic Center for Researching War Crimes and Searching for Missing Persons.<sup>53</sup> One of the reasons for the creation of this institution is that Republika Srpska claimed that the MPI’s work was discriminatory and biased against Bosnian Serbs.<sup>54</sup>

<sup>45</sup> An example of such criticism of the ICTY is: “Victims were generally not made a priority before the ICTY also in terms of their identification. Not enough effort was invested in identifying all the victims at a certain location and as far as the problem of missing persons is concerned, the Tribunal has not done enough to shed light on what happened to these people. Plea bargaining was not sufficiently used to identify victims. We believe that the plea bargaining could have been used better to resolve questions over their fate.” ICTY Outreach Programme, “Legacy of the ICTY in Former Yugoslavia”, Conference Proceedings, Sarajevo, 6 November 2012, Zagreb, 8 November 2012, 2013, p. 27.

<sup>46</sup> The LMP was adopted on 21 October 2004 pursuant to Art. IV 4(a) of the Constitution of BiH.

ICMP’s unofficial translation of the LMP is available [here](#).

<sup>47</sup> Art. 7 of the LMP.

<sup>48</sup> Agreement on Assuming the Role of Co-founders of the Missing Persons Institute of BiH is available [here](#).

<sup>49</sup> For more detail on where the MPI offices are located, see Council of Ministers of BiH, [“Missing Persons Institute of Bosnia and Herzegovina”](#).

<sup>50</sup> Art. 10 of the LMP.

<sup>51</sup> For more detail on the advisory board, see Council of Ministers of BiH, [“Missing Persons Institute of Bosnia and Herzegovina”](#).

<sup>52</sup> ICRC, “7000 lives still missing”, December 2018.

The advisory board is only one among four existing MPI boards and has no right to vote with respect to decisions taken by the steering (also called supervisory) board, the body responsible for overseeing the work of the MPI.

<sup>53</sup> The Republic Center was the result of a merger between the Operational Team for Tracing Missing Persons, the Coordination Team for War Crimes and Missing Persons and the Center for the Research on War Crimes that were created by the government of Republika Srpska in 2008 (the Operational and Coordination Team) and in 2002 (the Center for the Research). ICMP, “Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING”, 2014, p. 42.

<sup>54</sup> For more details on ethnic tensions within the MPI, see Kirsten Juhl, “The Problem of Ethnic Politics and Trust: The MPI of BiH”, Genocide Studies and Prevention, Vol. No. 4, Issue No. 2, August 2009, pp. 253-256.

Republika Srpska also established a forensic institution referred to as the Institute for Forensic Medicine. No such forensic center exists in the Federation of BiH or Brčko District. At the State level, the institution in charge of forensic science is the Agency for Forensic Examination and Expertise, which operates under the Ministry of Security.<sup>55</sup> However, given that this agency does not consider legal medicine in its structure, its work does not encompass tasks related to missing persons. The persons who conduct forensic work regarding missing persons are the so-called “legal medicine specialists” or “forensic experts”, who are in most cases medical doctors, pathologists, and so forth. They must be certified to work on criminal law cases and requested to perform forensic work on a case-by-case basis by the Court of BiH.<sup>56</sup>

## II. Databases

The LMP also regulates the establishment of the Central Records of Missing Persons (CEN).<sup>57</sup> It is managed by the MPI. As soon as someone is reported missing to the MPI, the missing person report is added to the CEN.<sup>58</sup> Upon completing the verification procedure (i.e. reviewing the missing person’s reported identity, establishing whether any identification documents were issued after the reported date of disappearance, and if the disappearance of the person was previously reported to any domestic or international institution/organization),<sup>59</sup> if sufficient and corroborating information is obtained, the CEN case is marked as verified and transferred to the list of verified cases.<sup>60</sup> Since the CEN was created by merging 13 separate databases,<sup>61</sup> the verification process prescribed by the LMP has resulted in an extremely lengthy process, which has been criticized by the international community.<sup>62</sup> Even though the process was supposed to end one year after the establishment of the CEN (in 2012), it is still ongoing.<sup>63</sup>

The CEN has to encompass all existing information on missing persons including the data provided by non-governmental organizations (NGOs), families of missing persons, domestic institutions and international organizations (e.g. the ICRC and the ICMP), with which agreements on the transfer of data have been made.<sup>64</sup> The scope of information that can be found in the CEN includes, apart from the list of missing persons, a description of the circumstances in which they went missing and information on exhumations and identification processes, if applicable. It is partially open to the public and can be consulted online or by requesting the physical case file from the MPI.<sup>65</sup> While certain information in the CEN is always available, e.g. the name of the person who went missing and the date of their disappearance, the disclosure of other details may require prior consent of the family (e.g. the date of exhumation).

Apart from the CEN, the ICMP maintains a database on missing persons’ relatives.<sup>66</sup> However, the content of this database is different from the CEN, as it contains information on DNA reference samples of the relatives of the missing.<sup>67</sup> In principle, the ICMP is also the only institution with access to the information in this database, but can be subject to exception under certain circumstances. For example, genetic data can be used as evidence in criminal trials if a prosecutor requests access to such

<sup>55</sup> Data gathered through written observations, 2 February 2021.

<sup>56</sup> Ibid.

<sup>57</sup> Art. 21 of the LMP.

<sup>58</sup> Data gathered through interview, 7 January 2021.

<sup>59</sup> “All data entered into the CEN BiH is subject to verification that includes checking the validity of the request and cross-checking with all official records that were or are kept in BiH.” Art. 22 of the LMP.

<sup>60</sup> Data gathered through written observations, 2 February 2021.

<sup>61</sup> The process of merging these databases was completed in 2011. ICMP, [“Bosnia and Herzegovina”](#).

<sup>62</sup> See, e.g. TRIAL International, “Follow-Up Report on the Implementation by Bosnia and Herzegovina of the Recommendations issued by the Working Group on Enforced or Involuntary Disappearances”, February 2014, para. 8.

<sup>63</sup> Data gathered through various interviews.

As of 12 January 2021, 28,604 cases have been verified. Information gathered through written exchange, 12 January 2021.

<sup>64</sup> See, e.g. the agreement between the ICMP and the MPI, [“Transfer of missing persons and relatives data to become part of the Missing Institute’s Central Records”](#).

<sup>65</sup> The public version of the CEN is available online [here](#). The website of the MPI only provides a list of verified cases.

<sup>66</sup> ICMP, “Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING”, 2014, pp. 52-53.

<sup>67</sup> A large number of blood samples received from the families of missing persons is at least partially thanks to the campaigns organized by the ICMP. For more detail, see ICMP, [“Families of the Missing Give Blood Samples to Trace Relatives”](#), November 2004.



information for a specific case and the relatives of missing persons consent to the use of the information in court.<sup>68</sup>

### III. Social benefits and measures of reparation

Given the complexity of the topics of reparation and social benefits, this study does not address them comprehensively. It deals with them to the extent that they are directly embedded in the framework relevant for the coordination between the search and criminal investigations. The articles in the LMP stipulating the creation of a Fund for the Support of Families of Missing Persons (Fund) are such an example.<sup>69</sup> Financial support could be requested by anyone who had been supported by a person who went missing and is in need of such support,<sup>70</sup> as long as he/she has no other income (e.g. salary or pension).<sup>71</sup>

However, due to various disagreements – related, in particular, to the ways of funding and disputes related to the jurisdiction over social care which lies with the entities – this Fund is yet to be established.<sup>72</sup> This is unfortunate because, apart from the LMP, there is no law or program dealing with the right to financial support, reparation, or guarantees of non-repetition for families of missing persons that would be applicable for all of BiH. These questions are regulated differently at the State level and by each of the entities and the Brčko District (e.g. according to the Law on Protection of Civilian Victims of War applicable in Republika Srpska, the final deadline for requesting financial support was 31 December 2007).<sup>73</sup>

The major issue related to social benefits for the families of missing persons before the adoption of the LMP had been linked to the fact that a declaration of death had to be issued in order to receive financial support.<sup>74</sup> The LMP stipulates that “three years after the date of the coming into force of the Law, persons registered as missing in the period from 30 April 1991 to 14 February 1996 whose disappearance has been verified within the CEN Bosnia and Herzegovina, shall be considered dead and this fact shall be officially entered in the Register of Death”.<sup>75</sup> Despite many proposals to strike this provision, it continues to be in force.<sup>76</sup> The declaration of death, however, does not preclude the search.<sup>77</sup> Thus, in cases where a declaration of death has been issued but the mortal remains have actually not been found, the search process continues.<sup>78</sup> A declaration of death also has no effect on the conduct of a criminal investigation, the purpose of which is, in that case, to determine the cause of death of the missing person and whether the acts occurred qualify as a war crime. Further, the declaration of death has no impact on the statute of limitations, which is inapplicable for war crimes in BiH.<sup>79</sup>

<sup>68</sup> ICMP, “Bosnia i Herzegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING”, 2014, p. 56.

<sup>69</sup> Art. 15 of the LMP.

<sup>70</sup> Art. 11 of the LMP.

Financial support should not be confused with compensation as a measure of reparation for the harm suffered.

<sup>71</sup> Art. 2(9) of the LMP.

<sup>72</sup> OHCHR, “[Human Rights Committee considers the report of Bosnia and Herzegovina](#)”, March 2017.

Regarding the dispute on the jurisdiction over social care, it has been suggested that Republika Srpska is against the creation of the Fund because it does not consider it a measure of reparation. Instead, it seems to assign the Fund a social welfare function. Data gathered through written observations, 2 February 2021.

<sup>73</sup> Art. 34 of the Law on Protection of Civilian Victims of War, No. 02/4.3-409 /10, 15 March 2010.

<sup>74</sup> TRIAL International, “Written Information for the Examination of Bosnia and Herzegovina’s Combined Second to Fifth Periodic Reports (CAT/C/BIH/2-5)”, 12 October 2010, paras. 101-103.

<sup>75</sup> Art. 27 of the LMP.

<sup>76</sup> This provision has been criticized by the international community. See, e.g. WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances: Follow-up report to the recommendations made by the Working Group. Missions to Argentina and Bosnia and Herzegovina”, UN Doc. A/HRC/27/49/Add.2, 8 September 2014, para. 85.

<sup>77</sup> Pursuant to Art. 9 of the LMP, the tracing process cannot be terminated without mortal remains being found if the person is proclaimed dead. This has also been confirmed by data gathered through written exchange, 16 September 2020.

<sup>78</sup> This has been also confirmed by various interviewees.

<sup>79</sup> Data gathered through written exchange, 28 January 2021.

### 2.2.3 [Criminal investigations](#)

#### I. Crime of enforced disappearance

Apart from the framework set out above, the issue of missing persons and, more specifically, enforced disappearances, has also been approached in a criminal justice context. The ICTY played an important role concerning the domestic criminalization of enforced disappearance by acknowledging that enforced disappearance can, under certain circumstances, amount to a CAH or genocide. Given that enforced disappearance was not included in the ICTY's statute, the tribunal held no criminal investigations on charges of enforced disappearance. Nevertheless, it prepared the ground for the prosecution of this crime in domestic settings of the former SFRY countries by referring to the commission of enforced disappearances in a few cases, including it among "other inhumane acts",<sup>80</sup> "crime of persecution"<sup>81</sup> or "serious mental harm to a member of the group"<sup>82</sup> in the framework of CAH and genocide.

In addition to the ICTY, local courts in BiH were also in charge of adjudicating war crimes, unless a case was taken over by the ICTY due to its gravity or high-level ranking of the perpetrator.<sup>83</sup> In 2003, the Court of BiH obtained "supreme jurisdiction" over the most heinous crimes including grave breaches of international humanitarian law (IHL), while the local courts were charged with the handling of less serious war crime cases.<sup>84</sup> Around the same time, new criminal codes were also adopted at all levels (State, the entities and Brčko District) and the crime of enforced disappearance was for the first time included as a CAH in the State criminal code (BiH Criminal Code) used by the Court of BiH.<sup>85</sup> The definition of the crime is entirely the same as the one enshrined in the Rome Statute of the International Criminal Court (ICC), which was ratified by BiH in 2002. Conversely, local criminal codes have not adopted a similar stance and do not codify enforced disappearance, neither as a CAH nor as a discrete offense. BiH justified this by saying that CAH fall within the subject matter jurisdiction of the Court of BiH.<sup>86</sup>

With the adoption of the Completion Strategy aimed at transferring cases from the ICTY to domestic courts of former SFRY countries, BiH created a special section for war crimes (including enforced disappearances as a CAH) at the Court of BiH in 2005.<sup>87</sup> The adoption of the National Strategy for Processing War Crimes (Strategy) followed in 2008 and sought more effective prosecution of war criminals.<sup>88</sup> Pursuant to this Strategy, the most complex cases had to be dealt with within seven years and less complex cases in the period of 15 years from 2008. In addition, the Strategy prescribed that war crimes could be adjudicated at the State level only when they reached a certain threshold of complexity, while all other less complex war crime cases were to be tried before the courts of the entities and Brčko District.<sup>89</sup> When it became clear that the goals and timelines established by this Strategy could not be met, BiH adopted the Revised War Crimes Strategy (Revised Strategy) in 2020.<sup>90</sup> The deadline for processing war crime cases was extended until 2023 with the Revised Strategy. The Revised Strategy also instructed a more efficient distribution of cases between the courts at the State and local levels and

<sup>80</sup> In the context of a CAH. *Prosecutor v Kupreškić and others* (Judgment) IT-95-16-T (14 January 2000) para. 566; *Prosecutor v Kvočka and others* (Judgment) IT-98-30/1-T (2 November 2000) para. 208.

<sup>81</sup> In the context of CAH. *Prosecutor v Gotovina and others* (Judgment) IT-06-90-T (15 April 2011) paras. 1838-1839.

<sup>82</sup> In the context of genocide. *Prosecutor v Blagojević and Jokić* (Judgment) IT-02-60-T (17 January 2005) paras. 653ff.

<sup>83</sup> For the explanation of the court system of BiH, see European Commission for Democracy Through Law (Venice Commission), "The Judicial Power in Bosnia and Herzegovina (BiH)", Background Paper, CDL(2011)096rev, December 2011, p. 27.

<sup>84</sup> Human Rights Watch, "Looking for Justice. The War Crimes Chamber in Bosnia and Herzegovina", 7 February 2006.

<sup>85</sup> Art. 172(1)(i) of the BiH Criminal Code.

<sup>86</sup> WGEID, "Report of the Working Group on Enforced or Involuntary Disappearances: Follow-up report to the recommendations made by the Working Group. Missions to Argentina and Bosnia and Herzegovina", UN Doc. A/HRC/27/49/Add.2, 8 September 2014, para. 87(b).

<sup>87</sup> For more detail on the special section for war crimes of the Court of BiH, see Hybrid Justice, "[The War Crimes Chamber in Bosnia and Herzegovina](#)".

The ICTY conducted trials and in this sense supported BiH's judiciary until the end of 2017, when the tribunal closed its doors.

<sup>88</sup> For more information on this strategy, see "[National War Crimes Strategy](#)", December 2008.

<sup>89</sup> For further analysis of the "complexity" requirement, see OSCE Mission to BiH, "War Crimes Case Management at the Prosecutor's Office of Bosnia and Herzegovina", Spot Report, June 2019.

The institutions charged with the determination of a case's level of complexity are the Court of BiH and the PO BiH.

<sup>90</sup> The Revised War Crimes Strategy is available (in Bosnian language only) [here](#).

the establishment of accountability mechanisms for judges and prosecutors who do not act in line with it (such mechanisms should be introduced by the High Judicial and Prosecutorial Council).<sup>91</sup>

In view of ensuring closer compliance with international standards regarding enforced disappearances, BiH ratified the ICPED in 2021. The inclusion of enforced disappearance as an autonomous crime, outside the scope of CAH, in the BiH Criminal Code followed in 2015. The definition adopted is as follows (unofficial consolidated text):

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*Official person in the institutions of Bosnia and Herzegovina or any other official person that acts in capacity of official person in the institutions of Bosnia and Herzegovina or by acting on order or by being incited or on explicit or implicit consent of an official person in the institutions of Bosnia and Herzegovina who imprisons, keeps imprisoned or deprives another of liberty in any other way, and thereby refuses to confess that he/she had someone deprived of liberty or conceals information on the whereabouts or location of that person, leaving him/her without legal protection, shall be punished by imprisonment of minimum 8 years.*<sup>92</sup>

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BiH claims that enforced disappearances that began before the adoption of this provision could be prosecuted on its basis.<sup>93</sup> This has, however, never happened in practice, as all the sentences on cases of enforced disappearance in BiH were issued for the perpetration of this crime as a CAH in the context of offenses that occurred during the war.<sup>94</sup> This is also the reason why the absence of a definition of this crime (either as an autonomous crime, or as CAH) in local criminal codes in practice means that any war crime case tried before the entities' courts and the courts of Brčko District could not include charges for the crime of enforced disappearance.<sup>95</sup> The lack of harmonization among the criminal codes in BiH and the corresponding difficulties to efficiently prosecute enforced disappearance have been acknowledged as a matter of concern by various international bodies.<sup>96</sup> Failure to address enforced disappearances separately from the general framework on missing persons in a comprehensive way and at all levels has had an impact on the number of investigations regarding this crime because certain cases of enforced disappearances have simply fallen outside the scope of the work of the investigative authorities.<sup>97</sup>

## **II. War crime cases concerning missing persons**

The issue of missing persons often arises in the context of investigations of war crime cases. Apart from the courts, other institutions involved in investigating war crimes are the Prosecutor's Office of BiH (PO BiH) at the State level and the prosecutors' offices at the local levels respectively.<sup>98</sup> Prosecutors normally

<sup>91</sup> OSCE, "[Joint statement of the EU in BiH, U.S. Embassy and the OSCE Mission to BiH on adoption of Revised National War Crimes Processing Strategy](#)", September 2020.

<sup>92</sup> Art. 190a(1) of the BiH Criminal Code.

<sup>93</sup> CED, "List of issues in relation to the report submitted by Bosnia and Herzegovina under article 29(1) of the Convention: Replies by Bosnia and Herzegovina to the list of issues", UN Doc. CED/C/BIH/Q/1/Add., 22 July 2016, para. 30. As a matter of fact, BiH has provided contradictory statements on this issue. At para. 12 of the same report, BiH held that Art. 190a would be applicable for enforced disappearances committed outside the war context.

<sup>94</sup> CED, "List of issues in relation to the report submitted by Bosnia and Herzegovina under article 29(1) of the Convention: Replies by Bosnia and Herzegovina to the list of issues", UN Doc. CED/C/BIH/Q/1/Add., 22 July 2016, para. 21 and Appendix. Such conclusion has also been drawn on the basis of information received from the Court of BiH regarding the existing sentences on enforced disappearance.

<sup>95</sup> In the absence of enforced disappearance as a codified offense, local authorities refer to provisions concerning the prohibition of unlawful imprisonment, abduction and illegal deprivation of freedom. For example, Republika Srpska commonly applies the provision on unlawful imprisonment (Art. 166 of the Criminal Code of Republika Srpska).

<sup>96</sup> See, e.g. Committee against Torture, "Consideration of reports submitted by States parties under article 19 of the Convention. Concluding Observations of the Committee against Torture. Bosnia and Herzegovina", UN Doc. CAT/C/BIH/CO/2-5, 20 January 2011, para. 24.

<sup>97</sup> See, e.g. how the WGEID argued why it cannot follow the approach adopted in the special process dealing with missing persons on the territory of the former Yugoslavia, according to which disappearances outside the armed conflict would not fall within the category of "missing persons". This is just one example showing that using the categories "missing" and "disappeared" interchangeably is inaccurate as they cannot be fully equated. WGEID, "Report on the Visit to former Yugoslavia by a Member of the WGEID at the Request of the Special Rapporteur on the Situation of Human Rights in the former Yugoslavia (4-13 August 1993)", UN Doc. E/CN.4/1994/26/Add.1, 15 December 1993, paras. 42-60.

<sup>98</sup> Similar to the judicial structure, there is one prosecutor's office at the State level and various prosecutors' offices at the local level.

deal with the question of missing persons in the framework of a larger investigation and within the process to collect evidence. In the first years of war crime investigations, all prosecutors in the country also dealt with the location, exhumation and identification of mortal remains.<sup>99</sup> This changed in 2011, when the PO BiH became the only institution authorized to file a motion to exhume with the Court of BiH. Since then, the PO BiH is the only prosecutor's office in the country responsible for the coordination and supervision of exhumation processes.<sup>100</sup>

Moreover, the State Investigative and Protection Agency (SIPA), a State level police agency with full police powers within the Ministry of Security of BiH, plays an important role in investigations of war crimes and exhumations in the entire territory of BiH.<sup>101</sup> Through its Section for Investigation of War Crimes and Criminal Offences Punishable under IHL, the SIPA investigates criminal offenses under international law (including the crimes that relate to the war and involve the question of missing persons), which fall under the jurisdiction of the Court of BiH. Since 2016, the SIPA has a special TERRA Operative Team for carrying out operational activities concerning missing persons, such as the location of graves or burial sites.<sup>102</sup> Furthermore, the SIPA is the authority in charge to protect witnesses before, during and after their testimonies at trials in any court in BiH (but only when instructed by a court order coming from the Court of BiH), in accordance with the Law on Witness Protection Program.<sup>103</sup>

#### 2.2.4 [International cooperation](#)

##### I. Support

BiH's activities concerning the search for disappeared persons and criminal investigations have benefited from strong support of the international community. The ICMP, present in BiH since 1996, was initially established to facilitate exchanges between local search commissions, as well as to assist them in locating and identifying persons who went missing during the war, including as a result of human rights violations.<sup>104</sup> The ICMP's role in BiH in addressing all questions concerning missing persons remains crucial until today. Its contribution has been immense, particularly because of its constant assistance to domestic institutions with resources and know-how to identify mortal remains.<sup>105</sup> Prior to the establishment of the ICMP's DNA-led identification process, identification of mortal remains had been one of the greatest challenges for local search commissions.<sup>106</sup> The ICMP also assists domestic authorities in activities such as designing legislation, educating the families of the missing on how to claim their rights, creating specialized institutions, setting professional standards and processes for the search for missing persons, etc.<sup>107</sup>

<sup>99</sup> Between 2005 and 2010, local prosecutors were also able to deal with exhumation processes. ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 46.

<sup>100</sup> This became an exclusive power of the PO BiH because of different issues and disputes related to subject matter and territorial jurisdiction. Ibid.

<sup>101</sup> Find more information on the work of the SIPA [here](#).

<sup>102</sup> TERRA Operative Team members are police officers from the previously mentioned Section for Investigation of War Crimes and Criminal Offences Punishable under IHL from the regional offices of Banja Luka, Mostar, Sarajevo and Tuzla. Data gathered through written exchange, 21 January 2021.

For criticism regarding the resources invested in the TERRA Operative Team, see OSCE Mission to BiH, "Improving War Crimes Processing At The State Level In Bosnia and Herzegovina – A Follow-Up Report By Her Honour Judge Joanna Korner", 2016, para. 85.

<sup>103</sup> Only the Court of BiH may grant protective status to witnesses after receiving a request from the prosecutor, *ex officio*, from the suspected, indicted person or his/her defense attorney. SIPA, "[Sector for Investigation of War Crimes and Crimes Punishable under International Humanitarian Laws](#)".

<sup>104</sup> For more details on the reasons for the establishment of the ICMP, see ICMP, "[History](#)".

<sup>105</sup> For more detail on the DNA-led identification process, see ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, pp. 52-56.

For an example of the ICMP's support to identifications, see, ICMP, "[ICMP Donates DNA Lab Equipment to Federation Police Directorate](#)", August 2019.

<sup>106</sup> For a more detailed description of the issue of misidentifications during the war and in early post-war years, before the ICMP began with its DNA-led identification process, see ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, pp. 62-63.

<sup>107</sup> The ICMP's funding is donor-based. Since 2015, the ICMP headquarters are in The Hague and its mandate now goes far beyond the initial focus on missing persons from the conflict of the former SFRY. It addresses the issue of persons who have gone missing as a consequence of natural disasters, migration, conflict, among others, in different parts of the world.

Similar to the ICMP, the ICRC still fulfills an indispensable role in the search processes for missing persons today, particularly with respect to the assistance and support to the families of missing persons.<sup>108</sup> After the Working Group concluded its activities in 2001, the ICRC began forwarding ante-mortem data and information on tracing requests collected since the beginning of the war to the newly established search mechanisms in BiH.<sup>109</sup> The ICRC also worked to strengthen domestic forensic capacities. Additionally, it managed the transfer of documentation concerning mass graves received from the ICTY from 2016 onwards by getting directly involved in the search for information that can clarify the fate of the missing in the ICTY archives, reviewing the selected documentation and then handing it over to the search mechanisms in BiH.<sup>110</sup>

Apart from the international organizations mentioned above (the ICMP and the ICRC), different UN programs and institutions, e.g. the United Nations Development Program (UNDP), the European Union (EU), the Organization for Security and Cooperation of Europe (OSCE) Mission to BiH, among others, have supported the search and/or criminal investigations in different ways.<sup>111</sup> Their contributions largely consisted in providing financial and/or technical support and capacity building activities such as:

1. OSCE Mission to BiH: has organized trainings, educational activities and other capacity building projects to advance war crime prosecution. It has also engaged in the publication of reports and provided feedback on how progress in the prosecution of war crimes can be achieved.<sup>112</sup>
2. EU: has been one of the main donors to domestic institutions in BiH; its steady financial support has been especially crucial for strengthening institutions at the State level (in particular the PO BiH and the MPI).<sup>113</sup>
3. UNDP: since 2018, the UNDP implements the Regional War Crimes Project in BiH and surrounding countries.<sup>114</sup> The core idea of this project is to increase collaboration between the respective prosecutors' offices in Serbia, BiH, Montenegro and Croatia and also to improve cross-border cooperation between the different institutions in charge of the search for missing persons.

## II. Agreements concerning the search

The cross-border dimension of the issue of missing persons in the former SFRY is among the most challenging when it comes to the search and criminal investigations in BiH and the region. In many cases, evidence or information needed for each process is in one of BiH's neighboring countries and therefore the need to establish strong regional collaboration is seen as a priority. One such important regional effort is the Declaration on the Role of the State in Addressing the Issue of Persons Missing as a Consequence of Armed Conflict and Human Rights Abuses (Mostar Declaration) signed on the initiative of the ICMP between BiH, Serbia, Croatia and Montenegro in Mostar in August 2014.<sup>115</sup> By signing the Mostar Declaration, States committed to, *inter alia*, the systematic location and identification of missing persons and the promotion of best practices in this field.<sup>116</sup>

In July 2018, BiH and other Western Balkan countries signed the Joint Declaration on Missing Persons

<sup>108</sup> For more information on the ICRC's role in BiH, see ICRC Bosnia and Herzegovina Sarajevo, ["Bosnia and Herzegovina Conflict 1991-1996. Background Information"](#).

<sup>109</sup> ICRC, "Bosnia and Herzegovina: 10 years on, thousands still missing", 21-06-2005 Feature, 2005.

The ante-mortem data is information relevant to identify disappeared persons alive, e.g. description of physical appearance and information related to the genetic profile. The post-mortem data is information relevant to identify deceased persons, e.g. a description of the genetic profile.

<sup>110</sup> ICRC, "ICRC's five-year strategy on the missing in former Yugoslavia. The Road Map – 2 years later", 26 November 2020.

<sup>111</sup> The list of the organizations and the list of activities is non-exhaustive, and it serves as an example to demonstrate the importance and scope of the support provided to BiH by the international community.

<sup>112</sup> Many OSCE activities are part of its War Crimes Processing Project. For more detail, see OSCE Mission to BiH, ["War Crimes Processing Project"](#), 8 May 2013.

<sup>113</sup> One of such activities is the [IPA 2013 Project – Enhancing War Crimes Processing](#).

<sup>114</sup> For more information on the Regional War Crimes Project, see UNDP, ["Processing War Crimes and the Search for Missing People in the Western Balkans \(Regional Brief\)"](#), July 2017.

<sup>115</sup> The Mostar Declaration is available [here](#).

<sup>116</sup> Data gathered through written observations, 1 February 2021.



(Joint Declaration) at the Berlin Process Summit in London, United Kingdom.<sup>117</sup> The Joint Declaration upholds the need for common efforts to clarify the fate of persons who went missing as a result of the war in the former SFRY and recalls the principles expressed in the Mostar Declaration. Subsequently, in November 2018, BiH agreed to form part of the Missing Persons Group together with Serbia, Croatia, Montenegro and Kosovo.<sup>118</sup> The tasks of this group include pursuing goals agreed in the Joint Declaration signed at the London Summit, but more importantly, the exchange of information on active missing persons cases through the regional database with all open cases of missing persons from the armed conflicts in the former SFRY, the Database of Active Missing Persons Cases from the Armed Conflicts (the Database of Active Missing Persons Cases).<sup>119</sup>

The creation of the Database of Active Missing Persons Cases in 2019 marked an important step forward for the whole region.<sup>120</sup> The ICMP created software packages, provides technical support and stores information on missing persons for the purpose of this database from all national authorities responsible for the search for missing persons.<sup>121</sup> With this database, data transparency is secured and duplicate cases in the region are identified. As of February 2021, the Database of Active Missing Persons Cases is fully operational and in use by domestic authorities but not yet open to the general public.<sup>122</sup>

In July 2019, BiH signed bilateral agreements on cooperation in the search for missing persons with Croatia and Serbia.<sup>123</sup> The objective of the agreements is to enhance collaborative efforts for locating mass graves and carrying out exhumations as well as to strengthen the commitment to share any information that could be useful for the search. The first results of the agreements have already been registered, e.g. in October 2020, BiH and Serbia exchanged the bodies of five war victims (four bodies were handed from BiH to Serbia, and one from Serbia to BiH).<sup>124</sup> In October 2019, BiH signed a similar agreement, the Protocol on Cooperation in Search for Missing Persons with Montenegro.<sup>125</sup>

While this is not relevant for war crime cases, in January 2020, BiH joined Amber Alert Europe and Amber Alert Europe's Police Expert Network on Missing Persons, which can be seen as a forward-looking stance in cases of potential disappearances of children.<sup>126</sup> The institution that signed both agreements is the Directorate for Coordination of Police Bodies of BiH, which presumably also bears the main implementation responsibility.<sup>127</sup>

### III. Agreements concerning criminal investigations

BiH has also concluded various agreements for a more effective prosecution of war crimes, e.g. the European Convention on Mutual Assistance in Criminal Matters and the Protocol of Cooperation on the

<sup>117</sup> The Joint Declaration is available [here](#).

The Berlin Process was launched first in 2014 by Germany with the aim of assisting Western Balkan countries to prepare for EU membership.

<sup>118</sup> ICMP, "[Western Balkans Regional Missing Persons Group Has Resolved 387 Missing Persons Cases Since July 2019](#)", October 2020.

<sup>119</sup> Data gathered through written observations, 2 February 2021.

<sup>120</sup> For more information on this database, see Missing Persons Group, "Annual Report", July 2019, pp. 4-5.

<sup>121</sup> Access to the database is to be given to the persons chosen by each of the participating States on their behalf. ICMP, "[Western Balkans Regional Meeting Launches Database of Active Missing Persons Cases From the Armed Conflicts in the Former Yugoslavia](#)", December 2017.

<sup>122</sup> Data gathered through written observations, 2 February 2021.

According to interview data, the database will become public once it is completed. At present, only the search mechanisms of the countries involved have access to it. Data gathered through written exchange, 11 January 2021. See also IHL in Action, "[Bosnia and Herzegovina, Identification of Missing Persons](#)".

<sup>123</sup> Haris Rovcanin, "[Bosnia Signs Missing Persons Search Agreements with Croatia, Serbia](#)", Balkan Transitional Justice, July 2019.

<sup>124</sup> Albina Sorguc, "[Bosnia, Serbia Exchange Exhumed Remains of War Dead](#)", Balkan Transitional Justice, October 2020.

Examples of handovers of identified mortal remains existed even prior to the bilateral agreements mentioned above. See, e.g. Dnevnik.hr, "[Institut za nestale osobe BiH predani posmrtni ostatci šest žrtava](#)", January 2013.

<sup>125</sup> Sarajevo Times, "[Protocol on Cooperation in Search for Missing Persons signed with Montenegro](#)", October 2019.

<sup>126</sup> Amber Alert, "[Bosnia and Herzegovina joins AMBER Alert Europe](#)", January 2020.

Amber Alert is a system to facilitate prompt reaction and communication through a variety of channels between law enforcement experts in cases where a child (meaning anyone below 18 years of age) goes missing under threatening circumstances. The ultimate objective of Amber Alert is to increase the chance of finding the child.

<sup>127</sup> For the Police Expert Network on Missing Persons, it is clear that law enforcement experts in the field of missing persons are the ones in charge of implementing the goals of the network. For more information on the Police Expert Network, see Amber Alert, "[Police Expert Network on Missing Persons](#)".

Prosecution of Perpetrators of War Crimes, Crimes against Humanity and Genocide.<sup>128</sup> The latter was concluded in 2013 with two neighboring countries of BiH, namely Serbia and Croatia. BiH further agreed to mutual assistance in criminal law matters through various bilateral agreements, e.g. with Croatia, Serbia, Slovenia. Whenever this is justified by the urgency of the case, BiH is also entitled to criminal legal assistance implemented through the International Criminal Police Organization (INTERPOL).<sup>129</sup>

As a result of the previously mentioned criticism of the ICTY's approach to the issue of missing persons, which regarded exhumations as relevant only to the extent they were useful for the investigations and trials conducted at the ICTY, certain agreements were concluded with the aim of addressing this shortcoming. The Office of the Prosecutor of the International Residual Mechanisms for Criminal Tribunals (IRMCT)<sup>130</sup> showed willingness to support the search for missing persons in BiH by concluding a Memorandum of Understanding with the ICRC in 2018.<sup>131</sup> The goal of this agreement is to promote and assist the search for the missing in the territory of the former SFRY in various ways, in particular by sharing the evidence that the ICTY obtained in the course of its work, which could be useful for the search by domestic authorities.

#### **IV. Agreements concerning family associations**

Apart from the agreements and cooperation between State institutions, the Regional Coordination of Associations of Families of the Missing Persons from the Former Yugoslavia (Regional Coordination) is registered as a non-governmental human rights organization with the Ministry of Justice in BiH since 2011.<sup>132</sup> The Regional Coordination includes associations from BiH, Croatia, Kosovo and Montenegro.<sup>133</sup> It monitors the work of the respective domestic institutions with respect to the search for missing persons and organizes events with the aim of raising public awareness on different issues concerning missing persons.

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<sup>128</sup> CED, "Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention", UN Doc CED/C/BIH/1, 28 May 2015, paras. 78-79.

<sup>129</sup> Ibid., para. 112.

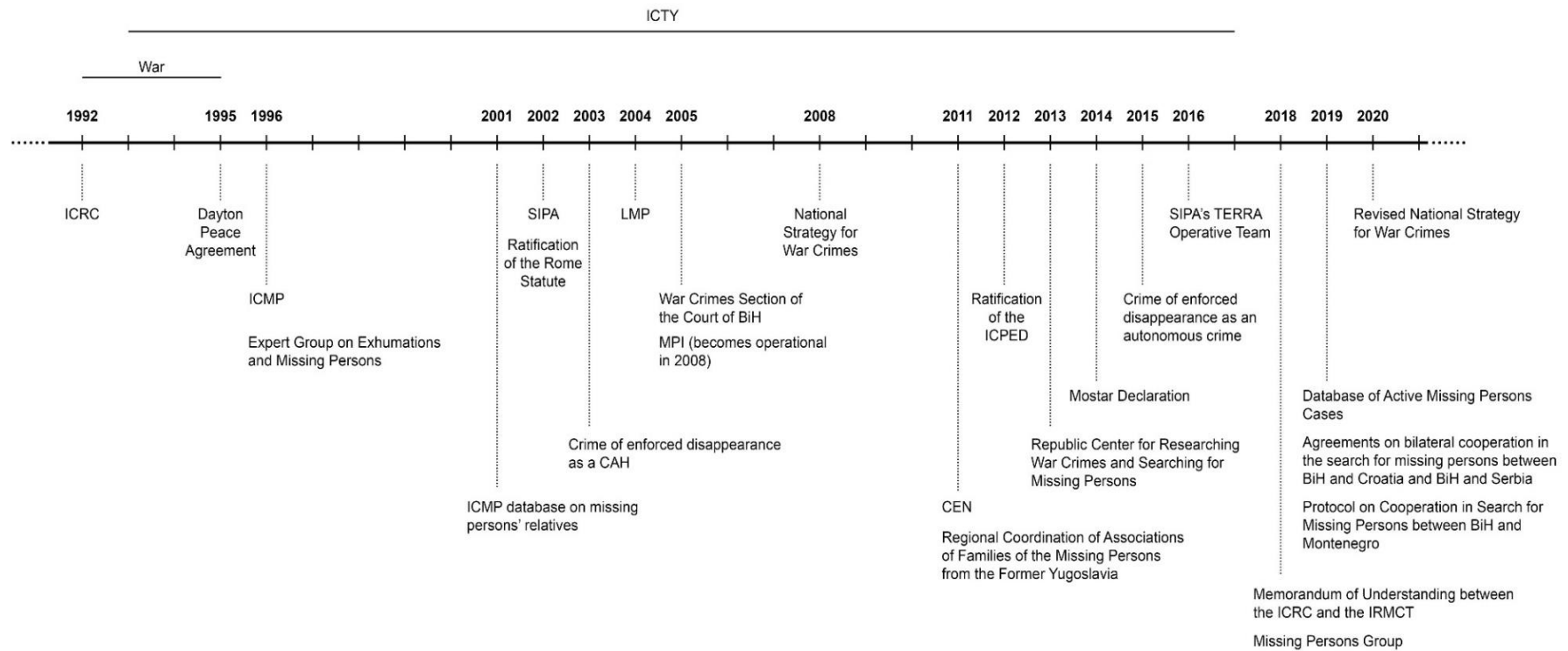
<sup>130</sup> The IRMCT's task is to carry out the remaining tasks of the ICTY and the International Criminal Tribunal for Rwanda.

<sup>131</sup> IRMCT, "[The Office of the Prosecutor and the ICRC sign a Memorandum of Understanding on Cooperation in the Search for Missing Persons](#)", 11 October 2018.

<sup>132</sup> ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 127.

<sup>133</sup> Data gathered through written exchange, 27 August 2020.

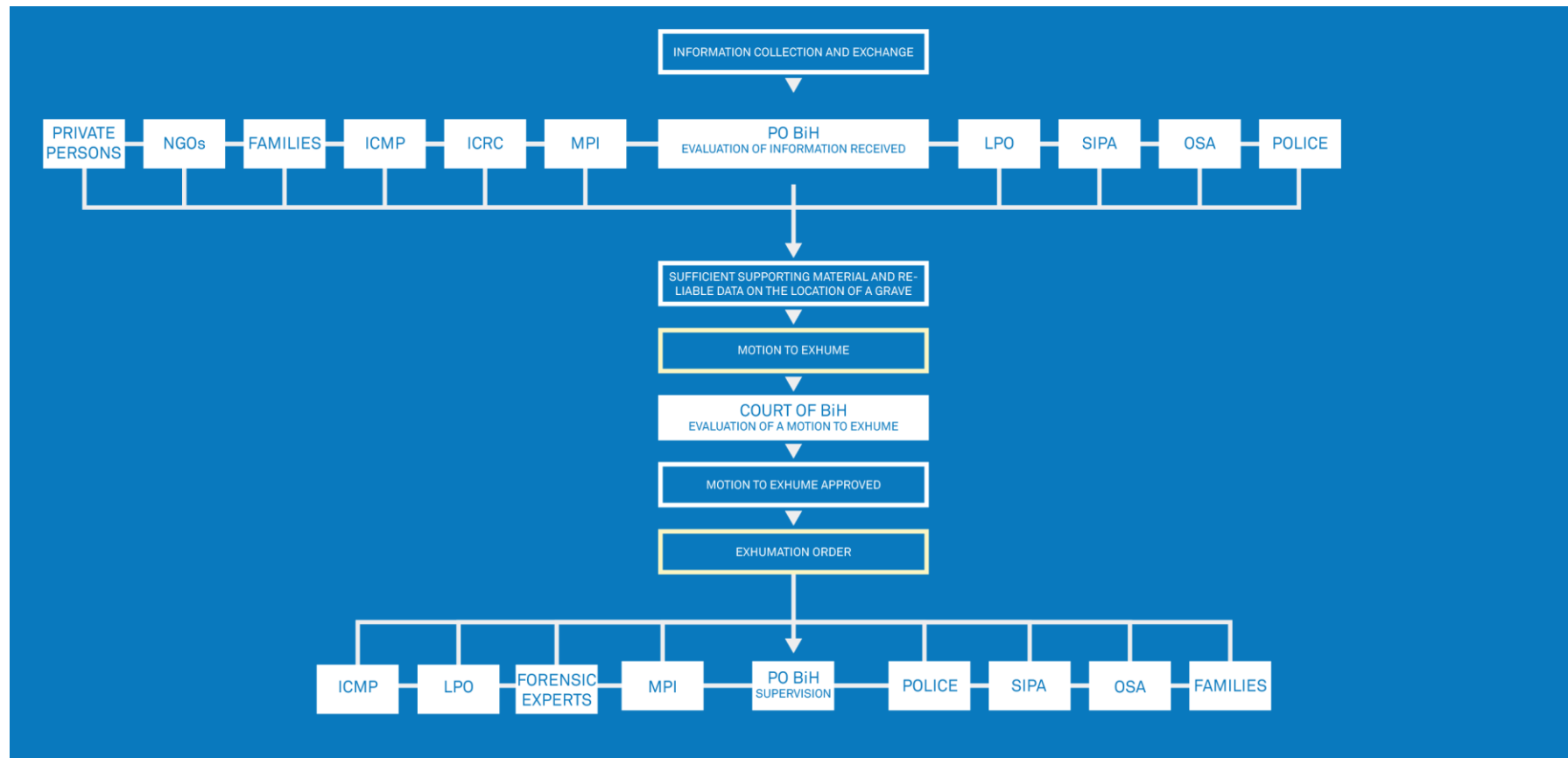
## V. Timeline of key events and institutions





## 2.3 Coordination

### I. Actors mapping<sup>134</sup>



<sup>134</sup> LPO – local prosecutors' offices; OSA – Intelligence and Security Agency.  
The SIPA, the OSA and the families have no active role during the exhumation process.

## II. Theoretical framework

The LMP sets forth the basis for coordination between the different institutions working on the issue of missing persons in BiH. Pursuant to Art. 4 of the LMP, all State and local institutions working in the sphere of justice, defense, internal affairs or involved in the search for missing persons in any other entity, cantonal, and municipal bodies, must provide all available information to the families of missing persons and to the institutions in charge of searching and addressing the issue of missing persons. The LMP also sets forth the methods of information exchange among all the competent institutions, which must consist of “collecting and verifying all relevant information and facts, quoting all sources that have been checked in the process of establishing such information concerning the disappearance of a missing person, and consulting all official documents and materials within their respective institutions and submitting a written notification of the documents consulted and the findings to both the claimant and relevant institutions in charge of tracing missing persons”.<sup>135</sup> In cases where an official fails to comply with the rules regarding sharing information (e.g. intentionally provides false information, blocks access or delays and hinders making information available to either a family member or any other institution in charge of the search for missing persons), the LMP foresees fines of up to approximately 500 Euros.<sup>136</sup> Furthermore, an institution or competent authority that does not grant access to information to families and other institutions involved in the search or violates the prohibition of discrimination between family members, may also receive a fine of up to approximately 2,500 Euros.<sup>137</sup>

The rule concerning the sharing of information obtained in the course of criminal investigations is less clear. The general rule concerning access to information in BiH holds that every person has the right to access information controlled by a public authority under the obligation to disclose such information.<sup>138</sup> However, under the Court of BiH’s policy of anonymization, all judicial documents are censored and the PO BiH does not share information on indictments in a comprehensive way (e.g. the names of those convicted and references to the crime scene are not included in the indictments).<sup>139</sup>

The LMP further requires collaboration among all relevant institutions for the search in BiH, including the ICRC, the ICMP, the MPI and the Red Cross Society of BiH.<sup>140</sup> The ICRC implements its activities in BiH through various channels. For instance, it supports the search by analyzing the existing files from the ICTY. Whenever it finds information that could facilitate the search efforts, the ICRC shares it with the MPI.<sup>141</sup> Together with the Red Cross Society of BiH, the ICRC also strives to improve forensic capacities and to offer comprehensive support to the families of missing persons. The ICMP plays an important role in supporting the families of missing persons with educational and information activities (e.g. on the latest initiatives and developments in the missing persons process, as well as scientific advances in forensic science). It does so by supporting the implementation of small projects designed by the associations of families, publishing reports, organizing commemorations, etc. The ICMP has also made major efforts for the families to gather blood samples needed for DNA-led identifications. Moreover, ICMP’s experts have provided expert testimonies at war crimes proceedings in front of the ICTY and domestic courts.<sup>142</sup>

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<sup>135</sup> Art. 5 of the LMP.

<sup>136</sup> Art. 25 of the LMP.

Based on the data gathered through interviews, this provision has never been applied in practice.

<sup>137</sup> Ibid.

Based on the data gathered through interviews, this provision has never been applied in practice.

<sup>138</sup> Art. 4 of the LMP.

<sup>139</sup> In spring 2019, the High Judicial and Prosecutorial Council established a commission to discuss this issue and to propose changes that would allow for minimum data to be shared, but there are no changes known in this regard. Data gathered through written exchange, 17 August 2020.

<sup>140</sup> Art. 6 of the LMP.

<sup>141</sup> According to information from an ICRC report, more than 25,000 pages have been transferred to the domestic authorities by the ICRC from the ICTY’s archives until 2018. ICRC, “7,000 lives still missing”, December 2018.

<sup>142</sup> Information gathered through written observations, 2 February 2021.

### III. Coordination at the operational level prior to the exhumation

Being the main domestic institution in charge of collecting and analyzing data on missing persons, the MPI acquires information through different sources, including families of missing persons, eyewitnesses or archives. However, for the MPI to start the search process, a request must be submitted by a family member or other persons or institutions, which possess minimum information on the missing person's identity.<sup>143</sup>

Among the MPI's key tasks are the location of individual and mass graves, the participation in exhumation activities and safekeeping of mortal remains until burial. The MPI also financially supports cantonal and district prosecutors' offices in storing and analyzing bodies that were exhumed before 2011 (when exhumations were not under the exclusive jurisdiction of the PO BiH).<sup>144</sup> However, the MPI itself does not have the power to perform exhumations. Exhumations may only be carried out when the Court of BiH issues an exhumation order on the basis of a successful motion to exhume lodged by the PO BiH.<sup>145</sup> Thus, whenever the MPI is convinced that an exhumation is necessary, it has to communicate the relevant information to the PO BiH, who is then in charge of assessing the relevancy and accuracy of the data.<sup>146</sup>

In some cases, location, exhumation and identification of missing persons may also begin in the framework of investigations or trials for the prosecution of war crimes, as part of the evidence collection process. Thus, since 2008, the MPI and other institutions working on missing persons need to regularly share any information that could be potentially useful for exhumations with the PO BiH.<sup>147</sup> This obligation, however, does not encompass the duty to tell the name of the person who shared the information, which the MPI is allowed to withhold.<sup>148</sup> The MPI seeks to prepare information in a way that is supported by sufficient material, as this increases the possibility for the motion to exhume to be evaluated positively by the PO BiH. In some cases, the PO BiH might also request the SIPA or local police for assistance with verifying the accuracy of certain information or ask the MPI to provide additional information or supporting material. If the PO BiH decides to lodge the motion to exhume and the motion satisfies the Court of BiH, the latter can issue an exhumation order.

The PO BiH then initiates the exhumation process in cooperation with various institutions, including forensic experts, who are appointed by the Court of BiH on a case-by-case basis.<sup>149</sup> These experts are in charge of the forensic work needed for the exhumation and identification of mortal remains. They are not necessarily employed in any of the institutions at State or local levels; sometimes they operate as "freelancers".

The Expert Group on Exhumations is in charge of coordinating the work between different institutions in the exhumation process and making sure that the existing standards for exhumation processes are fully respected. The MPI has led the Expert Group on Exhumations since 2009, when it took over the chairmanship from the ICMP.<sup>150</sup> In addition to the MPI, members of the Expert Group on Exhumations are representatives of the PO BiH and local offices of the prosecutors, the SIPA, the OSA<sup>151</sup> and members of numerous ministries in both entities as well as the Mine Action Center and the ICMP.

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<sup>143</sup> Art. 8 of the LMP.

<sup>144</sup> ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 41.

Conversely, the PO BiH receives no funds from the MPI for exhumations, re-exhumations, storage or identification of the mortal remains. Instead, it is funded directly from the State budget and by donors such as the IPA (the EU) according to interviewee statements. Data gathered through written observations, 1 February 2021 and written exchange, 18 February 2021.

<sup>145</sup> Ibid., p. 46.

<sup>146</sup> Data gathered through interview, 10 July 2020.

<sup>147</sup> Conclusion based on data gathered through various interviews and deduced from Art. 4 of the LMP.

<sup>148</sup> Data gathered through interview, 7 July 2020.

However, in most cases, the families do not oppose the sharing of their name. Data gathered through interview, 7 January 2021.

<sup>149</sup> ICRC, "7000 lives still missing", December 2018.

<sup>150</sup> The Handover Memorandum between the ICMP and the MPI concerning the Expert Group on Exhumations is available [here](#).

<sup>151</sup> The OSA is a criminal investigative agency. With respect to missing persons, its work is collecting evidence on grave violations of IHL. During the exhumation, it does not have an active role and may participate only as an observer.

As regards the division of labor between the PO BiH and the MPI, the former does the majority of the supervisory work and the latter conducts most of the investigative work with respect to the location of mortal remains, mass graves and burial sites.<sup>152</sup> Local institutions (e.g. local police) may help as well, but also then the PO BiH is in charge of giving direct instructions.<sup>153</sup> In certain cases, local prosecutors may also be asked to conduct specific tasks (again under the supervision of the PO BiH).

The ICMP supports the exhumation procedure through different activities, including through forensic assistance on-site.<sup>154</sup> If mortal remains are found upon exhumation, they are kept in mortuaries and later examined by forensic experts. In addition, tooth and bone samples are transferred to the ICMP's laboratory, where DNA testing and matching take place.<sup>155</sup> On the basis of the matching results, the ICMP issues a final matching report. The ICMP's assistance is indispensable here since BiH does not have its own laboratories. The MPI is in charge of notifying the families about the results. Upon receipt of the positive DNA matching report, the competent prosecutor's office and the Court of BiH's appointed forensic expert organize a formal meeting with the family of the missing and share with them all data concerning the identified person.<sup>156</sup> If the matching process is unsuccessful, the mortal remains continue to be stored in one of the mortuaries and ossuaries across the country.

The issue of unidentified remains in mortuaries, No Name (NN) bodies, which do not genetically match with existing blood samples of the families, have been a significant problem in BiH (and in the rest of the region).<sup>157</sup> At the moment, there are around 3.000 NN bodies in mortuaries.<sup>158</sup> The PO BiH does not have a database with information on NN bodies and usually needs assistance in compiling relevant data on specific cases. Currently, the ICMP is developing a software solution for the storage of data on all NN cases for the benefit of the MPI and the PO BiH.<sup>159</sup>

#### **IV. Coordination between the investigative authorities**

When the process of exhumation and identification is concluded, it falls to the PO BiH to analyze all documentary evidence, which, together with forensic evidence, is used for the purposes of criminal trials. After the trial ends and a final sentence is issued, factual findings on forensic evidence are included therein. The PO BiH benefits from the support of the SIPA, which, based on a Memorandum of Cooperation (Memorandum) signed with the PO BiH in 2005, is obligated to support criminal investigations, especially when they involve serious violations of IHL.<sup>160</sup> According to this Memorandum, the SIPA must have five investigators who work "under the direct supervision and per the instructions" of the PO BiH.<sup>161</sup> The latter is in charge of coordinating activities concerning criminal investigations undertaken by the SIPA and the PO BiH,<sup>162</sup> and has also the obligation to provide the necessary technical and other means needed for the effective work of the SIPA.<sup>163</sup> Both institutions must meet regularly and consult between themselves on joint activities.<sup>164</sup> The SIPA's police officers are obligated to report on any case where grounds for suspicion of a criminal offense exist, and prosecutors have to work directly with police officers.<sup>165</sup> Whenever this does not happen, police officers have to act independently but in

<sup>152</sup> ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 46.

<sup>153</sup> Data gathered through interview, 10 July 2020.

<sup>154</sup> ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 59.

<sup>155</sup> For an historical overview of the DNA-led identification process, see *ibid.*, pp. 52-56.

<sup>156</sup> Data gathered through interview, 7 January 2021 and through written observations, 2 and 3 February 2021.

<sup>157</sup> Presumably, the reason for the NN bodies in BiH lies in misidentifications of mortal remains in the early stages of the search processes, where many families, due to poor identification techniques, mistakenly believed that their missing relative had already been found. Whenever possible, the MPI and the ICMP seek to rectify these mistakes by reaching out to families with the request of taking their blood samples to verify whether they match with one of the NN bodies.

<sup>158</sup> Data gathered through interview, 9 July 2020.

<sup>159</sup> Data gathered through written observations, 2 February 2021.

<sup>160</sup> The full name of the agreement is "[Memorandum of Understanding between the SIPA and the Prosecutor's Office on Cooperation in the Field of Criminal Investigations of Serious Breaches of IHL](#)" (Memorandum).

<sup>161</sup> Art. 2(4) of the Memorandum.

<sup>162</sup> Art. 2(3) of the Memorandum.

<sup>163</sup> Art. 2(4) of the Memorandum.

<sup>164</sup> Arts. 4 and 6 of the Memorandum.

<sup>165</sup> Arts. 2 and 3 of the "[Instructions on the Provisional Basis for the Provisional Basis between the SIPA and the Prosecutor's Office of BiH in Discovery and Prosecution of Perpetrators of Criminal Offenses](#)" (Instructions).

compliance with the existing regulation of their powers.<sup>166</sup> The communication between SIPA and the PO BiH can be in oral or written form, depending on the matter concerned and the party passing the information.<sup>167</sup> While the SIPA police officers are obligated to report anything that could be of relevance for evidence collection, prosecutors must provide specific instructions concerning investigative activities within three days of receipt of information.<sup>168</sup>

The SIPA's TERRA Operational Team must act upon the orders of the PO BiH.<sup>169</sup> In fact, the TERRA Team is led by the Head of the Special Department for War Crimes of the PO BiH, and one of its investigators together with the SIPA investigators acts upon the PO's instructions. Since the information collected by the SIPA Operational Team is used directly by the PO BiH to investigate cases regarding missing persons, they are in contact almost on a daily basis.<sup>170</sup> Furthermore, the TERRA Team must also coordinate its activities with the MPI and The Hague Tribunal Archive Center in BiH.<sup>171</sup> In fact, investigators from the SIPA, the MPI and the PO BiH work closely together whenever necessary for the location of a mass grave and the analysis of a crime scene.<sup>172</sup> The work of the PO BiH and the SIPA is further supported by the local police, which is obliged, *inter alia*, to prevent and detect criminal offenses, to identify perpetrators of criminal offenses and to bring them before the competent authorities, as well as to guarantee a safe and secure environment in accordance with international human rights law (IHRL).<sup>173</sup> Throughout the exhumation, police assist in tasks related to the collection of evidence, e.g. by taking photographs and recordings of the location of the grave, as well as in protecting the area where the exhumation takes place.<sup>174</sup>

## V. Reporting the location of a grave

Private persons may report the location of a mass grave or a burial site to one of the following institutions: to the MPI, the PO of BiH or any police agency in person, or to the MPI and the ICMP anonymously.<sup>175</sup> It is important to note that unless they have been summoned as witnesses by the competent court, private persons holding information on a criminal offense are not obligated, only entitled, to report a crime to the competent authorities of BiH.<sup>176</sup> Nevertheless, an exception to this rule is when "the failure to report such a criminal offense itself constitutes a criminal offense".<sup>177</sup> The obligation to report the location of a mass grave that exists only at the State level is an example of such an exception.<sup>178</sup> The penalty prescribed for failing to report the location is imprisonment up to three years. According to the official data from 2019, no one has ever been prosecuted or convicted for this offense.<sup>179</sup>

However, the existence of this provision has a strong consequence on criminal trials because it eliminates the possibility to offer financial benefits in exchange for information concerning the location of mass graves.<sup>180</sup> This provision has been criticized because it can negatively impact someone's

<sup>166</sup> Art. 3 of the Instructions.

<sup>167</sup> Arts. 6, 10 and 17 of the Instructions.

<sup>168</sup> Art.16 of the Instructions.

<sup>169</sup> Data gathered through written exchange, 21 January 2021.

<sup>170</sup> Ibid.

<sup>171</sup> CED, "Concluding observations on the report submitted by Bosnia and Herzegovina under article 29 (1) of the Convention. Addendum", UN Doc. CED/C/BIH/CO/1/Add.1, 29 January 2018, para. 21. The document refers to the Hague Tribunal Department, and given that no such institution seems to exist, the assumption is that what is meant is the Hague Tribunal information center, which gives access to the ICTY archives. For more detail on the Hague Tribunal information center, see Erna Mackic, "[Hague Tribunal Archive Centre Opens in Sarajevo](#)", Balkan Transitional Justice, May 2018.

<sup>172</sup> Data gathered through interview, 7 January 2021.

<sup>173</sup> CED, "Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention", UN Doc. CED/C/BIH/1, 28 May 2015, para. 27.

<sup>174</sup> Data gathered through interview, 10 July 2020.

<sup>175</sup> Data gathered through written observations, 1 and 2 February 2021.

<sup>176</sup> Art. 214(1) of the BiH Criminal Procedural Code.

<sup>177</sup> Art. 214(2) of the BiH Criminal Procedural Code.

<sup>178</sup> The crime is called "Failure to Inform of the Location of a Mass Grave". Art. 231a of the Criminal Code BiH.

<sup>179</sup> Eldar Jahić, "The challenges of searching for missing persons in Bosnia and Herzegovina", Balkan Perspectives No. 12, October 2019, p. 10.

<sup>180</sup> Ibid., p. 11. Eldar Jahić also suggests that while the PO BiH and the SIPA are unable to offer money in exchange for information useful for locating a mass grave, other "non-public institutions or individuals/families" are able to sign agreements and provide financial benefit to an "executor of criminal offence".

willingness to share information due to the fear of facing criminal prosecution for not reporting earlier.<sup>181</sup> It is also not clear how this provision is compatible with the possibility of the PO BiH to refer to the use of plea bargaining (the latter is now allowed if the accused pleads guilty at the plea hearing) in order to obtain the needed information that could be relevant for the collection of evidence.<sup>182</sup> This rule may not be in direct contradiction with the provision criminalizing the failure to report the location of a mass grave but there certainly is a tension between them.

Another controversial issue around the criminalization of the failure to report the location of a mass grave is the MPI's power to offer financial benefits to those who are willing to share information on the location of graves.<sup>183</sup> The MPI also offers an option to submit information on the location of a grave anonymously (by calling a specific number, which cannot identify the geographical location of the caller), which again renders criminalization illogical.<sup>184</sup> Further, the ICPM's website "Site Locator" provides for a possibility to report the location of a grave; more reason why criminalizing the failure to report a mass grave makes little sense.<sup>185</sup>

## **VI. Other institutions involved and further ways of sharing information**

Apart from the coordination at the operational level, institutions in BiH also hold occasional meetings where they agree in which manner they will work. In addition to the MPI and all prosecutors that are working on war crime cases from the PO BiH, the SIPA, police agencies, international organizations (e.g. the ICMP, the ICRC) and other experts are among the participants. On some occasions, such meetings are held by family associations and thus families and NGOs are also present.<sup>186</sup>

The families in BiH have assumed an important role in the coordination between the search and activities related to criminal investigations. During the war, families seeking support in the search for their missing loved ones organized through informal unions.<sup>187</sup> Later, many of them became more formal family associations. At present, there are around 30 such family associations actively working in BiH.<sup>188</sup> At the level of State institutions for the search for missing persons, families' interests are represented through the MPI's advisory board. However, family associations also organize various independent activities with respect to the search, e.g. they may accompany families during the exhumation and identification processes, contribute to the organization of collective burials, prepare information for submission to the MPI, etc. As for the families' involvement in criminal investigations related to missing persons, families and family associations may assist their members in preparing and filing claims for compensation,<sup>189</sup> file reports to the prosecutors' offices, monitor the work of investigative authorities, propose witnesses to testify in court, participate at the exhumation as observers, etc.

Another institution dealing with missing persons in BiH is the Ministry of Human Rights and Refugees, which aims at establishing efficient collaboration between the institutions involved in the search for missing persons.<sup>190</sup> More specifically, the Ministry engages in different activities related to the

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<sup>181</sup> Ibid., pp. 10-11.

<sup>182</sup> Art. 231 of the BiH Criminal Procedural Code.

<sup>183</sup> The MPI has a special fund dedicated to pay such financial benefits, but according to the information provided by one of the interviewees, this money in practice has not been spent, because such benefit has been awarded in one single case only. Data gathered through interview, 23 July 2020.

<sup>184</sup> More detail on the MPI's tool to file a report anonymously is available [here](#).

This tool has not really been used in practice. Data gathered through interview, 7 January 2021.

<sup>185</sup> The application "Site Locator" was introduced relatively recently and is available [here](#). However, the application has been used very few times (14 or 15). Data gathered through written exchange, 7 January 2021.

To this date (3 February 2021), the application has allowed locating 3 mass graves in BiH. Data gathered through written observations, 3 January 2021.

<sup>186</sup> Data gathered through interview, 9 July 2020.

The information was also confirmed in another interview, 7 January 2021.

<sup>187</sup> ICMP, "Bosnia i Hercegovina. Missing persons from the armed conflicts of the 1990s: A STOCKTAKING", 2014, p. 123.

<sup>188</sup> Data gathered through written exchange, 17 August 2020.

<sup>189</sup> In BiH, when a civil claim for compensation is lodged in the course of criminal proceedings (against the offender for the damages suffered because of the crime), courts normally do not decide on this issue; instead, they instruct the applicant to open separate civil proceedings. When the latter actually begin, the claims are often declared as time-barred. Data gathered through written exchange, 24 August 2020.

<sup>190</sup> Council of Ministers of Bosnia and Herzegovina, "[Ministry of Human Rights and Refugees](#)".



enforcement and application of the law.<sup>191</sup> In addition, the Council of Ministers of BiH – as an executive organ in BiH – has an impact on both the search and criminal investigations. The Ombudsperson of Human Rights may also play a role in some cases, as the organ in charge of investigating complaints on violations of human rights or freedoms on behalf of any institution in BiH. Finally, many local NGOs have contributed to the conduct of criminal investigations and the search for missing persons in BiH by collecting evidence on the identity of victims, witnesses, perpetrators and other information that could help in locating mass graves. The support of many NGOs has also enabled the participation in the search and/or investigations concerning missing persons for many families in BiH.

## VII. Key rules on sharing information

LAW	LMP	<p>Art. 4 (Obligation to share information):</p> <p><i>“Pursuant to Article 3 of this Law, the bodies and institutions of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, the Republika Srpska and Brčko District of Bosnia and Herzegovina, that are in charge of defence, justice, internal affairs and other bodies in charge of tracing missing persons, in Bosnia and Herzegovina and other entity, cantonal, and municipal bodies that in accordance with their authority resolve cases related to the disappearance of persons in/from Bosnia and Herzegovina (hereinafter referred to as: the relevant authorities of BiH), are obliged to provide families of the missing and relevant institutions in charge of tracing missing persons with available information and to give all necessary assistance to improve the tracing process and the process of resolving cases of disappearances of persons in/from Bosnia and Herzegovina.”</i></p> <p>Art. 5 – in part (Methods of exchange of information):</p> <p><i>“The relevant authorities in BiH, on the basis of previous and new requests for information, are responsible for: collecting and verifying all relevant information and facts, quoting all sources that have been checked in the process of establishing such information concerning the disappearance of a missing person, and consulting all official documents and materials within their respective institutions and submitting a written notification of the documents consulted and the findings to both the claimant and relevant institutions in charge of tracing missing persons.”</i></p>
	MPI	<ul style="list-style-type: none"> <li>— Receives information reported anonymously</li> <li>— Acquires information through families of missing persons, eyewitnesses, archives, etc.</li> <li>— Adds data to and manages the CEN (information is partially shared with public)</li> <li>— Shares all the information that could be useful for exhumations with the PO BiH (except the name of the person who provides the information to the MPI, which can be withheld)</li> <li>— Continuously exchanges information internally and with the SIPA's TERRA Operative Team and the PO BiH</li> <li>— Notifies the families about the successful DNA matching process</li> <li>— Can provide an award for reporting the location of a mass grave (but not really used in practice)</li> </ul>
INSTITUTIONS	SIPA	<ul style="list-style-type: none"> <li>— Must provide support in criminal investigations, especially when they involve serious violations of IHL</li> <li>— Assists in the location of mass graves (also by sharing information)</li> <li>— Reports to the PO BiH anything that could be of relevance for evidence collection</li> <li>— Continuously exchanges information internally and with the PO BiH and the MPI</li> </ul>
	Court of BiH	<ul style="list-style-type: none"> <li>— Shares information without specific rules</li> <li>— Issues the exhumation order (in this sense it contributes to the exchange of information)</li> <li>— Has a policy of anonymization regarding indictments</li> </ul>
	PO BiH	<ul style="list-style-type: none"> <li>— Is limited by the Court of BiH's anonymization policy (cannot share certain information on indictments)</li> <li>— Receives information on the need for an exhumation from the MPI, or in the course of a criminal investigation</li> <li>— Continuously exchanges information internally and with the SIPA's TERRA Operative Team and the MPI</li> <li>— Coordinates the exhumation process (in this sense it contributes to the exchange of information)</li> <li>— May share information received from the MPI with the SIPA or local police to verify its accuracy</li> <li>— Shares information received from the MPI with the Court of BiH whenever it is convinced that an order for exhumation has to be issued</li> </ul>

<sup>191</sup> According to Art. 24 of the LMP, the Ministry of Human Rights and Refugees oversees the enforcement of this law. An example of the Ministry's activities is described here: ICMP, [“Enforcement of the Law on Missing Persons in BiH”](#). Another example is the guide for families concerning the application of the LMP prepared by this Ministry. Ministry for Human Rights and Refugees, “Application of the Law of Missing Persons of Bosnia and Herzegovina. Guide for the Families”, 2016.

INSTITUTIONS		<ul style="list-style-type: none"> <li>— Can offer a reduction of sentence to obtain information that could be relevant for the collection of evidence</li> </ul> <p>(It could not be ascertained definitively how and to what extent information obtained in the process of investigations is shared.)</p>
	ICMP	<ul style="list-style-type: none"> <li>— Receives information (on the location of a mass grave) reported anonymously through its website</li> <li>— Manages Site Locator for reporting the location of a mass grave</li> <li>— Adds data and manages the database on missing persons' relatives (information in principle not publicly available)</li> <li>— Is in charge of DNA testing and matching</li> <li>— Issues a final report about the results of the DNA matching process</li> <li>— Collects and stores information on missing persons for the purpose of the Database of Active Missing Persons</li> </ul>
	ICRC	<ul style="list-style-type: none"> <li>— Analyzes files from the ICTY and shares information which could help to clarify the whereabouts of missing persons with the MPI (and other institutions involved in the search)</li> </ul>
	Police	<ul style="list-style-type: none"> <li>— Obligated to cooperate with the SIPA and the PO BiH and to regularly share information with them</li> </ul>
	Forensic experts	<ul style="list-style-type: none"> <li>— Share information without specific rules</li> <li>— Are bound by the exhumation order of the Court of BiH</li> </ul> <p>(It could not be ascertained definitively how information among forensic experts is shared.)</p>
	Private persons	<ul style="list-style-type: none"> <li>— Can report information regarding missing persons with the MPI, the PO BiH, any police agency and the ICMP and anonymously through website of the ICMP and the MPI's phone number</li> <li>— Must report locations of mass graves (failure to do so constitutes a criminal offense)</li> </ul>

## 2.4 Challenges

### 2.4.1 General

#### I. Search

- In the first years after the war in BiH, the reluctance of both entities (and their local search commissions) to share information useful for the other entity represented an enormous challenge in the conduct of search activities. The unwillingness of the entities to share information also hampered the work and efficiency of the mechanisms dealing with the search at the State level.
- The appointment of former members of the local search commissions in the entities as MPI staff members has been described as a challenge by some family members of missing persons, who saw their political affiliation as a potential danger for implicit bias in the working policy of the MPI.<sup>192</sup>

#### II. Criminal investigation

- The lack of technical and financial resources in the cantonal and district offices of the prosecutor has been referred to as one of the biggest obstacles affecting the efficiency of the prosecution of war crimes.<sup>193</sup>
- It has been noted that some of the regional and cantonal prosecutors send any case involving the question of missing persons to the PO BiH, even when it could be adjudicated at the local level (e.g. because it falls within the competence of the concerned local court, and no involvement of the PO BiH is required because the exhumation had been previously conducted). This was identified as problematic due to the alleged passivity of the PO BiH, which is reflected in the slow or non-existent responses vis-à-vis transferred cases (e.g. the PO BiH often does not continue with the examination of the existing evidence, or it eventually decides not to press charges).<sup>194</sup>

<sup>192</sup> Data gathered through interview, 7 July 2020.

<sup>193</sup> Data gathered through interview, 23 July 2020.

<sup>194</sup> Data gathered through interview, 8 July 2020.



- Investigative authorities seem to face difficulties when seeking witnesses, who rarely come forward on their own initiative. While this has not been explicitly pointed out by the interviewees, among the reasons for the reluctance in sharing certain information (e.g. on the location of a grave) could be the fact that “Failure to Inform of the Location of a Mass Grave” is a criminal offense. Some witnesses might be reluctant to approach investigative authorities because they fear to be prosecuted and sanctioned for not sharing the information earlier.

### III. Search and criminal investigation

- In the past, criminal investigations focused on the collection of evidence for the purposes of criminal trials. Determining the fate and whereabouts of disappeared persons was considered to be of subordinate importance. Consequently, the progress of the search in the course of criminal investigations was limited, as it was carried out only to the extent it was deemed useful for the criminal investigation. A greater exploration of the link between search and criminal investigations could have created better synergies to further advance search efforts.
- In the initial phases of the search and criminal investigations, the lack of trust towards domestic institutions (both those in charge of the search and criminal investigations) from the families was a common obstacle to their willingness to collaborate in either of the two processes. According to information provided by one of the interviewees, the trust in the institutions again decreased since 2015, when the ICMP moved its headquarters from Sarajevo to The Hague.<sup>195</sup>
- An overall challenge is related to the passing of time, given that 25 years elapsed since the majority of persons went missing. On the one hand, the passage of time imposes obstacles to criminal investigations, e.g. there are difficulties in finding and accessing relevant evidence and identifying witnesses who are willing to testify. On the other hand, it also makes the search much more complicated, e.g. the collection of DNA samples (from the relatives of missing persons) cannot be conducted because many of the relatives have already passed away.
- The lack of financial, human, and technical resources has been highlighted as one of the key obstacles in both the search and criminal investigations.
- The lack of forensic expertise has hindered both the search and criminal investigations. Before 2001 and the introduction of DNA testing as a standard for identifications, many bodies found were misidentified due to the lack of sufficient forensic identification expertise, resources and qualified personnel.
- One of the difficulties with regard to access to information needed for the search and/or investigation is that many families no longer hope and expect that their relative will ever be found, given that many years have passed since the war ended. Families often prefer to avoid speaking about painful memories and are reluctant to share information.
- Among the biggest challenges to account for disappeared persons (and, at least indirectly, also to the investigative process) is the lack of accurate and reliable information on the location of graves or burial sites. Despite the existence of various tools encouraging information exchange (i.e. the MPI can grant an award for those who submit information; information on the location of mass graves can be reported to the MPI anonymously; the prosecutor can offer a reduction of sentence in exchange for information), none of them has led to meaningful results. Even in the few cases where they were used, the information provided was incorrect or incomplete.<sup>196</sup> The only exception is the ICMP Site Locator, which has so far enabled to locate three mass graves.<sup>197</sup>

<sup>195</sup> Data gathered through interview, 8 July 2020.

However, this reading of the situation is not necessarily shared by all the interviewees and is disputed by the ICMP.

<sup>196</sup> Data gathered through interview, 7 January 2021.

<sup>197</sup> Data gathered through written observations, 2 February 2021.

- Regarding the possibility of the investigative authorities to offer a reduction of the sentence, the impression is that such privilege would in some cases be granted prior to checking the authenticity of the information.<sup>198</sup> Consequently, the purpose of this privilege (i.e. to contribute to the search process and to speed up the criminal investigation) is not achieved, which ultimately represents a challenge to both criminal investigations and the search.
- The police's lack of genuine interest and will to address the issue of disappeared persons has been mentioned as one of the dangers which could hamper the search and criminal investigations in the future, in particular, if and when the international community is no longer present in BiH and both processes are left entirely in the hands of domestic institutions.<sup>199</sup>
- The challenge regarding regional cooperation in the search and criminal investigations is two-fold: on one hand, some neighboring countries are reluctant to cooperate in any of the processes.<sup>200</sup> Since in many cases mass graves, burial sites and perpetrators are in one of BiH's neighboring countries, regional cooperation and coordination are a precondition for carrying out both the search and criminal investigations. On the other hand, while BiH has concluded agreements to assist in the search and criminal investigations with some neighboring countries in recent years, the obligations that flow from these agreements have not yet been fully assumed by all authorities. The regional coordination will only be possible when all countries assume their responsibilities on equal footing.

#### 2.4.2 [Specific to coordination](#)

- The politization of processes has been described as an obstacle to coordination and collaboration between institutions. While this view has not been supported by other persons interviewed, one interviewee suggested that no genuine political will for the search, criminal investigations and coordination ever existed in BiH.<sup>201</sup>
- BiH's complex organizational structure, which encompasses many institutions at different levels (local and State), has been among the biggest challenges to coordination. On the one hand, information is more fragmented and thus difficult to collect as a result of such an organizational structure (especially when a State institution tries to obtain information from all existing local institutions). On the other hand, the danger posed by the lack of control over information in certain local institutions is that they fail to disclose data. This issue is exacerbated by the fact that most of the resources awarded from international organizations to domestic institutions go exclusively to institutions at the State level. Compared to the State institutions, local institutions may be less willing and capable to conduct their own activities, as well as to engage in coordination.
- While related to the organizational structure of BiH, the reluctance of the institutions of Republika Srpska to share information with other local and State institutions goes even further and extends to all forms of collaboration. Even though several reasons for such behavior on behalf of Republika Srpska have been identified through interviews, the following was repeated on various occasions: a general fear of being responsible for supporting/participating/knowing about the atrocities committed by Republika Srpska during the war, and a sense that collaboration – in particular with the other entity – could be understood as betrayal of its own people.<sup>202</sup>
- The lack of permanent forensic institutions with permanent staff in all exhumations has a negative impact on coordination. Given that forensic experts conducting work regarding missing persons are often freelancers, the prosecutors fully depend on their availability and have very little oversight of the quality of their work. Furthermore, the forensic experts currently working on cases regarding missing

<sup>198</sup> Data gathered through interview, 10 July 2020.

<sup>199</sup> Data gathered through interview, 7 July 2020.

<sup>200</sup> Data gathered through interview, 10 July 2020.

<sup>201</sup> Data gathered through interview, 8 July 2020.

<sup>202</sup> Data gathered through interview, 7 January 2021.

persons do not necessarily exchange relevant experience and coordinate among themselves to standardize work practices.

- While the presence of international institutions has in general had a positive impact on the coordination between the search and criminal investigations, it has also created a challenge: domestic institutions have relied too much on international organizations, in particular the ICMP, and have not sufficiently improved their own capacities and knowledge.<sup>203</sup> If international institutions completely withdraw their support one day, domestic institutions could find themselves completely unable to function. Incapacity to carry out their work would generate frictions among the search and investigative institutions and potentially also hamper coordination.
- Concerning the stage of the implementation of GP 13, not all institutions seem to even be aware of its existence. Even those who are familiar with this GP see it as inapplicable to the relation between the search and criminal investigations. This is either because GP 13 is perceived as relevant only for those countries where search and criminal investigations are completely separated or where the two processes relate to cases of missing persons who are presumably still alive.<sup>204</sup>

## 2.5 Lessons learned and good practices

### 2.5.1 Lessons learned

- In the Bosnian language, the word “coordination” has a vague meaning and it is not understood as a legal term. It is generally associated with physical meetings or the arranging of activities in person on a spontaneous and voluntary basis. Institutions in charge of the search and criminal investigation describe their cooperation and information exchanges as activities that have a sound legal basis and are not part of the coordination efforts. Coordination efforts are seen as complementary to the existing legal obligations.<sup>205</sup>
- Search and criminal investigations should be understood as two inherent parts of a broader process, where the collaboration between all institutions is a precondition for doing their work effectively. The understanding of the complementary roles of the MPI and the PO BiH – two crucial institutions for the search and criminal investigations – and that none of them is self-sufficient, has been the key to the significant degree of coordination achieved among all institutions in BiH.
- Learning from past mistakes and applying the lessons learned is crucial for improvement in the search and criminal investigations. For example, families in BiH have learned that actions taken to pursue the search might have decisive consequences for the success of criminal investigations (e.g. performing exhumations on their own may jeopardize the evidentiary value of the mortal remains) and have thus decided to pursue a different path, i.e. exerting greater pressure on the institutions to conduct exhumations.<sup>206</sup>
- A way to search is to identify patterns in which people went missing and to organize the information by groups based on the place where a person was last seen alive. While the ICMP has already established a software consolidating available data on disappearances per municipality, the MPI’s limited analytical capacities do not allow for the utilization of the information gathered by this software.<sup>207</sup> If the ICMP software use is improved or a different way to identify the patterns is found, it could contribute to understanding where to search for physical evidence and, more importantly, who could possess information that could be useful to locate graves.

<sup>203</sup> Data gathered through interview, 7 July 2020.

<sup>204</sup> Data gathered through interview, 6 July 2020.

While efforts have been made to understand why the institutions perceive GP 13 this way, no particular reason could be identified.

<sup>205</sup> Data gathered through interview, 6 July 2020.

<sup>206</sup> Data gathered through interview, 8 July 2020.

<sup>207</sup> Data gathered through written observations, 2 February 2021.

- The families of disappeared persons, civil society organizations and NGOs have great potential for speeding up the progress of the search and criminal investigations. In BiH, their efforts have not only been decisive for the high success rate of missing persons found, but also for the garnering of political support and the prompt reactions of domestic institutions to certain matters more in general (i.e. the issue of the NN bodies has been increasingly recognized as a matter to be addressed as a priority thanks to the families).<sup>208</sup>
- The inclusion of family members among the representatives of the search mechanism (i.e. the MPI's advisory board) has empowered the relatives of missing persons, increased their trust and allowed them to feel that they can participate more meaningfully in the search for the disappeared.
- The fact that one single institution in the whole State (i.e. the PO BiH) has the power to file a motion to exhume and to supervise all exhumation processes (notwithstanding whether the original request for exhumation has been put forward by the MPI or one of the local offices of the prosecutors) has contributed to a more organized approach in the collection of data.
- The existing tools to obtain valuable information from private persons should be better explored and their use should be more encouraged in practice. The reasons why they have not led to meaningful results should be examined, in view of finding a solution and of increasing their use in practice.
- Since the work of the prosecutors is frequently characterized by huge delays, the establishment of a supervisory mechanism in charge of monitoring the progress of investigations could improve their efficiency. Ideally, such a mechanism would have the power to impose deadlines for the delivery of certain results (i.e. time span, within which the investigation must begin after receiving the first concrete evidence).
- By providing constant indirect and direct financial, technical, human and educational support, international organizations have made an immense contribution to the establishment of solid foundations for the search and criminal investigations concerning disappeared persons. Some organizations (e.g. the ICRC and the ICMP) have also played an important role (e.g. as communication intermediaries) in the development of regional cooperation with other countries in the region (e.g. Croatia, Serbia, Montenegro and Kosovo).

### 2.5.2 [Good practices](#)

- Daily relationship, exchanges and communication between different institutions, e.g. the ICMP, the MPI, the SIPA and the PO BiH, have been noted as an example to be followed because of the effective, good and dynamic coordination.<sup>209</sup>
- As a concrete example, reference to a case was made where the accused agreed to a plea bargain and shared information, which led to the location of a mass grave containing the bodies of 90 disappeared persons.<sup>210</sup> The success in this specific case was the result of enhanced coordination between the police, the prosecutors, family and civil society associations, the MPI and the SIPA.
- The exchange of mortal remains between BiH and Serbia in 2020 can be referred to as good practice, given that it proves the effectiveness of the bilateral agreement that was concluded between the two countries in 2019.

<sup>208</sup> Data gathered through interview, 6 July 2020.

<sup>209</sup> This has been pointed out by various interviewees.

<sup>210</sup> Data gathered through interview, 7 July 2020.

## 2.6 Conclusions

The involvement and constant support of the international community to BiH's domestic authorities have made a crucial contribution to the progress and the overall results achieved. Nowadays, BiH is often referred to as an example of good practice, since no other post-conflict country managed to achieve such a high success rate in the search and identification processes.<sup>211</sup> The approach to coordination between the search for disappeared persons and criminal investigations taken by BiH can be likewise considered as an example of good practice for post-conflict countries. First, because the framework for the coordination is extremely detailed, precise and unambiguous. Second, the practice in this regard is well-settled. In the majority of cases, the institutions are aware of their tasks, understand their obligations and are committed to their work. While it is true that different reasons (e.g. lack of resources) prevented them from fulfilling all the obligations envisaged in the applicable domestic legislation (e.g. creating the Fund for the Support of Families of Missing Persons), BiH's institutions have managed to implement a significant part of the provisions concerned and achieved remarkable results.

There is, however, a lot of space for improvement to enhance coordination: on the one hand, investigative authorities seem to be, at least compared to the specialized search institutions, less aware of the importance and benefits that criminal investigations have for the search. Authorities conducting criminal investigations should be more aware of the close link between the processes and see their interdependence as an opportunity. Furthermore, they should strive for building trust with the families of disappeared persons by being more transparent in their work. On the other hand, both search and investigative institutions should reflect on how to use certain powers entrusted to them with the aim of facilitating access to information (e.g. the tool of plea bargaining or the MPI awards for the submission of information). In this respect, capacity building could be a solution to obtain a more efficient use of the existing tools.

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<sup>211</sup> For a list of reasons for BiH's success in the search for missing persons see European Commission, "Instrument for Pre-Accession Assistance (IPA II) 2014-2020. Assistance to BiH to address the issue of missing persons", p. 5.

## 3 Mexico

### 3.1 Context

The number of disappeared persons (*personas desaparecidas*) has reached an enormous scale in Mexico.<sup>212</sup> The first period known for enforced disappearances is the so-called “Dirty War” (*Guerra Sucia*) that lasted from the late 1960s until the early 1980s.<sup>213</sup> At that time, people were forcibly disappeared for political or social reasons. Specifically, there was a trend to forcibly disappear anyone who was perceived as a political threat (often referred to as communist;<sup>214</sup> most such victims were left-wing students, activists and *guerrillas*, and their families and friends) or as an opponent to the existing political regime. In the case of the latter, the intention was to repress urban, rural or social movements including those seeking to address land ownership.<sup>215</sup> The perpetrators were, in the majority of cases, the secret police and members of the army.<sup>216</sup> The total number of forcibly disappeared persons during that period remains highly disputed but, according to some sources, goes up to 1200 (this number includes all enforced disappearances, i.e. cases where persons were eventually found and those who remain disappeared to this day).<sup>217</sup> Having denied the involvement of security forces for many years, the Mexican Federal<sup>218</sup> government relatively recently started to adopt measures with respect to the disappearances from that period.<sup>219</sup> However, remarkably little has been done to clarify the fate and whereabouts of the disappeared and to hold the perpetrators accountable: by February 2021, the mortal remains of at least six disappeared persons were found<sup>220</sup> and only one sentence was issued for the perpetration of enforced disappearances during the period of the “Dirty War” by domestic courts.<sup>221</sup>

The second “wave” of disappearances began with the “war against drugs” (*guerra contra el narcotráfico*)

<sup>212</sup> The analysis on Mexico calls for three remarks: first, given the complexity of the Mexican system and the disparity of information related to the search and criminal investigations concerning disappeared persons, the “discrimination” between the information acquired was to some extent unavoidable. As access to information was extremely difficult, priority has been given to the aspects of coordination. Since sources often offered contradictory answers, or it was unclear, which information was the most up-to-date, the information with the highest degree of reliability was included in this study.

Second, there is a general issue with respect to the translation of the word *desaparecido* to English, as it is sometimes translated as “missing” and other times as “disappeared”. However, the meanings of the terms “missing” and “disappeared” are not necessarily the same. This leads to confusion and common misinterpretations of the content of laws and the mandates of different institutions.

Third, the wording used in laws and protocols in Mexico sometimes leaves considerable room for interpretation in practical application. For example, “*tiene las siguientes atribuciones*” (has the following competences) or “*tiene las funciones siguientes*” (has the following functions) could be understood as an obligation or not. This study adopts, whenever there is a doubt about how to translate certain terms, a literal translation with the objective of maintaining the original meaning of the word.

<sup>213</sup> While the term “Dirty War” is a common reference in the Mexican context, many victims do not find it appropriate. Mostly they hold that there was no actual war, since the crimes were only committed one way (State vis-à-vis the population).

<sup>214</sup> As soon as the authorities realized that reference to “communists” could imply the need to consider the disappeared as political prisoners, they began to call them “criminals” or “terrorists”. Data gathered through written observations, 31 August 2020.

<sup>215</sup> Data gathered through various interviews and written observations.

<sup>216</sup> See, e.g. Surya Palacios, “[OPINIÓN: Los crímenes de la 'guerra sucia', en espera de la justicia](#)”, *Expansión*, January 2012.

<sup>217</sup> Different family associations and other local organizations reported this number in the early 1980s. Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 209. However, the official numbers are much lower (see, e.g. the following [speech](#) which refers to 532 cases of enforced disappearances).

<sup>218</sup> Whenever reference is made to the Federation/Federal or the State (capital initial) in the text on Mexico, it covers the institution at the level of the Federation. Conversely, when the state is spelled in small letters, the reference is made to one of its federal entities, i.e. states.

<sup>219</sup> WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 9.

Examples of such measures are public apologies to the victims of the “Dirty War”.

<sup>220</sup> The final number of the bodies exhumed of the forcibly disappeared during the “Dirty War” is unknown, but it is certain that at least 6 have been exhumed and identified. 2 were exhumed in the state of Mexico City in 2005, 2 in the state of Guerrero in 2014 and 2 in the state of Sonora in 2015. Gustavo Castillo and Laura Poy, “[Exhuma la Femospp restos de dos guerrilleros ligados a Lucio Cabañas](#)”, *La Jornada*, August 2005; Roberto Ramírez, “[Exhuman cadáver de otro guerrillero del grupo de Lucio Cabañas](#)”, *La Jornada*, July 2014; Andrés Becerril, “[Software dio cara a desaparecido: víctima de la Guerra Sucia](#)”, *Excelsior*, November 2020.

Some of the forcibly disappeared persons “reappeared” alive already during the “Dirty War”. Data gathered through written exchange, 27 January 2021.

<sup>221</sup> The sentence was issued in 2009. For a detailed description of the case, see Javier Yankelevich, “[El canto del cisne de la FEMOSPP: La única condena a un perpetrador de la guerra sucia en México](#)”, *A dónde van los desaparecidos*, 27 January 2020.

In the only existing sentence for an enforced disappearance committed in the period of the “Dirty War”, the accused was sentenced to five years of deprivation of liberty. However, the court decided to send the accused to home confinement instead of jail, allegedly because of his poor health and advanced age (which is hardly convincing since he was 70 years old). Data gathered through written observations, 1 February 2021.



during the presidency of Felipe Calderón in 2006 and continues until today.<sup>222</sup> The logic behind these disappearances differs from the rationale during the period of the “Dirty War”, because they are not necessarily linked with political repression. Instead, they occur in a broader context of organized crime and drug, arms and human trafficking.<sup>223</sup> At the same time, the State continues to be directly or indirectly involved in the perpetration of enforced disappearances, or to support, authorize or acquiesce to their commission.<sup>224</sup> Potential victims may be students, human rights defenders, journalists, children, indigenous persons and police officers.<sup>225</sup> Poor families and communities are more exposed to disappearances. Moreover, girls, women<sup>226</sup> and young men seem to be particularly common targets (in some states).<sup>227</sup>

Linked to the extensive activities of organized crime and geographical location of the country is the widespread disappearance of migrants,<sup>228</sup> which is a considerable issue in Mexico.<sup>229</sup> In most cases, migrants from South or Central America disappear while crossing Mexico with the aim of reaching the United States. Since they often travel without identification documents and they try to avoid any contact with official authorities, there is usually no detail on the location and the manner, in which they disappeared. These disappearances pose their own specific challenges.<sup>230</sup> Furthermore, they place the relatives of disappeared migrants in a particularly challenging position, bearing in mind that they reside abroad and often do not have the knowledge or resources to travel to Mexico to begin the search or to lodge a complaint to trigger the opening of criminal investigations.<sup>231</sup>

The Inter-American Commission on Human Rights (IACHR), the WGEID and the CED all have acknowledged the connection between the current crimes and the enforced disappearances from the “Dirty War”.<sup>232</sup> For example, one of their common characteristics is the widespread impunity for perpetrators reflected by the extremely low number of sentences: according to the data recently provided by the National Search Commission (*Comisión Nacional de Búsqueda*, CNB), as of February 2021, only 35 first instance sentences (for at least 55 perpetrators) for the crimes of enforced disappearances and disappearance perpetrated by private individuals at both Federal and local levels have been passed.<sup>233</sup>

<sup>222</sup> Manuel Espino, “[Así comenzó la “guerra” contra el narcotráfico de Calderón](#)”, *El Universal*, August 2019.

This is without prejudice to the fact that disappearances did not completely stop in the period between the end of the “Dirty War” and 2006, which is supported by various Amnesty International reports. Data gathered through written observations, 9 February 2021.

<sup>223</sup> In these contexts, the distinction between enforced disappearances and other similar crimes, such as kidnapping, is often blurred.

<sup>224</sup> On many occasions, criminal groups act in collusion with public authorities. An example of a close link between organized crime and public authorities is the disappearance of 43 students in the case Ayotzinapa, which is discussed in-depth later in chapter 3.2.6.

<sup>225</sup> Data gathered through various interviews.

<sup>226</sup> The disappearance of women and girls is often characterized by activities related to human trafficking.

<sup>227</sup> Lidia Arista, “[1,227 mujeres han desaparecido en México en el último año](#)”, *Expansión política*, March 2020.

Even though certain groups seem to be targeted more often than others, there is absolutely no clear pattern of disappearances since the beginning of the war against drugs. Anyone is a potential target.

<sup>228</sup> In this study, the term “migrant” encompasses anyone who is on the move and under conditions of vulnerability. See Section 3 of the [agreement on the establishment of specialized institutions for migrants](#) (discussed in more detail later). For a better understanding of the definition of “migrant” in Mexican legislation, see Art. 3 (XVII) of the [Law on Migration](#).

<sup>229</sup> For a very detailed analysis of the disappearances of migrants in Mexico, see Fundación para la Justicia y Estado Democrático de Derecho (FJEDD) and TRIAL International, “Informe presentado al Comité contra la Desaparición Forzada en vista del dialogo de seguimiento con respecto a México, en ocasión de la 15ª sesión (noviembre de 2018)”, octubre de 2018, paras. 11-115.

For a broader analysis of the challenges in addressing the disappearances of migrants, see WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances on enforced disappearance in the context of migration”, UN Doc. A/HRC/36/39/Add.2, 28 July 2017.

<sup>230</sup> For a more detailed analysis of peculiarities regarding disappearances of migrants in Mexico, and the subsequent challenges in the search, see Gabriella Martínez-Castillo, “Desafíos y tensiones en la búsqueda de migrantes desaparecidos de Honduras y El Salvador”, *Íconos*, *Revista de Ciencias Sociales*, No. 67, may-ago 2020.

<sup>231</sup> CED, “Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention: Committee on Enforced Disappearances”, UN Doc. CED/C/MEX/CO/1, 5 March 2015, para. 23.

<sup>232</sup> See, e.g. WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 9. See also OAS, “[Preliminary Observations on IACHR visit to Mexico](#)”, Press Release No. 112A/15, October 2016.

<sup>233</sup> This information was published by the CNB on its Twitter account. Twitter, “[Comisión Nal. de Búsqueda Mx](#)”. Information also confirmed through written observations, 1 February 2021.

Information on the number of sentences issued for the crime of enforced disappearance in Mexico varies from source to source. For example, one source (official response letter submitted by the Federal Judicial Council on the request for access to information No. 0320000433819, mentioned in the i(dh)as report from May 2020) suggests that 28 sentences were issued in common and 31 in Federal jurisdiction until August 2019. i(dh)as, “Situación de impunidad en México”, No. 750e, mayo de 2020, p. 7.

Moreover, the number of persons reported disappeared in Mexico is continuously and rapidly growing.<sup>234</sup> On 9 January 2021, 76,230 persons were registered as disappeared.<sup>235</sup> By the end of December 2020, more than 4,000 clandestine graves and tens of thousands of unidentified bodies had been found.<sup>236</sup> Despite specialized search mechanisms in place, no information is available on the number of cases where the search led to meaningful results, i.e. determination of the fate and whereabouts of the disappeared. This is because the CNB (which is in charge of the current register for disappeared persons for the whole State) is not necessarily involved in the search from beginning to end, which prevents it from maintaining the statistics. For instance, where the person is not found alive, locating and exhuming mortal remains is a precondition to determine the identity of the disappeared. The dependence of the CNB on other institutions (e.g. forensic experts) and the lack of knowledge of what happens with mortal remains after they are found and exhumed with the help of the CNB, makes it very difficult to establish when an identification process is concluded successfully and whether the remains have been returned to the family.<sup>237</sup>

Mexico has been repeatedly criticized for its failure to prevent disappearances, to search and locate disappeared persons, to conduct effective investigations, to hold those responsible accountable and to provide reparation to victims. In fact, various international institutions, including the CED,<sup>238</sup> the WGEID, the UN Human Rights Committee (HRCtee), and the Inter-American Court for Human Rights (IACtHR) held that Mexico is responsible for not abiding by its international obligations.<sup>239</sup> One of the few cases where Mexico was compelled to react due to the strong international pressure is the enforced disappearance of 43 students on 26 September 2014 (Ayotzinapa case). However, even in that case, as of February 2021, neither the search nor the criminal investigations have been successfully concluded.<sup>240</sup>

## 3.2 [Legal framework and institutions](#)

### 3.2.1 [Regarding enforced disappearances during the “Dirty War”](#)

#### I. Search and criminal investigation

The international community has repeatedly criticized Mexico’s failure to investigate crimes committed during the “Dirty War”, to provide reparation to victims and determine the fate and whereabouts of the disappeared.<sup>241</sup> Mexico’s reluctance to acknowledge both the practice of and responsibility for enforced disappearances during the “Dirty War” period posed crucial obstacles to truth-seeking and to the prosecution of offenders. In the late 1980s, one of the first efforts – which did not really target “doing justice”, but rather aimed at forgiving past violations – was the elimination of the prohibition of left-wing parties and the granting of an amnesty to those imprisoned during the “Dirty War”.<sup>242</sup> By the beginning of

<sup>234</sup> Similar to BiH, the total number of disappeared persons in Mexico is highly disputed. Up-to-date information can be found in the [current register on the disappeared and missing \(no localizadas\) persons](#) (see chapter 3.2.4 for further explanation of the latter term). The numbers introduced in the RNPDO need to be examined carefully and with an understanding that certain figures may be misleading in the sense that they do not provide any detailed information on whether the persons found had disappeared due to a crime, were actually missing (no localizada) or any other reason, including voluntary absence.

<sup>235</sup> This number includes all persons who disappeared from 15 March 1964 onwards and remain disappeared on 9 January 2021.

At 11 a.m. CET time of 9 January 2021, the number of persons who went missing (no localizadas) or disappeared in Mexico between 10 a.m. (Mexico City time) on 15 March 1964 and 3.50 a.m. (Mexico City time) on 9 January 2021 amounts to 201,234. Almost 60 percent of them were found, and in 94 percent of the cases, the missing (no localizada) or disappeared person were found alive.

<sup>236</sup> Karla I. Quintana Osuna, “[Hacia una reforma integral de justiciar](#)”, Animal Político, December 2020.

<sup>237</sup> Data gathered through interview, 13 January 2021.

<sup>238</sup> An interesting observation is that until 11 January 2021, the CED issued 420 urgent actions for Mexico, the second highest number on the list of countries with the number of CED urgent actions, just after Iraq (leading with 491 urgent actions).

<sup>239</sup> See, e.g. HRCtee, ‘Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2750/2016’, UN Doc. CCPR/C/126/D/2750/2016, 13 September 2019, paras 10. and 11 for the specification of the measures Mexico ought to take in order to provide effective remedy for the victims. See also OHCHR, “[Mexico responsible for disappearances involving state authorities allegedly linked to organized crime groups, say UN human rights experts](#)”, August 2019; IACtHR, “[México es responsable por desapariciones forzadas ocurridas en el marco de labores de seguridad ciudadana](#)”, Comunicado Corte IDH\_CP-56/18, December 2018.

<sup>240</sup> For further information on the case of Ayotzinapa, see chapter 3.2.6 of this study.

<sup>241</sup> See, e.g. OHCHR, “[México: Expertas y expertos de la ONU lamentan impunidad por crímenes de la llamada “guerra sucia”](#)”, November 2019.

<sup>242</sup> The [Amnesty Law](#) was adopted in 1978 and abrogated in 2015.



the 1990s, the human rights movement was getting stronger in Mexico thanks to the efforts made by civil society, the National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH)<sup>243</sup> and the official visits of the IACHR<sup>244</sup> to Mexico. When Vicente Fox became president in 2000,<sup>245</sup> the pressure and demands to address past violations triggered discussions on how to improve the human rights agenda.<sup>246</sup> The inclusion of the autonomous offense of enforced disappearance in the Mexican Federal criminal code in 2001 was one of the first steps taken to this end by domestic authorities.<sup>247</sup> However, it was said at the time that this provision could not be applied retroactively, i.e. for any enforced disappearance that took place before the provision entered into force.<sup>248</sup> Apart from the criminalization of enforced disappearance, other important developments included the ratification of the Inter-American Convention on Forced Disappearance of Persons in 2002<sup>249</sup> and of the Rome Statute of the ICC in 2005.

The first institution to “investigate” enforced disappearances from the “Dirty War” (without criminal investigative authority) was the CNDH, which engaged in this task since its establishment in 1990.<sup>250</sup> With the presentation of a CNDH report on enforced disappearances from the “Dirty War”,<sup>251</sup> a specialized office for the investigation of these crimes was eventually created in 2001.<sup>252</sup> According to the decree instructing the creation of the Special Federal Prosecutor’s Office for Social and Political Movements of the Past (*Fiscalía Especial para Movimientos Sociales y Políticos del Pasado*, FEMOSPP) within the Federal Prosecutor’s Office [(*Procuraduría General de la República*, PGR);<sup>253</sup> later reformed to become the Office of the Attorney General of the Republic (*Fiscalía General de la República*, FGR)],<sup>254</sup> the main task of the FEMOSPP was to investigate Federal crimes perpetrated against political and social groups (in practice, this meant that crimes committed by a state’s security forces could not be subjected to investigation).<sup>255</sup> The FEMOSPP was also not mandated to press charges against any serving members of the military because this was still an exclusive power of military prosecutors at the time.

At the beginning, the FEMOSPP had potential for success due to its financial resources and access – albeit limited – to military archives. While its mandate went beyond the crimes committed during the “Dirty War” (e.g. it also included political killings in the 1980s),<sup>256</sup> the FEMOSPP decided to focus on cases

<sup>243</sup> The CNDH was created with the aim of overseeing the practices of different institutions in the State with respect to human rights, and raising public awareness on burning human rights issues, pressing the State authorities to react in case of abuses, etc. Since its creation, the CNDH has a special program for disappeared persons to “investigate” complaints on disappearances whenever they are allegedly committed by a public official or any authority at the Federal level. It also aims to strengthen public policies on the matter. Nonetheless, its powers remain limited in the sense that it is not a law-enforcing institution.

<sup>244</sup> The IACHR’s role goes beyond the national borders of Mexico, as it is in charge of monitoring human rights situations (this is only one of its many tasks) in the entire region within the Organization of American States.

<sup>245</sup> Vicente Fox was the first president not affiliated with the Institutional Revolutionary Party, the party in power in Mexico for over 70 years. Instead, Fox was a member of the right-wing party called “National Action Party”.

<sup>246</sup> Promotion of human rights was also part of Fox’s political campaign and efforts to gain the support of the left wing. Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 211.

<sup>247</sup> The decree, by which enforced disappearance was added as a crime to the then existing Federal criminal code, is available [here](#).

<sup>248</sup> Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 217.

While an in-depth analysis of (non-)retroactivity is beyond of the scope of this study, it is important to mention that the argument of non-retroactivity was used incorrectly by the Mexican authorities. Due to the continuous nature of enforced disappearance, in that the crime is ongoing until the fate and whereabouts of the forcibly disappeared are determined, a law entering in force later than the enforced disappearance initiated can be applied without violating the non-retroactivity principle.

<sup>249</sup> Upon ratification of this treaty, Mexico issued two reservations. The first one concerned the provision establishing the incompetence of military courts to adjudicate cases of enforced disappearance (Art. IX) and the second one related to the understanding of the temporal application of the Convention (in the opinion of Mexico, the Convention was only applicable to enforced disappearances committed after the Convention was ratified by Mexico). In 2014, Mexico withdrew both reservations.

<sup>250</sup> CNDH México, “[Creación de la Comisión Nacional de los Derechos Humanos](#)”.

<sup>251</sup> Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 213.

<sup>252</sup> This office started to operate effectively in 2002, when the specialized prosecutor was appointed. *Ibid.*, pp. 214-215.

<sup>253</sup> The PGR was at that time still part of the executive power in Mexico and the authority in charge of prosecuting all crimes against Federal order. It was led by the Federal Prosecutor (*Procurador Federal de la República*) and it consisted of the Federal Public Ministry and various auxiliary organs, e.g. investigative police and different experts.

<sup>254</sup> There is no unique approach towards translation of the PGR and the FGR to English. Sometimes “Federal Prosecutor’s Office” is used for the PGR, and on other occasions for the FGR. The same occurs in English sources referring to the FGR, which tends to be translated as both the Office of the Attorney General of the Republic and the Federal Prosecutor’s Office. Thus, the terminology adopted in this study should be regarded with a certain level of flexibility and understanding that the same institution might be translated to English differently.

<sup>255</sup> Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 215.

<sup>256</sup> Data gathered through written observations, 1 February 2021.

which had received more attention because of their gravity (e.g. the two massacres of Tlatelolco and Corpus Christi).<sup>257</sup> Various indictments were filed against high-profile State agents including the former President of Mexico but none of them reached trial.<sup>258</sup> In the charges, the FEMOSPP opted for “unlawful deprivation of liberty” instead of “enforced disappearance”, mostly due to the prohibition of the allegedly retroactive application of the law.<sup>259</sup> In November 2006, the FEMOSPP was closed.<sup>260</sup> Since its closure, no other specialized authority has been established in order to investigate enforced disappearances from the “Dirty War”. The IACtHR issued a judgment concerning one case of enforced disappearance perpetrated during that period and found Mexico internationally responsible.<sup>261</sup>

While no information on how the FEMOSPP interacted (if at all) with the families of the disappeared could be found, the latter were among the first ones to pool their efforts in the search for their relatives in Latin America. The first organized family association in Mexico was the Committee ¡Eureka! (*Comité ¡Eureka!*) formed in 1970, mostly by the mothers of the disappeared, with the intention of pressing State authorities to clarify what had happened to the disappeared and to unite forces in the search.<sup>262</sup> According to information from 2013, the organization succeeded in the search in 148 cases,<sup>263</sup> while the struggle for the rest of the disappeared continues until today.<sup>264</sup>

After the FEMOSPP closed, all pending and unresolved cases were transferred to the General Coordination for Investigation (*Coordinación General de Investigación*) of the PGR.<sup>265</sup> Since then, not much information is available on the activities pursued by the General Coordination for Investigation.<sup>266</sup> It is, however, certain that it is still operating and that the “Dirty War” cases are still its responsibility.<sup>267</sup>

## II. Measures of reparation

In Mexico, the path to reparation might require the involvement of the search and investigative institutions (or both), and is thus directly relevant for coordination. For example, Mexican legislation provides for the possibility to obtain compensation in addition to a criminal conviction.<sup>268</sup> Regarding the cases from the

<sup>257</sup> Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), p. 216.

<sup>258</sup> As mentioned previously, there is one exception: a single sentence for a crime perpetrated during the “Dirty War” was issued in 2009 (after the closing of the FEMOSPP). The first steps with respect to this case were taken by the FEMOSPP.

It is suggested that while the FEMOSPP conducted hundreds of investigations concerning enforced disappearances from the “Dirty War”, only 14 investigations reached the trial stage. Data gathered through written observations, 1 February 2021. See also PGR, “[Oficio Número DGPPVCI/DV/0114/2015](#)”, 26 February 2015.

<sup>259</sup> However, in 2004 the Supreme Court of Mexico issued a decision confirming the continuous nature of enforced disappearance and the relevance of new criminal legislation, according to which enforced disappearance was already a Federal crime, for enforced disappearances that occurred before 2001. The court asserted that it was lawful to use the definition of enforced disappearances because the bodies of the disappeared were not yet found. Supreme Court of Justice, *Tesis Jurisprudencial 49/2004*, Ruling of 29 June 2004.

<sup>260</sup> The reasons for the closure of the FEMOSPP are not entirely clear. One of the interviewees suggested that the closure occurred as a result of a political decision. As for the reasons for the failure to achieve any results in its work, González-Ocantos has suggested that the FEMOSPP failed to succeed due to the very formalistic interpretation of the law by the Mexican judiciary (resulting in an unwillingness to adopt a human rights-based approach) and a rather limited legal strategy of FEMOSPP prosecutors. Ezequiel A. González-Ocantos, “Mexico: An Untamed Judiciary and the Failure of Criminal Prosecutions”, *Shifting Legal Visions* (Cambridge University Press 2016), pp. 219-223.

<sup>261</sup> *Radilla-Pacheco v Mexico*, Judgment, IACtHR Series C No. 168 (23 November 2009). This case is of crucial importance for many reasons, one of them being its reference to the mandatory nature of the jurisprudence of the IACtHR for Mexico. Another important aspect of the IACtHR’s judgment is that it affirms the right of any victim to use *amparo* (commonly referred to as constitutional protection lawsuit) to intervene in criminal investigations or trials whenever authorities violate human rights in one of these two processes.

<sup>262</sup> For more details on the work and achievements of the Comité ¡Eureka!, see Alfonso Díaz Tovar, “Prácticas de Conmemoración de la Guerra Sucia en México”, *Athenea Digital. Revista de Pensamiento e Investigación Social*, Vol. 15, No. 4, diciembre de 2015.

<sup>263</sup> Alberto Najar, “[La incansable buscadora de desaparecidos en México](#)”, BBC News, October 2013.

<sup>264</sup> Museo casa de la memoria indomita, “[A más de 40 años de buscar, Comité Eureka exige a Gobernación saber paradero de sus desaparecidos](#)”, May 2017.

<sup>265</sup> According to the information submitted by Mexico to CED in 2014, 569 cases were transferred from the FEMOSPP to the Office of the General Coordination for Investigation. CED, “Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention. Reports of States parties due in 2012: Mexico”, UN Doc. CED/C/MEX/1, 17 April 2014, para. 42, fn. 12.

<sup>266</sup> In its report submitted to the HRCtee in 2018, Mexico claimed that the General Coordination for Investigation has made little progress with respect to enforced disappearances from the “Dirty War” (e.g. it has examined historical archives, informed the families of the disappeared on the status of investigations, etc.). HRCtee, “Sixth periodic report submitted by Mexico under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2015”, UN Doc. CCPR/C/MEX/6, 11 June 2018, para. 102.

The following speech also describes some achievements of the General Coordination for Investigation: PGR, “[Oficio Número DGPPVCI/DV/0114/2015](#)”, 26 February 2015.

<sup>267</sup> Data gathered through interview, 19 January 2021.

<sup>268</sup> ECOL, “[OHCHR – UN Office of the High Commissioner for Human Rights. United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico](#)”, Doc. No.1039023, March 2011.

“Dirty War”, the first step towards reparation were taken by the Interdisciplinary Committee for Reparation (Interdisciplinary Committee), which was created in 2001 within the Human Rights Unit of the Secretariat of the Interior, also referred to as Ministry of the Interior (*Secretaría de Gobernación, SEGOB*).<sup>269</sup> The Interdisciplinary Committee’s main task was to prepare proposals for measures of reparation for the families whose disappeared relatives were among the 275 “Dirty War” cases mentioned in the list of “accredited” enforced disappearances in the CNDH’s recommendation No. 26/2001,<sup>270</sup> while the Human Rights Unit of the SEGOB was in charge of monitoring and implementing such measures of reparation.<sup>271</sup> The Interdisciplinary Committee was composed of representatives of domestic institutions in Mexico and of the UN Office of the High Commissioner for Human Rights (OHCHR).<sup>272</sup> A special Trust Fund for the Fulfillment of Obligations in Human Rights Matters (*Fidecomiso para el Cumplimiento de Obligaciones en Materia de los Derechos Humanos*, Trust Fund) was then created for the purposes of the work of the Interdisciplinary Committee in 2012 to grant pecuniary compensation in cases where measures of reparation had been ordered by the IACtHR, and later (in 2014) also for certain cases from the “Dirty War”.<sup>273</sup>

The Interdisciplinary Committee has been repeatedly criticized as ineffective in practice (e.g. as of 2011, it still lacked guidelines on how to deliver reparation).<sup>274</sup> In fact, it is unknown what the achievements of this Interdisciplinary Committee are and how many measures of reparation from the Trust Fund have been granted in total.<sup>275</sup> There is also no clarity on whether the Interdisciplinary Committee and the Trust Fund still operate and, if this is the case, how the Interdisciplinary Committee coordinates its work with the Executive Commission of Support to Victims (*Comisión Ejecutiva de Atención a Víctimas, CEAV*).<sup>276</sup> The assumption is, however, that the CEAV has taken over the responsibility to grant reparation and provide different measures of support (e.g. related to health, wellbeing, education) for all cases of the “Dirty War”.<sup>277</sup>

According to the information obtained through interviews, the CEAV included the names of many persons disappeared during the “Dirty War” in its register,<sup>278</sup> who were for some time entitled to receive financial support (not in the sense of reparation, but rather as measures of provisional support for daily expenses, e.g. alimentation, payment of rent, etc.). Eventually the CEAV withdrew its support, which was highly

<sup>269</sup> WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 61.

<sup>270</sup> WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. 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, response of the government, para. 107.

For details on the Recommendation 26/2001, see CNDH, “Recomendación 26/2001”, 27 de noviembre de 2001.

<sup>271</sup> CED, “Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention”, UN Doc. CED/C/MEX/CO/1/Add.2, 6 April 2018, para. 81.

<sup>272</sup> CED, “Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention. Reports of States parties due in 2012: Mexico”, UN Doc. CED/C/MEX/1, 17 April 2014, para. 44.

<sup>273</sup> The rules on the functioning of this Trust Fund are available [here](#).

For the description of the Trust Fund’s mandate, see CED, “Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention”, UN Doc. CED/C/MEX/CO/1/Add.2, 6 April 2018, paras. 84-90.

<sup>274</sup> For a critical appraisal of the Interdisciplinary Committee, see WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 62.

<sup>275</sup> In 2018, Mexico held that financial compensation was awarded to 56 persons. CED, “Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention”, UN Doc. CED/C/MEX/CO/1/Add.2, 6 April 2018, para. 83. According to data gathered through interviews, measures of reparation were granted in 145 cases out of 275 identified in the CNDH’s Recommendation 26/2001.

<sup>276</sup> The language used in the CNDH press release in 2019, which at no point mentions the role of the Interdisciplinary Committee of the SEGOB, suggests that this group most likely does not exist anymore, and its tasks have been fully assumed by the CEAV. CNDH, “[Reconoce CNDH el plan de reparación a víctimas de la “guerra sucia”, que atiende las propuestas de la recomendación 26/2001 y el informe especial sobre desaparición de personas y fosas clandestinas de este organismo nacional](#)”, Press Release No. DGC/046/19, February 2019. This could also be deducted from the language used by Mexico in 2018, when it declared that the Unit for the Promotion and Defense of Human Rights of the SEGOB is in contact with victims from the “Dirty War” and helps them in their efforts to obtain reparation. CED, “Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention”, UN Doc. CED/C/MEX/CO/1/Add.2, 6 April 2018, para. 88.

<sup>277</sup> Irene Álvarez, “[La guerra sucia y los pendientes de la CEAV](#)”, Animal Político, June 2019.

See also the [CEAV’s collective plan for measures of reparation regarding the cases from the “Dirty War”](#).

<sup>278</sup> For more detail on the CEAV register, see chapter 3.2.4.

criticized by the relatives of the disappeared.<sup>279</sup>

In 2019, the CEAV, together with the government of Guerrero (the state most affected by enforced disappearances during the “Dirty War”)<sup>280</sup> introduced a plan on measures of reparation for all those affected by different crimes of the “Dirty War”, including measures of satisfaction and compensation.<sup>281</sup> This plan is yet to be implemented and thus remains a matter of concern.<sup>282</sup>

In 2020, the CNDH announced the creation of a special office in charge of determining what happened with the cases of enforced disappearances from the “Dirty War”.<sup>283</sup> However, until February 2021, there does not seem to be any progress in this regard.

The Harmonized Search Protocol (*Protocolo Homologado de Búsqueda*, PHB) providing the legal basis for the creation of a special group in charge of solving cases from the “Dirty War” within the CNB. This can be seen as an important development.<sup>284</sup> As of February 2021, such a group exists and has in fact started its work even prior to the adoption of the PHB.<sup>285</sup>

### 3.2.2 Prior to the General Law on Disappearances

Between 2001 and 2018, there was no systematic and integral approach in addressing cases of enforced disappearance that would comprehensively deal with all aspects of investigations, search, exhumations, identifications, measures of reparation or coordination between Federal and state authorities. There was neither consistency nor clarity on how the search was to be carried out effectively at the Federal or state levels. The investigation and the search for disappeared persons were both entrusted to the prosecutors’ offices (and to the institutions that supported their work, e.g. the police). Dedicated groups for the search were created only in a few states.<sup>286</sup>

#### I. Crime of enforced disappearance

The complicated legal system and the division of powers between Federation and states have had an important impact on the regulatory developments concerning the crime of enforced disappearance. Since there are 32 states next to the Federation, the general rule is that legislative and judicial powers are assigned to both Federal and state authorities.<sup>287</sup> However, there are certain matters that are under the exclusive jurisdiction of the Federation, curbing state legislative and judicial powers.<sup>288</sup> For example, a

<sup>279</sup> Fabiola Martínez and Fernando Camacho, “[Familiares de desaparecidos celebran renuncia de Mara Gómez a CEAV](#)”, La Jornada, June 2020.

Some of the steps taken by the CEAV with regard to the events related to the “Dirty War” are described [here](#).

<sup>280</sup> EFE, “[México crea plan de atención y reparación a víctimas de violencia del pasado](#)”, February 2019.

<sup>281</sup> Melissa Galván, “[A casi 50 años de la “guerra sucia”, México inicia plan de reparación del daño](#)”, Expansión política, February 2019. See also the official press release: Gobierno de México, “[CEAV presenta Plan de Atención y Reparación a las Víctimas de la Violencia Política del Pasado, en Atoyac de Álvarez, Guerrero](#)”, No. 003, February 2019.

<sup>282</sup> For a description of how the implementation of the CEAV’s plans with regard to victims of the “Dirty War” is failing, see Irene Álvarez, “[La guerra sucia y los pendientes de la CEAV](#)”, Animal Político, June 2019.

<sup>283</sup> See the CNDH press release from January 2020: CNDH, “[Crea Presidenta de CNDH Oficina Especial para Investigar Represión y Desapariciones Forzadas por Violencia Política del Estado durante el pasado reciente, y subraya que conocer la verdad es necesidad imperante, obligación ética y deuda histórica](#)”, Press Release DGC/006/2020, January 2020.

<sup>284</sup> Para. 324 of the PHB.

The obligation to adopt special search policies regarding disappearances of persons linked with certain political movements also flows from Art. 53(XXXI) of the General Law on Disappearances.

<sup>285</sup> Data gathered through interview, 10 August 2020.

<sup>286</sup> An example of such a group is the Immediate Search Group established in Nuevo León in 2014. The group’s work had a reputation of good practice because of their timely and effective response to disappearances. They were established by the prosecutor’s office of Nuevo León and composed of one official, six representatives from the Prosecution Service and three clerks. CED, “List of issues in relation to the report submitted by Mexico under article 29, paragraph 1, of the Convention. Replies of Mexico to the list of issues”, UN Doc. CED/C/MEX/Q/1/Add.1, 8 April 2015, para. 85.

See also the [report](#) prepared by this Immediate Search Group 1 year after its creation.

It has been suggested that the Nuevo León Immediate Search Group served as a model for the current specialized mechanisms for the search. Data gathered through written observations, 9 February 2021.

<sup>287</sup> In addition to the Federation, each state has its own constitution and laws. Each state has also its prosecutor’s office (now called attorney general’s office), which can investigate and prosecute crimes at the state level. As for the judicial authorities, the Federation’s highest court is the Supreme Court of Justice of the Nation (usually referred to as the Supreme Court of Justice), and the states’ highest courts have a function similar to that of the Supreme Court of Justice.

<sup>288</sup> After the WGEID carried out a visit to Mexico in 2011, it became clear that the relationship of power between state and Federal authorities



crime that would normally fall in the competence of a state prosecutor has to be tried at the Federal level when it is linked to an offense that is exclusively under Federal jurisdiction.<sup>289</sup> This is important for an understanding of the effects of the criminalization of enforced disappearance in 2001 at the level of the Federation (Art. 215(a) of the Federal Criminal Code). The provision was formulated as follows (unofficial translation):

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*“Any public servant who, regardless of whether he or she has been involved in the legal or illegal detention of a person or persons, abets or wrongfully maintains their concealment under any form of detention shall be guilty of the offense of enforced disappearance.”*

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After this provision was adopted, certain states decided to criminalize enforced disappearance in their own criminal codes, while others did not regulate the matter.<sup>290</sup> Some states also decided to adopt a different definition of the crime. The process of inclusion of the autonomous crime of enforced disappearance in the legislation of the different states was lengthy and depended on the will of each state.<sup>291</sup> What is more, Art. 215(a) has been repeatedly criticized by the international community because organized crime has allegedly been one of the main causes for disappearances in recent years and in many cases the perpetrator is not a public official or the crime is only supported, authorized or acquiesced by a public official.<sup>292</sup> The provision was eventually found at odds with international law by the IACtHR, in the judgment issued in the case *Radilla-Pacheco v. Mexico*.<sup>293</sup> Although the IACtHR ordered Mexico to amend the provision and bring it in line with international standards,<sup>294</sup> Art. 215(a) remained unchanged until 2017.

At the Federal level, the information available suggests that the first authority in charge of investigating cases of enforced disappearances post-FEMOSPP was a department of the PGR, namely the Deputy Federal Prosecutor's Office (nowadays Deputy Attorney General's Office) Specialized in Investigation of Organized Crime (*Subprocuraduría Especializada en Investigación de Delincuencia Organizada*, SEIDO).<sup>295</sup> In its work, the SEIDO was obliged to comply with the Protocol for Action concerning investigations (*Protocolo de Actuaciones relativo a las investigaciones*). In 2013, the first Unit Specialized in the Search for Disappeared Persons (*Unidad Especializada de Búsqueda de Personas Desaparecidas*, UEBPD) was created within the PGR for the search of forcibly disappeared persons; this time under the department of the Deputy Federal Prosecutor's Office (later called Deputy Attorney General's Office) for Human Rights, Crime Prevention and Community Services (*Subprocuraduría de Derechos Humanos, Prevención del Delito y Servicios a la Comunidad*, SDHPDSC).<sup>296</sup> This Unit was to conduct investigations and to search for forcibly disappeared persons in coordination with other entities involved in the search (including state prosecutors). In 2015, the UEBPD was replaced by the Federal

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was not so straightforward. For example, while state institutions claimed that the Federation was responsible for all matters related to security, including organized crime or abductions, the Federation held that there were certain tasks with respect to enforced disappearance that fall solely under the competence of the states. WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 12. This was clarified at a later stage by explaining that the investigation and prosecution of Federal offenses are the sole responsibility of the PGR (nowadays FGR).

<sup>289</sup> E.g. because Federal agents are involved in the commission of a crime.

<sup>290</sup> Amnesty International, “Submission to the UN Committee on Enforced Disappearances. 8<sup>th</sup> Session, 2-13 February 2015”, 2015, p. 5-6.

<sup>291</sup> The states that did not codify enforced disappearance as an autonomous offense in their criminal codes were using alternative provisions concerning abduction, illegal deprivation of liberty, homicide and abuse of authority. Data gathered through various interviews.

<sup>292</sup> See, e.g. Amnesty International, “Submission to the UN Committee on Enforced Disappearances. 8<sup>th</sup> Session, 2-13 February 2015”, 2015, p. 5.

<sup>293</sup> *Radilla-Pacheco v Mexico*, Judgment, IACtHR Series C No. 168 (23 November 2009), paras. 319-324.

<sup>294</sup> *Ibid.*, para. 344.

<sup>295</sup> This paragraph is based on information gathered during various interviews and the documents regarding Mexico prepared by the CED, the WGEID and TRIAL International.

<sup>296</sup> See decision No. A/066/13 of the PGR, dated 21 June 2013. Pursuant to this decision, it was the UEBPD who would direct, monitor and coordinate all activities concerning the investigation and search for the disappeared person concerned. CED, “Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention. Reports of States parties due in 2012: Mexico”, UN Doc. CED/C/MEX/1, 17 April 2014, para. 153.

See chapter 3.2.3 for more detail on the department which replaced SDHPDSC.

Prosecutor's Office Specialized in the Search for Disappeared Persons (*Fiscalía Especializada para la Búsqueda de Personas Desaparecidas*, FEBPD).<sup>297</sup> Its mandate was practically the same as that of the UEBDP. Among the FEBPD's tasks, there were also forensic investigations, prosecution of crimes related to the enforced disappearance of persons, informing families of the progress of investigations, requesting exhumations and coordination with all other competent bodies in order to make the search more efficient.<sup>298</sup> In its work, the FEBPD had to comply with the Harmonized Protocol for the Search for Disappeared Persons and the Investigation of the Crime of Enforced Disappearance (*Protocolo Homologado para la Búsqueda de Personas Desaparecidas e Investigación del Delito de Desaparición Forzada*) adopted in 2015.<sup>299</sup>

## II. Constitutional reforms

Two events potentially triggered the amendment of Art. 215(a): the ratification of the ICPED by Mexico in 2008 and the decision to grant constitutional status to all ratified human rights treaties in 2011.<sup>300</sup> The latter is known as the Constitutional Reform on Human Rights. It enabled an easier implementation of IHRL treaties in Mexico including the ICPED.<sup>301</sup> Also in 2011, the possibility to refer to *amparo* proceedings in cases where IHRL was violated was provided in the frame of a constitutional reform. It was confirmed with the adoption of a new Amparo Law (*Ley de Amparo*) in 2013.<sup>302</sup>

Since the beginning, the key function of *amparo* is to serve as a tool to control the constitutionality of any activity undertaken by State authorities. Moreover, *amparo* is used as a remedy of urgent appeal for anyone who claims that his or her rights have been violated. Prior to 2013, the existence of *amparo* was seen as important for disappearances because of the lack of remedies such as *habeas corpus* when rights to liberty or personal integrity were violated (in fact, *amparo* was seen as a type of *habeas corpus*).<sup>303</sup> At the time, *amparo* could not be used to claim the enforced disappearance of a person; instead, the legal strategy was to refer to the violations related to the fact that someone was held *incommunicado*.<sup>304</sup> However, for these cases *amparo* proved to be inefficient because to grant the remedy, judges often requested the families to identify perpetrators and/or the location where the disappeared was being held (which is hardly possible in the cases of enforced disappearance).<sup>305</sup> Further, prior to 2013, only "direct victims" were entitled to *amparo*,<sup>306</sup> while the new Law provided for the possibility to refer to *amparo* for anyone claiming that his or her individual or collective rights had been violated.<sup>307</sup>

However, from 2013 onwards, the purpose of *amparo* in Mexico was not only to assess whether acts and omissions of State institutions violated the constitution, but also IHRL.<sup>308</sup> The Amparo Law also explicitly refers to the possibility of using *amparo* for cases of alleged enforced disappearance.<sup>309</sup> Despite the

<sup>297</sup> *Fiscalía* is translated here as the Federal Prosecutor's Office because it was created before the PGR reform.

<sup>298</sup> CED, "List of issues in relation to the report submitted by Mexico under article 29, paragraph 1, of the Convention. Replies of Mexico to the list of issues", UN Doc. CED/C/MEX/Q/1/Add.1 8 April 2015, para. 93.

<sup>299</sup> The Harmonized Protocol for the Search for Disappeared Persons and the Investigation of the Crime of Enforced Disappearance is available [here](#).

<sup>300</sup> By having constitutional status, international human rights treaties could be directly invoked in court.

<sup>301</sup> For more details on this constitutional reform, see Carlos Cerda Dueñas, "Incorporating International Human Rights Standards in the Wake of the 2011 Reform of the Mexican Constitution", Sur, No. 19, December 2013.

<sup>302</sup> The Amparo Law is available [here](#).

<sup>303</sup> TRIAL International and others, "¡Desaparición forzada también es tortura! Informe alternativo al Comité contra la Tortura con respecto a los informes periódicos quinto y sexto combinados de México", mayo de 2012, para. 72.

*Habeas corpus* is meant to protect from unlawful imprisonment. The writ for *habeas corpus* requires that the detained person is brought in court for the judge to decide if a detention is lawful.

<sup>304</sup> Data gathered through written observations, 1 February 2021.

<sup>305</sup> WGEID, "Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico", UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 36.

<sup>306</sup> WGEID, "Report of the Working Group on Enforced or Involuntary Disappearances. 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. 95.

<sup>307</sup> *Ibid.*, see the response of the government.

See also some further details on the changes brought by the Amparo Law in: Norma Gutierrez, "[Mexico: New Amparo Law is Enacted](#)", Global Legal Monitor, May 2013.

<sup>308</sup> Art. 1o of the Amparo Law.

<sup>309</sup> See, e.g. Arts. 15, 159, and 202.

positive novelties brought by the Amparo Law, it has been subject to criticism for different reasons, e.g. because the only type of reparation that victims can receive on its basis is “restitution”, while rehabilitation, satisfaction and guarantees of non-repetition, which would be much more pertinent in cases of enforced disappearance, are not foreseen.<sup>310</sup>

### III. The National Victims System

Until 2011, there was no comprehensive policy regarding measures of reparation and no dedicated program beyond the context of the 275 cases from the “Dirty War” (described earlier).<sup>311</sup> The WGEID stated in this respect that it “appears that there is no vertical and horizontal coordination” concerning the measures of reparation, investigation, prevention and punishment “among Federal, local and municipal levels[,] neither within the same level of government”.<sup>312</sup>

The adoption of the General Law on Victims (*Ley General de Víctimas*) in 2013 marked an important step forward.<sup>313</sup> This law sets forth victims’ rights and the corresponding procedures, including the establishment of a victims register, the right to appoint a victims counsel and the allocation of State funds to provide measures of reparation.<sup>314</sup> It also regulates other issues such as the meaning of the term “victim”,<sup>315</sup> the recognition of victims’ right to reparation, as well as the right to preventive and precautionary measures in favor of victims during investigation and prosecution.<sup>316</sup> As of February 2021, not all states have fully implemented this law. In 2014, the National Victims System (*Sistema Nacional de Atención a Víctimas*) together with the CEAV were established on the basis of the General Law on Victims.<sup>317</sup>

The CEAV is a mechanism established within the SEGOB and was foreseen as an institution with a representation of civil society organizations as well as victims. Its tasks are, *inter alia*, guaranteeing victims’ participation in the National Victims System, offering legal and psychological support to victims, immediate support<sup>318</sup> and granting measures of reparation to anyone who has suffered gross violations of human rights, including enforced disappearance. Originally, these CEAV activities were financed through the Fund for Aid, Assistance and Comprehensive Reparation (*Fondo de Ayuda, Asistencia y Reparación Integral*) which changed in 2020, when the elimination of this Fund was approved by the Senate.<sup>319</sup>

### IV. Alba and Amber Protocols

The Alba Protocol, which concerns situations where girls and women are abducted or subjected to disappearance and immediate and coordinated search efforts must be implemented by the authorities at all levels, was first enforced in Mexico in 1993, in Ciudad Juárez.<sup>320</sup> In order to comply with the IACtHR’s judgment *González et al. (“Cotton Field”) v. Mexico*, the Protocol was eventually adjusted and its implementation has been extended to some other states in 2012.<sup>321</sup> The same year, the Mexican Federal

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Pursuant to Art.15, in all presumed cases of enforced disappearance, the judge must proceed with *amparo* within 24 hours, order the suspension of violations and instruct authorities to submit information, which could assist in locating and liberating the disappeared person(s).

<sup>310</sup> TRIAL International and others, “Denuncia general dirigida al Grupo de Trabajo sobre las desapariciones forzadas o involuntarias sobre los obstáculos encontrados por las víctimas de desaparición para acceder a medidas relativas a la asistencia social y obtener reparación”, noviembre de 2016, paras. 26-29.

<sup>311</sup> In 2011, the WGEID expressed concern because it could not find a single civil law decision on granting reparation to families. ECOI, “OHCHR – UN Office of the High Commissioner for Human Rights. United Nations Working Group on Enforced or Involuntary Disappearances concludes visit to Mexico”, Doc. No.1039023, March 2011.

<sup>312</sup> Ibid.

<sup>313</sup> The General Law on Victims is available [here](#).

<sup>314</sup> Arts. 44, 168 and 26 of the General Law on Victims.

<sup>315</sup> Art. 6(XIX) of the General Law on Victims. The recognition of the status of victims is a precondition for obtaining support and access to measures of reparation.

<sup>316</sup> Arts. 2(I) and 60(II, III) of the General Law on Victims.

<sup>317</sup> The decree establishing the CEAV is available [here](#).

<sup>318</sup> Such immediate support is meant to be provisional. CEAV, “Modelo Integral de Atención a Víctimas”, Primera Edición, 2015, pp. 26-27.

<sup>319</sup> Sididh\_master, “Advierten que eliminación de fideicomisos pone en riesgo vidas de víctimas”, October 2020.

The activities of the CEAV are now part of the general administrative budget. Data gathered through interview, 27 January 2021.

<sup>320</sup> Rubén Villalpando, “Entra en vigor Protocolo Alba en todo México”, La Jornada, July 2012.

<sup>321</sup> Data gathered through written observations, 1 February 2021.



government launched Amber Alert for the immediate search for missing and disappeared minors.<sup>322</sup>

## V. The National Human Rights Commission

Since 1992, the work of the CNDH is regulated by a special Law of the National Human Rights Commission (*Ley de la Comisión Nacional de los Derechos Humanos*, Law of the CNDH).<sup>323</sup> Pursuant to this law, the CNDH has different competences, such as to receive and “investigate” (not in the sense of a criminal investigation) cases of presumed violations of human rights,<sup>324</sup> to file complaints before the competent domestic authorities, to promote human rights in the country, etc.<sup>325</sup> Since 1990, the CNDH has a special program called Program for the Presumably Disappeared (*Programa de Presuntos Desaparecidos*), whose goal is to “investigate” the complaints regarding enforced disappearances presumably involving the participation of any authority or a Federal public official. In the framework of this Program, the CNDH has created a special database called “National Information System on Unidentified Missing (*extraviadas*)<sup>326</sup> and Deceased Persons” (*Sistema de Información Nacional de Personas Extraviadas y Fallecidas No Identificadas*, SINPEF).<sup>327</sup>

### 3.2.3 [After the General Law on Disappearances](#)

As explained above, the conduct of criminal investigations and searches for disappeared persons was originally assigned to the same institution in Mexico; prosecutors’ offices had to perform both tasks simultaneously. There was no legislation dealing with the search for disappeared persons specifically, and the norms and standards applied for investigations and the search were essentially the same.<sup>328</sup> After lengthy consultations between Federal and state institutions, relatives of disappeared persons, civil society organizations, NGOs and international institutions,<sup>329</sup> a major change came with the General Law on Enforced Disappearance of Persons, Disappearance Perpetrated by Private Individuals and the National Search System (*Ley General en Materia de Desaparición Forzada de Personas, Desaparición Cometida por Particulares y del Sistema Nacional de Búsqueda de Personas*, General Law on Disappearances) adopted in 2017, and entered into force in January 2018.<sup>330</sup> The revolutionary change brought by this law was the partial separation of the search and criminal investigation concerning disappeared persons in two processes, meaning that they were entrusted to different institutions.<sup>331</sup>

The General Law on Disappearances provides for the following definitions of the two offenses at stake (unofficial translation):<sup>332</sup>

<sup>322</sup> The Amber Advocate, “[Fiscal de los Estados Unidos trabaja en México para ayudar a todos los países a utilizar con eficacia la Alerta AMBER](#)”.

<sup>323</sup> The Law of the CNDH is available [here](#).

<sup>324</sup> The CNDH cannot investigate complaints regarding the merits of judicial decisions. Art. 8o of the Law of the CNDH.

<sup>325</sup> For the full list of its competences, see Art. 6o of the Law of the CNDH.

The Law explicitly refers to the obligation/rights related to those whose fate is unknown (e.g. in Art. 25 on the eligibility to file a complaint on behalf of the disappeared).

<sup>326</sup> Even though direct translation of the term “*extraviada*” to English is “lost”, all official documents translate it as “missing”.

<sup>327</sup> CNDH, “[Informe Anual de Actividades 2019](#)”.

<sup>328</sup> In some states, certain aspects of the search for the disappeared were regulated by special laws. For example, the state of Coahuila adopted a [law on the regulation of forensic search, recovery and identification of mortal remains](#) in 2016. While its focus was on the criminal investigation, the law also foresaw some other obligations, relevant for the search process only.

<sup>329</sup> By providing technical assistance to the Mexican authorities, observing, putting pressure and providing recommendations, the institutions such as the OHCHR, the ICRC and the WGEID have directly and indirectly contributed to the elaboration of the General Law on Disappearances.

<sup>330</sup> The General Law on Disappearances is available [here](#).

The initiative for the establishment of a comprehensive law on disappearances in Mexico was launched much before the law was eventually adopted. For one such initiative, see WGEID, “Report of the Working Group on Enforced or Involuntary Disappearances. Mission to Mexico”, UN Doc. A/HRC/19/58/Add.2, 20 December 2011, para. 86.

<sup>331</sup> Even though the General Law on Disappearances does not explicitly mention that search and criminal investigations are assigned to two different institutions, this is implied in various provisions, e.g. Arts. 2 and 4 of the General Law on Disappearances.

<sup>332</sup> It is rather unfortunate that the General Law on Disappearances does not criminalize enforced disappearance as a CAH, given the widespread phenomenon of disappearance in Mexico. CED, “Follow-up observations on the additional information submitted by Mexico under article 29 (4) of the Convention”, UN Doc. CED/C/MEX/FAI/1, 6 September 2019, para. 3. The wording used by the CED could be interpreted as a suggestion that the broad dimension of enforced disappearances in Mexico reaches the threshold of CAH.

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### *Enforced disappearance*

*The offense of enforced disappearance of persons is committed by a public official or an individual who, with the authorization, support or acquiescence of a public official, deprives a person of liberty in any way, subsequently refraining from or refusing to acknowledge such deprivation of liberty or to provide information on that person or on his or her fate, location or whereabouts.*<sup>333</sup>

*Public official or an individual who, with the authorization, support or acquiescence of a public official conceals or refuses to provide information on the deprivation of liberty of a person or the whereabouts of a detained person or in any way conceals a detained person shall be subject to the penalty prescribed in article 30.*<sup>334</sup>

### *Disappearance committed by private individuals*

*The offense of disappearance committed by individuals is perpetrated by who deprives a person of his or her freedom in order to hide the victim or his or her fate or whereabouts. Whoever commits this crime is punished with deprivation of liberty between 25 and 50 years and a fine of four thousand to eight thousand days.*<sup>335</sup>

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## **I. Search and criminal investigation**

Based on the General Law on Disappearances, a National Search System was established. In this system, the CNB holds a key function.<sup>336</sup> The CNB is an administrative body of the SEGOB and thus a governmental institution.<sup>337</sup> While the SEGOB has an overall responsibility for implementing the General Law on Disappearances,<sup>338</sup> the CNB's key objective is to determine the fate and whereabouts of anyone who disappears in the Mexican territory, as long as she or he falls within the definition of "disappeared" (i.e. "any person whose whereabouts are unknown, and it is presumed, from circumstantial evidence, that his or her absence is the result of the commission of a crime").<sup>339</sup> By contrast, the term "missing person" (*persona no localizada*),<sup>340</sup> is defined as "the person whose whereabouts are unknown and whose absence is presumably not related to the commission of a crime".<sup>341</sup> The CNB is also the institution in

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<sup>333</sup> Art. 27 of the General Law on Disappearances.

<sup>334</sup> Art. 28 of the General Law on Disappearances.

<sup>335</sup> Art. 34 of the General Law on Disappearances.

<sup>336</sup> According to information provided by Mexico, the key institutions in the National Search System are the SEGOB, the Ministry of Foreign Affairs, the FGR, the CNB, the Executive Secretariat of the National Public Security System, the Federal Police (replaced by the National Guard in 2019), state search commissions and the three members of the National Citizen Council. How they coordinate their activities with the objective of implementing the General Law on Disappearances is their decision. CED, "Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention", UN Doc. CED/C/MEX/CO/1/Add.2, 6 April 2018, para. 19.

<sup>337</sup> Generally speaking, "administrative organ" is a vague concept in Mexico. In this context, it is used as opposed to "judicial organs" (i.e. any institution that does not deal with criminal investigation is an administrative organ), similarly to the relationship between the state offices of the attorneys general (formerly state prosecutors' offices) and search commissions.

<sup>338</sup> Art. 45(I) of the General Law on Disappearances.

<sup>339</sup> Art. 4(XV) of the General Law on Disappearances. This is subject to various exceptions. For example, if the person whose fate is unknown is a female or a minor, the investigation and the search must begin immediately, without having to presume any link with a crime. Art. 7 of the General Law on Disappearances.

<sup>340</sup> The General Law on Disappearances defines "missing person" as "*persona no localizada*", while prior to its adoption the terminology used was "*persona extraviada*" (in the former register for missing and disappeared persons). Supposedly, the reason for including the term "*persona no localizada*" instead of "*persona extraviada*" is that the meaning of the word is broader and more legally accurate, as it encompasses anyone whose fate and whereabouts are unknown for any reason. Conversely, "*persona extraviada*" gives the impression that the person has to be lost, and thus covers a narrower scope of situations, in which the persons whose fate and whereabouts are unknown can find themselves in. Data gathered through interview, 22 January 2020.

<sup>341</sup> Art. 4(XVI) of the General Law on Disappearances.

charge of managing the new register on disappeared and missing (*no localizadas*) persons and updating the PHB.<sup>342</sup>

Apart from the CNB, the General Law on Disappearances sets forth the establishment of 32 search commissions; one in every state.<sup>343</sup> By January 2021, the legal framework for the search commissions was adopted in all states.<sup>344</sup> However, not all states have appointed members to their search commission yet.<sup>345</sup> In some states, members have been appointed but the commissions have not yet started carrying out their work.<sup>346</sup>

The General Law on Disappearances also demands the creation of a National Citizen Council (*Consejo Nacional Ciudadano*), whose role is primarily advisory vis-à-vis the CNB, but also towards the other institutions of the National Search System.<sup>347</sup> The National Citizen Council members are relatives of the disappeared, experts from a variety of disciplines (e.g. forensic science) and human rights defenders. Bodies like the National Citizen Council must be formed also in each of the states.<sup>348</sup>

In addition, these are just a few of the most important novelties foreseen in the institutional apparatus set forth by the General Law on Disappearances:

- the PHB (already adopted);
- the Specialized Protocol for the Search for Children and Adolescents (*Protocolo Adicional de Búsqueda de Niños, Niños y Adolescentes*) (in the process of adoption);<sup>349</sup>
- the Amber Alert (already in existence prior to the General Law on Disappearances);
- the External Mechanism of Support for Search and Investigation (*Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación*, MAE) (established prior to the General Law on Disappearances and incorporated in the National Search System);
- the National Forensic Database (*Banco Nacional de Datos Forenses*) (to be created);
- the National Register on Mass and Clandestine Graves (*Registro Nacional de Fosas Comunes y de Fosas Clandestinas*) (to be created);
- the National Register of Deceased and Unidentified Persons (*Registro Nacional de Personas Fallecidas No Identificadas y No Reclamadas*) (to be created);
- the National Register of Disappeared and Missing Persons (*Registro Nacional de Personas Desaparecidas y No Localizadas*) (operational);
- the FGR (formerly PGR) (incorporated in the National Search System).

Specialized prosecutors' offices for disappearances to be created at the Federal and state levels are another innovation of the General Law on Disappearances.<sup>350</sup> To comply with this obligation, the PGR (at the time) replaced the FEBPD with the new Federal Prosecutor's Office (nowadays reformed to the Attorney General's Office) Specialized in the Investigation of Enforced Disappearances (*Fiscalía Especializada en Investigación de los Delitos de Desaparición Forzada*, FEIDDF) under the SDHPDSC 2018.<sup>351</sup> Likewise, each state has incorporated a specialized office for disappearances within the prosecutor's office. A new legal instrument regulating questions such as investigative criteria and

<sup>342</sup> Art. 53(II, IX) of the General Law on Disappearances.

<sup>343</sup> Art. 2(IV) of the General Law on Disappearances.

<sup>344</sup> Fiscalía General de la República, "[Blog](#)". The last one to create a state search commission was the state of Guanajuato. Boletines, "[Instala Guanajuato el Sistema Estatal de Búsqueda de Personas](#)", July 2020.

<sup>345</sup> With the exception of Oaxaca, where no search commissioner has been appointed yet, the rest of the state search commissions have at least one member. Data gathered through written observations, 9 February 2021.

<sup>346</sup> Data gathered through various interviews.

<sup>347</sup> Art. 59 of the General Law on Disappearances.

<sup>348</sup> The National Citizen Council has been established, while according to information acquired through interviews, only five citizen councils have been established in states (Veracruz, Tamaulipas, Zacatecas, Michoacán, and Mexico City) until 1 February 2021.

<sup>349</sup> The draft open for public consultation and comments can be found here: Comisión Nacional de Búsqueda, "[Proyecto de Protocolo Adicional para la Búsqueda de Niños, Niños y Adolescentes](#)", December 2020.

<sup>350</sup> Art. 68 of the General Law on Disappearances.

<sup>351</sup> CED, "Follow-up observations on the additional information submitted by Mexico under article 29 (4) of the Convention", UN Doc. CED/C/MEX/FAI/1, 6 September 2019, para. 24.

In 2019, the SDHPDSC was replaced by the Attorney General's Office Specialized in Human Rights (*Fiscalía Especializada en Materia de Derechos Humanos*, FEMDH). The agreement on the establishment of the FEMDH is available [here](#).

procedures for conducting investigations on crimes related to the disappearance of persons had to be adopted and is used since then for investigations of cases of disappearances. It is called the Harmonized Protocol for the Investigation of Crimes of Enforced Disappearance and Disappearance perpetrated by Private Individuals (*Protocolo Homologado para la Investigación del Delito de Desaparición Forzada de Personas y Desaparición Cometida por Particulares*).<sup>352</sup> At the Federal level, the Protocol cannot be applied retroactively, meaning that the FEIDDF only deals with cases of disappearances if they were, are or will be submitted to the PGR (at the time, nowadays FGR) from the date of its adoption onwards. All previous cases of disappearances remain with the PGR unit (nowadays FGR unit) they were assigned to prior to the adoption of the Protocol.<sup>353</sup> At the same time, the Protocol is not used for cases that are not qualified as disappearance (e.g. because the facts described suggest the commission of the crime of kidnapping, human trafficking, illegal deprivation of liberty, etc.). Such cases are assigned to other PGR units (nowadays FGR units) competent to investigate crimes that, on the basis of reported facts, appear to be committed. As for the criminal investigation in states, it is not entirely clear how the cases are assigned to the specialized offices of the prosecutors (nowadays state offices of the attorneys general for disappearances). It has been suggested that this is a matter of internal administration and each of the specialized offices of the prosecutors (at present, state offices of the attorneys general) would autonomously decide how to divide cases among different units.<sup>354</sup>

## II. Social benefits and measures of reparation

The CEAV has maintained a crucial role in assisting the victims of Federal crimes (i.e. offenses investigated and prosecuted by the FGR).<sup>355</sup> Apart from confirming the CEAV's role towards victims, the General Law on Disappearances also regulate certain administrative and civil rights of the families of disappeared persons, e.g. the release of a certificate of absence due to enforced disappearance or disappearance perpetrated by private individuals.<sup>356</sup> Families are entitled to request such a certificate three months after the disappearance occurs and they may do so by approaching any of the institutions in charge of receiving complaints (e.g. the CNDH).<sup>357</sup> If a request for such a certificate is submitted, the competent institution (the civil courts, to which complaints are transmitted)<sup>358</sup> must then issue the decision within six months. If the certificate is awarded, it has no effect on the obligations to search and conduct investigations.<sup>359</sup>

With regard to measures of reparation for disappeared persons and their families, the General Law on Disappearances establishes the right to integral reparation, which must be implemented in line with the General Law on Victims.<sup>360</sup> All states and the Federation have the obligation to provide reparation to victims of enforced disappearance (hence if the crime was committed by a State agent or with the tolerance, acquiescence or support of the State).<sup>361</sup> Nevertheless, the right to obtain reparation exists

<sup>352</sup> [The Harmonized Protocol for the Investigation of Crimes of Enforced Disappearance and Disappearance perpetrated by Private Individuals](#), replaced the Harmonized Protocol for the Search for Disappeared Persons and the Investigation of the Crime of Enforced Disappearance in 2018.

<sup>353</sup> Data gathered through written exchange, 19 January 2021.

<sup>354</sup> Data gathered through written observations, 9 February 2021.

For example, the specialized attorney general's office for disappearances in Nuevo León has been referred to as an example where all cases regarding disappeared persons are indeed assigned to this unit, while cases of other "similar" crimes, such as kidnappings, are investigated by a different unit.

<sup>355</sup> Art. 136 of the General Law on Disappearances.

<sup>356</sup> Arts. 142-149 of the General Law on Disappearances.

<sup>357</sup> Art. 144 of the General Law on Disappearances.

<sup>358</sup> Art. 142 of the General Law on Disappearances.

<sup>359</sup> Art. 148 of the General Law on Disappearances.

<sup>360</sup> Art. 151 of the General Law on Disappearances.

<sup>361</sup> Art. 152 of the General Law on Disappearances.

In reality, the CEAV is almost alone in the struggle to provide social support and measures of reparation to all victims of human rights violations in Mexico (both at the Federal and state levels) because states are not fully fulfilling their obligations in this respect. Thus, the situation, in which the CEAV finds itself has been described as alarming and "just before the collapse". Chamberlin Michael W., ["La CEAV: trepaca o colapso"](#), Animal Político, November 2020.

even in cases of disappearances perpetrated by private individuals, foreseeing a subsidiary compensation borne by the State.<sup>362</sup>

### III. The reform of the Federal Prosecutor's Office

Even though the reform of the PGR in 2018 did not occur as a result of the General Law on Disappearances, it had important consequences for its implementation.<sup>363</sup> This reform was part of a broader judicial reform, which began already in 2008 and included replacing the inquisitive criminal system with an accusatorial one.<sup>364</sup> To establish an autonomous judicial institution, Congress adopted an amendment to the Mexican Constitution in 2014.<sup>365</sup> In December 2018, the PGR separated from the executive branch and declared itself as an autonomous institution – the FGR (established in replacement of the PGR).<sup>366</sup> This was accompanied by the change of its title from “Federal Prosecutor” (*Procurador Federal de la República*) to “Attorney General” (*Fiscal General de la República*). The Attorney General was given a fixed-term appointment.<sup>367</sup> Supposedly, the reason for the reorganization of the PGR was the wish to distance itself from politics and its potential influence on the investigative authorities in Mexico.<sup>368</sup> Currently, the state offices of the attorneys general (formerly state offices of the prosecutors) are in the process of doing the same, i.e. separating themselves from the respective state government (this process has not yet been completed in all states).<sup>369</sup>

The FGR made reference to its constitutional autonomy in its most recent efforts to amend its Organic Law (*Ley Orgánica*).<sup>370</sup> The elimination of the FGR from the National Search System and derogation from various provisions of the General Law on Disappearances (e.g. Art. 68 on the obligation of joint efforts of investigative authorities to advance the search) are just two examples of the demands put forward by the FGR.<sup>371</sup> In its reaction to the FGR's suggestions, the CNB highlighted that the suggestions implied the negation of the right to be searched,<sup>372</sup> and would put the FGR in a superordinate position to other governmental administrative institutions.<sup>373</sup> While the reform suggested by the FGR is still under consideration and it remains to be seen whether it will be approved, it has received considerable attention from the international community. In this regard, several international human rights mechanisms have warned that the approval of the reform would constitute a step backward for the disappeared and their families.<sup>374</sup>

<sup>362</sup> Art. 152 of the General Law on Disappearances.

<sup>363</sup> The reform came with the adoption of the [Organic Law](#).

<sup>364</sup> Data gathered through written observations, 9 February 2021.

<sup>365</sup> *Ibid.*

<sup>366</sup> Art. 1 of the Organic Law.

<sup>367</sup> The reform also implied the autonomous budget of the FGR. Data gathered through written observations, 9 February 2021.

<sup>368</sup> Nevertheless, this justification seems highly unconvincing, given that the Attorney General is elected by Congress upon the recommendation of the President of Mexico. Data gathered through written observations, 9 February 2021.

<sup>369</sup> Data gathered through interview, 17 August 2020.

It has been suggested that the majority of states has already completed the process of separation from federal governments. Data gathered through written observations, 9 February 2021.

<sup>370</sup> Gobierno de México, [“Necesario abrir debate público sobre reforma integral en materia de justicia: Alejandro Encinas Rodríguez”](#), December 2020.

After the study was finalized, the Organic Law of the FGR was abrogated. In May 2021, the FGR published [a new law](#), which foresees major changes regarding the role of the investigative authorities in the National Search System. This law, which is available [here](#), stresses the autonomy of the FGR in the participation in the National Search System, without clarifying what precisely is meant by this. The CNDH announced its opposition towards the changes foreseen in the new law, and its plan to claim unconstitutionality of legal provisions before the Supreme Court of Justice. Redacción La Jornada, [“CNDH prepara acción de inconstitucionalidad contra ley de la FGR”](#), May 2021.

<sup>371</sup> Redacción Animal Político, [“Propuesta de reforma niega derechos a víctimas y quita responsabilidades a FGR: Comisión de Búsqueda”](#), December 2020.

<sup>372</sup> Twitter, [“Comisión Nal. de Búsqueda Mx”](#).

<sup>373</sup> *Ibid.*

For a critical analysis of the FGR's suggestions, see the following blogpost: Karla I. Quintana Osuna, [“Hacia una reforma integral de justicia”](#), Animal Político, December 2020.

<sup>374</sup> See, *inter alia*, Gloria Leticia Díaz, [“ONU-DH alerta retroceso para víctimas si se aprueban modificaciones a Ley Orgánica de la FGR”](#), Proceso, January 2021; Latinus, [“ONU rechaza proyecto de ley de FGR; ‘implicaría un retroceso en búsqueda de desaparecidos’, alerta”](#), January 2021; Sun, [“La ONU alerta retroceso para víctimas con nuevo proyecto de ley de la FGR”](#), January 2021.



#### IV. Forensic crisis

The increasing number of unidentified bodies stored in mortuaries for ages has eventually revealed the state of a so-called forensic crisis in Mexico.<sup>375</sup> The reasons for this forensic crisis are manifold: high workload; limited material conditions in which the forensic experts are to conduct their work and limited availability of technical capacities.<sup>376</sup> While the Argentinian Forensic Anthropology Team (*Equipo Argentino de Antropología Forense* – EAAF), the Guatemalan Forensic Anthropology Team (*Fundación de Antropología Forense de Guatemala* – FAFG) and the ICMP have continuously assisted Mexican institutions in their forensic efforts over the past years, their support cannot make up for the lack of forensic capacities on behalf of Mexican institutions.

In fact, there are no institutions for forensic science in charge of the whole territory of Mexico, and each of the states and the Federation have their own approach to forensics.<sup>377</sup> In the majority of cases, forensic personnel are completely dependent on the investigative institutions and are in fact part of the respective state attorney general's office (e.g. Chihuahua and the Federation), while a small number of states have separate, autonomous institutions for forensic science (e.g. Jalisco). Again, in other states the forensic work is in part conducted by the forensic experts who belong to investigative institutions, and in part dependent on the Supreme Court of that state (e.g. Mexico City). Also, in certain cases, forensic experts may belong to the Ministry for Health (e.g. Guerrero). At the same time, the search commissions can hire and train their own personnel in charge of forensic tasks (in that case, a forensic expert is a member of the respective search commission). This has been done by some search commissions, e.g. the CNB and the search commission for the state of Veracruz. Nevertheless, forensic personnel of search commissions can only conduct its work under the auspices of the competent attorney general and/or if they are authorized to do so by a judicial order.

In light of this forensic crisis, the decision to create the Extraordinary Mechanism for Forensic Identification (*Mecanismo Extraordinario de Identificación Forense*, MEIF) taken by the institutions of the National Search System in December 2019 is surely an important achievement.<sup>378</sup> The MEIF's goal will be to overcome the obstacles encountered in the identification and storage of mortal remains. Since this mechanism is foreseen as extraordinary (in the sense that it was established with the objective of relieving the regular forensic teams from the excessive workload and allowing them to focus on ongoing investigations),<sup>379</sup> its mandate will in principle be limited to those bodies who were in custody of the Mexican government as of 5 December 2019.<sup>380</sup> Currently (in February 2021), the process of appointment of members to the MEIF is ongoing and it is not yet fully clear when the institution will become operational.

#### 3.2.4 [Registers and databases](#)

##### I. Detention

In the past, there were three databases to register cases of detention. One was the Administrative Register of Detentions (*Registro Administrativo de Detenciones*) for the arrests made by security forces, which was established in 2008 pursuant to the General Law on the National Public Security System (*Ley*

<sup>375</sup> Natalia Cordero, "[Mecanismo Extraordinario de Identificación Forense, un camino para afrontar la crisis forense en México](#)", *Animal Político*, December 2019.

<sup>376</sup> Observatorio Nacional Ciudadano and Friedrich Naumann Stiftung, "Desapariciones forzadas e involuntarias, crisis institucional forense y respuestas colectivas frente a la búsqueda de personas desaparecidas", septiembre de 2020, p. 16.

<sup>377</sup> Data in this paragraph gathered through written exchange, 10 and 22 February 2021.

<sup>378</sup> The agreement is available [here](#).

The idea for the establishment of the MEIF came from family associations of the disappeared, and was supported by the IACHR. OAS, "[IACHR Welcomes the Creation of Mexico's Extraordinary Forensic Identification Mechanism, Awaits its Swift Implementation](#)", Press Release No. 329/19.

<sup>379</sup> It has been suggested that in the view of some experts, seven MEIF members will not be able to relieve the workload of forensic experts in charge of one Federal and 32 state jurisdictions. Data gathered through written observations, 10 February 2021.

<sup>380</sup> Maureen Meyer and Gina Hinojosa, "[Mexico Moves forward with Efforts to Address Disappearances Crisis](#)", WOLA, March 2020. "[New Disappearances Law is an Important Step towards Ending the Disappearances and Impunity Crises in the Country](#)", October 2017.

*General del Sistema Nacional de Seguridad Pública*).<sup>381</sup> It was maintained by the National Information Security System (*Sistema Nacional de Información en Seguridad Pública*).<sup>382</sup> A different register called Detainee Registration System (*Sistema de Registro de Detenidos*, SIREN) was created in 2010.<sup>383</sup> It was used for registering detainees who were transferred into the custody of the Federal Prosecutor or were transferred to, or detained by, the Federal judicial police. The SIREN was administered by the National Planning, Analysis and Coordination Center on Information to Combat Criminality (*Centro Nacional de Planeación, Análisis e Información para el Combate a la Delincuencia*), which was at the time part of the then PGR. The third register was called National Registry of Penitentiary Information (*Registro Nacional de Información Penitenciaria*) and was used to register cases of persons sent to prison.<sup>384</sup> It was managed by the National System for Penitentiary Information (*Sistema Nacional de Información Penitenciaria*).

Since the National Law for the Register of Detentions (*Ley Nacional de Registro de Detenciones*), adopted with the aim of preventing arbitrary detentions, entered into force, the above-mentioned ceased to exist.<sup>385</sup> Today, any detention that occurs due to the probable commission of a crime or an administrative offense (even in cases where a detainee is a foreigner, as long as he or she is not a migrant held in retention and identification centers) must be registered in the National Register for Detention (*Registro Nacional de Detenciones*, RND).<sup>386</sup>

After a person is detained, this information must be immediately entered into the RND by the competent police, and then Public Ministries must update the information on the status of detention. While the information in the RND is partially public, any person with legal interest has the possibility to request more details about a detainee's location.<sup>387</sup> The scope of information open to the public includes the name of the detainee, date, time and location where the person was detained, as well as the name of the authority that ordered the detention.<sup>388</sup> All authorities in charge of public safety (e.g. police) have full access to the RND. Judicial authorities may also request detailed information about individual detentions.<sup>389</sup> The final decision on how the information from the RND can be shared rests solely with the National Center of Information (*Centro Nacional de Información*).<sup>390</sup>

## II. Ante-mortem/post-mortem

With the objective of gathering and consolidating data on disappeared persons and mortal remains throughout the country, the ICRC and the PGR concluded an agreement on the use of an ante-mortem/post-mortem database software license in 2014.<sup>391</sup> The ante-mortem/post-mortem database system is an electronic platform that the ICRC donated to the PGR, and the latter launched it in 2015. The platform offers the possibility to cross-reference information in the database and may assist in determining whether found mortal remains belong to a person reported missing or disappeared.<sup>392</sup> It is managed by the FEMDH.

<sup>381</sup> The General Law on the National Public Security System is available [here](#).

<sup>382</sup> This database was required by Art. 112 of the General Law on the National Public Security System.

<sup>383</sup> The agreement establishing the SIREN is available [here](#).

<sup>384</sup> CMIC, "[El Sistema penitenciario mexicano](#)", September 2018.

<sup>385</sup> The National Law for the Register of Detentions is available [here](#).

<sup>386</sup> For a detailed explanation of the RND, see: IFPES and others, "[Registro Nacional de Detenciones. Preguntas Frecuentes](#)". The completion of the register is foreseen in three stages, not all of which have been completed yet.

<sup>387</sup> For more detail on what is meant by the term "legal interest", see answers to questions 4 and 8 in IFPES and others, "[Registro Nacional de Detenciones. Preguntas Frecuentes](#)".

<sup>388</sup> The public version of the RND can be accessed [here](#).

<sup>389</sup> For more details on access to the RND, see Arturo Angel, "[¿Qué es y para qué sirve el Registro de Detenciones? Aquí los puntos clave de la ley](#)", *Animal Político*, May 2019.

<sup>390</sup> See answer to question 28 in IFPES and others, "[Registro Nacional de Detenciones. Preguntas Frecuentes](#)".

<sup>391</sup> Observatorio Nacional Ciudadano and Friedrich Naumann Stiftung, "Desapariciones forzadas e involuntarias: El registro estadístico de la desaparición: ¿delito o circunstancia?", febrero de 2017, p. 30.

<sup>392</sup> Human Rights Watch, "Letter to interior Minister on Disappearances", 8 October 2014.



The ante-mortem/post-mortem database served to record data of 6,467 persons in 2020.<sup>393</sup> Despite initiatives to open access to the database to the public, as of February 2021, it cannot be consulted by the general public.<sup>394</sup>

The FGR and state offices of the attorneys general are responsible for entering data into the database. Given that state attorneys general do not duly enter data, the database has often been referred to as incomplete (in particular with respect to the information on disappeared and missing migrants)<sup>395</sup> and thus subjected to criticism.<sup>396</sup> It has also been stated that, in practice, this database has mostly been used for statistical purposes, even though it could have helped to improve search and investigation processes.<sup>397</sup>

### III. Disappeared and missing (*extraviadas*) persons

Until 2012, Mexico did not have a centralized register on disappeared persons. The first database for the documentation of all existing cases of missing (*extraviadas*) and disappeared persons was the National Register of Missing or Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*, RNPED), which was created by a law on the RNPED in 2012.<sup>398</sup> The RNPED was established with the purpose of collecting and merging existing information on persons whose whereabouts were unknown, whenever the information on the disappearance was collected and stored in the PGR and state prosecutors' offices. The PGR and state prosecutors' offices were also the institutions in charge of entering the information in the RNPED, while the institution in charge of maintaining and supervising all activities concerning this register was the PGR, with the support of the National System of Public Security.<sup>399</sup>

The information contained in the RNPED was at first confidential.<sup>400</sup> This changed in 2014, when the PGR and the SEGOB announced that the RNPED would be partially opened to the public.<sup>401</sup> They also explained that the PGR would be in charge of entering data in the RNPED on the basis of information received from state prosecutors.<sup>402</sup> However, the information contained in the RNPED was often inaccurate or unreliable (e.g. there were double entries; in some cases where the mortal remains were found and the identity of the disappeared or missing person was determined, remained labeled as open; in the initial stages, the RNPED contained no cases of enforced disappearances from the "Dirty War", etc.).<sup>403</sup>

### IV. Disappeared and missing (*no localizadas*) persons

With the adoption of the General Law in 2018, the RNPED was abrogated. The General Law instructed the creation of the National Register of Disappeared and Missing (*No Localizadas*) Persons (*Registro Nacional de Personas Desaparecidas e No Localizadas*, RNPDNO) under the management of the CNB.<sup>404</sup> This register is currently in use.

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<sup>393</sup> ICRC, "Mexico Annual Report 2020".

This number most likely represents all cases that were registered until 2020. Data gathered through written observations, 1 February 2021.

<sup>394</sup> Mugs a Noticias, "[PGR debe dar a conocer base de datos Ante Mortem y Post Mortem con Registro de Personas Desaparecidas](#)", September 2017.

<sup>395</sup> FJEDD and TRIAL International, "Executive Summary of the Report to the Committee on Enforced Disappearances in View of the Follow-Up Dialogue with Mexico", October 2018, para. 14.

<sup>396</sup> Arturo Angel, "[Pese a miles de cuerpos sin identificar, estados no usan plataforma forense donada por la Cruz Roja](#)", Animal Político, May 2019.

<sup>397</sup> Ibid.

<sup>398</sup> The law on the RNPED is available [here](#).

The RNPED was used to document cases of disappearances that occurred prior and after 2012.

<sup>399</sup> For more detail about the RNPED, see Instituto Belisario Domínguez, "Historia, retos de mejora y cifras del registro de personas desaparecidas", TEMAS ESTRATÉGICOS, No. 70, abril de 2019.

<sup>400</sup> Nevertheless, this rule was subject to certain exceptions. For example, the CNDH, any person deprived of liberty and their representatives, families of disappeared persons, etc., could request access to the information in the RNPED.

<sup>401</sup> The data from the RNPED can still be viewed via the following [website](#). Instituto Belisario Domínguez, "Historia, retos de mejora y cifras del registro de personas desaparecidas", April 2019, p. 13.

<sup>402</sup> Ibid.

<sup>403</sup> Data gathered through written exchange, 31 August 2020.

<sup>404</sup> Art. 2(VI) of the General Law on Disappearances.

Since July 2020, the RNPDO is partially open to the public giving access to data organized by sex, gender, etc.<sup>405</sup> Pursuant to the PHB, the National Institute for Transparency, Access to Information and Personal Data Protection (*Instituto Nacional de Transparencia, Acceso a la Información y Protección de Datos Personales*) determines what data is shared with the general public.<sup>406</sup>

The main institutions of the National Search System (e.g. the FGR, the state search commissions) are granted restricted access to the RNPDO after signing a bilateral agreement with the CNB, who provides them with access credentials.<sup>407</sup> Such restricted access includes complete information as far as it concerns disappeared and missing (*no localizadas*) persons that fall within the respective competence, and access to minimum data of other parts in the RNPDO.<sup>408</sup> The only institution with complete and unlimited access to any information in the RNPDO is the CNB.<sup>409</sup>

## V. Unidentified missing (*extraviadas*) and deceased persons

Another important register is the SINPEF, which was created in 2007 and is managed by the CNDH.<sup>410</sup> It includes data on complaints received by the CNDH, submitted by different NGOs, OHCHR Mexico, the WGEID and the institutions in charge of law enforcement.

The SINPEF is composed of three separate registers and encompasses disappearances, which occurred before and after 2007.<sup>411</sup> While none of the three existing registers is at all times available to the public,<sup>412</sup> the CNDH has shared data from the registers with the public in the past.<sup>413</sup> The CNB (and presumably also other institutions of the National Search System) may also request the CNDH to share the information in the SINPEF with them.<sup>414</sup>

## VI. Victims

The National Register of Victims (*Registro Nacional de Víctimas*, RENAVI) was foreseen in the General Law of Victims and eventually established in 2016,<sup>415</sup> with the objective of documenting all cases of victims of gross human rights violations (including migrants).<sup>416</sup> The ultimate goal of the establishment of the RENAVI is to enable victims to access measures of support and reparation (inscription to the RENAVI is a precondition – but not a guarantee – to benefit from rights that are established in the General Law on Victims).<sup>417</sup>

According to the General Law on Victims, all members of the National Victim System are obligated to share their information about victims in the RENAVI.<sup>418</sup> The institution in charge of entering the information and managing this register is the CEAV.<sup>419</sup> In principle, the CEAV has the obligation to enter in the RENAVI only information on victims of Federal crimes, while states should have their own registers of victims.<sup>420</sup> Information from state registers must be transferred to the CEAV, which in turn must incorporate it in the RENAVI.<sup>421</sup>

<sup>405</sup> However, the RNPDO does not allow the general public to access “raw” data.

<sup>406</sup> Para. 532 of the PHB.

<sup>407</sup> Data gathered through interview, 13 January 2021.

<sup>408</sup> Data gathered through written observations, 11 February 2021.

<sup>409</sup> Ibid.

<sup>410</sup> According to data gathered through interviews, the SINPEF is not an electronic database, but rather a collection of data in Excel.

<sup>411</sup> The names of these registers are as follows: the SINPEF Integration (*Integración*); Missing, Disappeared and Absent Persons (*Personas Extraviadas, Desaparecidas o Ausentes*); Dead and Unidentified Persons (*Personas Fallecidas y Identificadas*).

<sup>412</sup> Observatorio Nacional Ciudadano and Friedrich Naumann Stiftung, “Desapariciones forzadas e involuntarias: El registro estadístico de la desaparición: ¿delito o circunstancia?”, febrero de 2017, p. 44.

<sup>413</sup> Data gathered through written observations, 1 February 2021.

<sup>414</sup> Data gathered through interview, 13 January 2021.

<sup>415</sup> Art. 44 of the General Law on Victims.

<sup>416</sup> Art. 28 of the General Law on Victims.

<sup>417</sup> Comisión Ejecutiva de Atención a Víctimas, “¿Para que sirve el RENAVI?”, January 2017.

<sup>418</sup> Art. 96 of the General Law on Victims.

<sup>419</sup> Art. 44 of the General Law on Victims.

<sup>420</sup> Art. 96 of the General Law on Victims.

<sup>421</sup> Data gathered through various interviews.

Access to the information in the RENAVI is restricted and includes only certain information relevant for statistical purposes (such as sex and domicile of the victim).<sup>422</sup> The name of the victim is not disclosed to the general public.<sup>423</sup> The CEAV has to respect the confidentiality of data received from the victims, and may only share it with the mechanisms outside the National Victim System on certain occasions (which are not specified in the General Law on Victims).<sup>424</sup>

## VII. Migrants

The National Law for the Register of Detentions instructed that changes be made to the Law on Migration within 180 days from its entry into force with the objective of setting the basis for a separate register of detained migrants.<sup>425</sup> As of February 2021, both the reform of the Law on Migration and the creation of a register of detained migrants are still pending.<sup>426</sup>

## VIII. Unimplemented provisions of the General Law on Disappearances

The ultimate objective of the General Law is to create a single information technology system. Apart from the RNPDO, the National Forensic Database (to integrate information from the existing forensic databases as well as genetic information),<sup>427</sup> the National Register on Mass and Clandestine Graves (to contain information on mass graves in the cemeteries and vaults, as well as the information on clandestine graves found in all municipalities)<sup>428</sup> and the National Register of Deceased and Unidentified Persons (to encompass information on corpses and unidentified persons, and the location where they were found or buried)<sup>429</sup> have been foreseen elements of such a system. None of these registers have been established so far; in fact, it is unknown whether the process of establishment has even begun. The authority responsible for their management and maintenance will be the FGR and all institutions in the National Search System (including the CNB) must be given access to these registers.<sup>430</sup>

### 3.2.5 [Disappearances of migrants](#)

#### I. Prior to the specialized institutions

Mexico created the first institution mandated to address different issues relating to migrants, the National Institute for Migration (*Instituto Nacional de Migración*, INM), in 1993. The INM was created within the SEGOB with the aim of,<sup>431</sup> *inter alia*, developing migratory policies, regulating the entry to Mexico, maintaining statistics regarding migration, and issuing identification documents to migrants.<sup>432</sup> In 2011, Mexico adopted a special law for migrants, i.e. the Law on Migration (*Ley de Migrantes*).<sup>433</sup>

Later, in 2013, Mexico established its first specialized forensics commission for the identification of mortal remains of migrants whose death was a result of the massacres in Tamaulipas (in 2010 and 2011) and Nuevo León (in 2012). This Forensic Commission was established in the framework of the Collaboration Agreement for the Creation of a Commission of Forensic Experts to Identify Remains located in San

<sup>422</sup> Art. 44 of the General Law on Victims.

<sup>423</sup> For examples of which type of information regarding a victim must be included in the RENAVI, see Art. 104 of the General Law on Victims.

<sup>424</sup> For more detail on the CEAV privacy policy, see Comisión Ejecutiva de Atención a Víctimas, "[Aviso de privacidad RENAVI](#)", January 2018.

<sup>425</sup> Section 8 of the [National Law for the Register of Detentions](#).

<sup>426</sup> The National Institute for Migration presumably has its own register for detained migrants, but no information is known about its characteristics. Data gathered through written exchange, 27 January 2021.

<sup>427</sup> Arts. 119 and 127 of the General Law on Disappearances.

<sup>428</sup> Art. 133(II) of the General Law on Disappearances.

<sup>429</sup> Art. 111 of the General Law on Disappearances.

<sup>430</sup> See, e.g. Art. 113 of the General Law on Disappearances, which states that the CNB can at any time access the National Register of Deceased and Unidentified Persons.

<sup>431</sup> Fiscalía General de la República, "[Blog](#)".

<sup>432</sup> The INM has been criticized for having "severe structural deficiencies". WOLA, "[Mexico's National Institute of Migration: Migrant Rights and the Need for Reform](#)", March 2014.

<sup>433</sup> The Law on Migration is available [here](#).

As for the protection of refugees and asylum seekers, a [special law](#) was adopted in 2011 (the last amendment was passed in 2014).

Fernando, Tamaulipas and Cadereyta, Nuevo León (*Convenio de Colaboración para la Creación de una Comisión Forense para la Identificación de Restos*, Collaboration Agreement).<sup>434</sup> The Collaboration Agreement was signed by the PGR, the EAAF, different civil society organizations and family associations of the disappeared. While civil society has requested to broaden the mandate of the Forensic Commission (currently limited to the identification of bodies of those whose death is a consequence of one of the previously mentioned massacres) on various occasions, these efforts have not been successful so far.<sup>435</sup>

## II. After the specialized institutions

Civil society and the families of disappeared persons also put forward a demand to establish a specialized system for missing and disappeared migrants.<sup>436</sup> This demand succeeded in 2015, when the Mexican Investigative Unit on Crimes for Migrants (*Unidad de Investigación de Delitos para Personas Migrantes* – Investigative Unit for Migrants) and the MAE were established.<sup>437</sup> Both the Investigative Unit for Migrants and the MAE started to operate in early 2016 and continue functioning.

The task of the Investigative Unit for Migrants is to investigate all crimes committed by and against migrants at the Federal level (state level authorities are in charge of investigating crimes against migrants that fall under their competence)<sup>438</sup> and the MAE's objective is to provide access to justice, truth and reparation for the families of missing and disappeared migrants from their country of origin.

Representatives of the MAE are presumably located in Mexican consulates, embassies and attachés' offices in Honduras, Guatemala and El Salvador, and function as an intermediary between the families of missing and disappeared migrants and authorities in Mexico.<sup>439</sup>

Since the adoption of the General Law on Disappearances, the Investigative Unit for Migrants and the MAE have been incorporated in the institutional framework the law set up.<sup>440</sup> Thus, apart from the MAE and the Investigative Unit for Migrants, the institutions dealing with disappearances of migrants today are also the FGR, the CNB, the CEAV (in charge of covering expenses of the families of migrants, e.g. for their travels to Mexico), the INM (has different competences, e.g. issuing visas for the families of migrants) and the Ministry of Foreign Affairs (in charge of organizing the work of the embassies and consulates of Mexico abroad).

## III. Specificities surrounding coordination

The General Law on Disappearances says very little regarding the coordination between the MAE and institutions in charge of the search and criminal investigations concerning disappeared persons (e.g. the CNB has to maintain regular contact with the MAE through the Ministry of Foreign Affairs for the purposes of coordination in the search).<sup>441</sup> The PHB is more detailed on this matter and gives the CNB the competence to coordinate an inter-institutional group for the search for disappeared migrants.<sup>442</sup> Once the establishment of this inter-institutional group is complete,<sup>443</sup> its members will have to, together with the

<sup>434</sup> The Collaboration Agreement is available [here](#).

<sup>435</sup> FJEDD and TRIAL International, "Aportación dirigida al Grupo de Trabajo sobre las desapariciones forzadas o involuntarias en vista del estudio temático sobre normas y políticas públicas para la investigación eficaz de las desapariciones forzadas", febrero de 2019, para. 34.

<sup>436</sup> Ibid., para. 31.

<sup>437</sup> The agreement establishing the MAE and the Investigative Unit for Migrants is available [here](#).

<sup>438</sup> Ibid., Section 6 (1).

See also Fiscalía General de la República, "[Unidad de investigación de delitos para personas migrantes – UIDPM](#)".

Some states have created special units to deal with crimes against migrants in their prosecutors' offices, but the results achieved in this domain have been extremely poor. Data gathered through written interview, 31 August 2020.

<sup>439</sup> According to the information gathered through interviews and research, the only attaché's office ever established was in Guatemala, and is unclear whether it is still functioning.

<sup>440</sup> See, e.g. Art. 4(XIII) of the General Law on Disappearances.

See also the [agreement on the reform of the MAE and the Investigative Unit for Migrants](#).

Since the General Law entered into force, the MAE and the Investigative Unit for Migrants are both subordinated to the FEIDDF. FJEDD and TRIAL International, "Informe presentado al Comité contra la Desaparición Forzada", October 2018, para. 72.

<sup>441</sup> Art. 53(XXIV) of the General Law on Disappearances.

<sup>442</sup> Para. 334 of the PHB.

<sup>443</sup> The inter-institutional group on migrants is currently being formed. Data gathered through interview, 13 January 2021.

MAE, intensify the search efforts of the institutions.<sup>444</sup> At the same time, state search commissions and ministerial authorities are responsible to report the disappearances of migrants that follow a specific pattern (i.e. they come to Mexican territory seeking refuge, opportunities or to cross the border with the United States of America) to the CNB.<sup>445</sup>

Pursuant to the PHB, the FGR, the CNB and the Ministry of Foreign Affairs should promote coordination and exchange of information with the countries of origin, transit or destination of the disappeared migrants, for the purposes of an easier identification of mortal remains possibly belonging to foreigners, as well as for advancing the search and return of mortal remains.<sup>446</sup> In view of the fact that Mexico has no separate register for missing and disappeared migrants, which could interface with other registers for migrants in Central America, the implementation of this provision seems rather challenging.

Based on experience to date, there are various deficiencies in the work of the MAE and the Investigative Unit for Migrants, and the results they have achieved so far are disappointing. While there are diverse causes for their lack of efficiency, the almost non-existent flow of information between the institutions addressing issues of migrants (e.g. the INM, the Ministry of Foreign Affairs, etc.) has had a particularly strong influence on their slow and lengthy procedures. For example, the transfer of complaints that families file with the embassies and consulates to Mexican domestic authorities may take various months.<sup>447</sup> Also, what has proved to be a particularly challenging obstacle for the families is the access to information on investigations and the search, and/or the effective exercise of their rights, such as access to humanitarian visas and psychological support.<sup>448</sup>

### 3.2.6 [Ayotzinapa case](#)

#### I. Domestic progress

Given the complexity of the case (the collusion between organized crime and corrupt officials in the perpetration of the crime) and the strong pressure exerted by the families, the enforced disappearance of 43 students in Ayotzinapa in 2014 has been exhaustively discussed by the international community.<sup>449</sup> The IACHR has played an important role and actively supported the search and criminal investigation of the Ayotzinapa case since the beginning.

When the crimes occurred, the search and criminal investigation were concentrated in the prosecutors' offices of the time.<sup>450</sup> The first special PGR unit for the search and investigation of the Ayotzinapa case was established under the SDHPDSC. Then, in 2019, the current administration created the Special Unit for the Investigation and Litigation of the Ayotzinapa Case (*Unidad Especial de Investigación y Litigación para el caso Ayotzinapa* – Special Unit for Ayotzinapa), which currently operates under the FEMDH.<sup>451</sup> Its task is to clarify acts related to the disappearance of 43 students in September 2014 as well as to identify, prosecute and punish the perpetrators.<sup>452</sup>

Another mechanism for the Ayotzinapa case established by the SEGOB is the Presidential Commission for Truth and Access to Justice (*Comisión Presidencial para la Verdad y la Justicia* – Commission for

<sup>444</sup> Para. 337 of the PHB.

<sup>445</sup> Paras. 333 and 336 of the PHB.

<sup>446</sup> Para. 273 of the PHB.

<sup>447</sup> An example are complaints from El Salvador, which were transferred to competent authorities in Mexico five months after they were submitted by the migrants' families in El Salvador. FJEDD and TRIAL International, "Informe presentado al Comité contra la Desaparición Forzada", October 2018, para. 106.

<sup>448</sup> FJEDD and TRIAL International, "Executive Summary of the Report to the Committee on Enforced Disappearances, 2018, para. 24.

<sup>449</sup> For more details on this case, and the importance it has for Mexico solving the issue of disappearances in the future, see Carlos Gutiérrez, "[El caso Ayotzinapa: empezar desde cero](#)", CONNECTAS.

<sup>450</sup> It is unclear which authority first began with the investigation of the case. According to data gathered through interviews, it seems that the case was first investigated by the Guerrero state prosecutors. Shortly after an investigation was also opened at the Federal level, but without much activity until 5 October 2014 (the enforced disappearances occurred on 26 September 2014), when it ended up in the hands of the SEIDO. Then, both investigations were conducted in parallel until 18 October 2014, when the Federal Prosecutor took over the case.

<sup>451</sup> Fiscalía General de la República, "[Comunicado FGR 313/19 Se crea por Acuerdo, Unidad Especial de Investigación y Litigación para el caso Ayotzinapa](#)", June 2019.

<sup>452</sup> Redacción Animal Político, "[Designan a Omar Gómez Trejo titular de la nueva unidad especial para el caso Ayotzinapa](#)", June 2019.



Truth).<sup>453</sup> Its main objective is to assist in clarifying the truth with respect to the enforced disappearance of the students. Among the tasks of the Commission for Truth are also the design and the implementation of initiatives offering benefits to those who provide valuable information for the clarification of facts, but is unknown whether the Commission for Truth has begun discharging its mandate.<sup>454</sup> In its work, the Commission for Truth benefits from different forms of support (e.g. technical support) from the OHCHR and the IACHR.<sup>455</sup>

## II. Specificities surrounding coordination

Pursuant to the decree that established the Commission for Truth, the SEGOB must coordinate with the families of the disappeared students or their representatives in the adoption of guidelines for the implementation of protection and collaboration measures for everyone who wishes to support the search of the truth and determination of facts in the Ayotzinapa case.<sup>456</sup> In fact, the Commission for Truth works closely with the families of the disappeared students (some of the Commission members are their relatives), e.g. through meetings and consulting them in sessions.<sup>457</sup> Public officials are also invited to participate in those meetings to learn about the families' priorities and discuss how to best advance in the work. During one such meeting in 2019, the Commission for Truth and other participants (i.e. public officials and representatives of civil society) agreed that a special search commission would be created to determine the fate of the 43 students.<sup>458</sup> No information could be found regarding any progress in this regard.

Regarding the coordination of work between the Special Unit for Ayotzinapa and the Commission for Truth, the representatives of both mechanisms occasionally meet in extraordinary sessions (together with some other public officials and external experts, such as the EAAF).<sup>459</sup> Nevertheless, for the purpose of this study, no information could be acquired on whether they have a regular channel of communication and exchange of information is done in an organized way.

As for the role of the CNB in the case, it participates in different meetings and sessions organized by the Commission for Truth.<sup>460</sup> Whenever it acquires information that could be useful for the Special Unit for Ayotzinapa, it must immediately share it with the Unit.<sup>461</sup> It remains, however, unclear whether the CNB has a regular channel of communication and exchange of information with any of these two institutions.

## III. Role of the IACHR

Shortly after the events occurred, the IACHR issued a request for precautionary measures, where it suggested to set up the Interdisciplinary Group of Independent Experts (GIEI).<sup>462</sup> This was followed by an agreement on technical assistance between the IACHR and Mexico, which formed the basis for establishment of the GIEI on 18 November 2014.<sup>463</sup> Its mandate was to verify the measures taken by Mexican authorities with respect to the enforced disappearance of the students, to offer technical assistance to the PGR and to recommend how to conduct the search and investigation more effectively.

<sup>453</sup> Data gathered through written observations, 11 February 2021.

<sup>454</sup> Maureen Meyer and Gina Hinojosa, "[A cinco años, no hay justicia para los 43 estudiantes desaparecidos de Ayotzinapa](#)", September 2019.

The legal basis granting the Commission for Truth a competence for this task is not clear. Data gathered through written observations, 11 February 2021.

<sup>455</sup> For information on the agreement signed between the OHCHR and the Commission for Truth and Access to Justice in 2019, see OHCHR, "[ACNUDH y el gobierno mexicano firman un acuerdo sobre el caso Ayotzinapa](#)", April 2019. See also OAS, "[IACHR Presents Report and 2019 Work Plan, Sets Up Team on Ayotzinapa Case](#)", Press Release No. 064/19, March 2019.

<sup>456</sup> See Art. 6 of the decree for the establishment of the Commission for Truth [here](#).

<sup>457</sup> OAS, "[Six Years On, the IACHR Acknowledges Progress in the Investigation and the Search for 43 Missing Students from Ayotzinapa and Stresses Its Commitment to the Students' Families](#)", Press release No. 234/20, September 2020.

<sup>458</sup> La Vanguardia, "[Gobierno de México crea grupo para buscar a los 43 estudiantes de Ayotzinapa](#)", April 2019.

<sup>459</sup> Gobierno de México, "[Sesiones Extraordinarias de Trabajo](#)".

<sup>460</sup> Data gathered through interview, 14 January 2021.

<sup>461</sup> Data gathered through interview, 22 January 2021.

<sup>462</sup> The Precautionary Measure 409/14 is available [here](#).

<sup>463</sup> For a comprehensive understanding of all IACHR's steps taken prior and after the establishment of the GIEI in the Ayotzinapa case, see [here](#).

The findings of the GIEI, which are summarized in two reports, confirmed the existence of many irregularities in the work of Mexican authorities.<sup>464</sup>

The GIEI's mandate ended in 2016 and Mexico decided not to renew it. Nevertheless, the IACHR created a special Follow-Up Mechanism for the Ayotzinapa Case (*Mecanismo Especial de Seguimiento al Asunto Ayotzinapa – MESA*), whose initial task was to monitor Mexico's compliance with the final recommendations of the GIEI.<sup>465</sup> In 2019, the MESA's mandate was extended to provide technical support in coordination with the Commission for Truth in the Ayotzinapa case and the Special Unit for Ayotzinapa.<sup>466</sup>

In December 2019, the IACHR officially suggested the restoration of the GIEI.<sup>467</sup> The main objective of this suggestion is to advance the criminal investigation. As a result, a new agreement between Mexico and the IACHR to reinstall the GIEI for another nine months was signed in May 2020.<sup>468</sup> According to the IACHR's press release from September 2020, the GIEI currently provides assistance to the Special Unit for Ayotzinapa, while the MESA still monitors the compliance of Mexican authorities with the GIEI's recommendations. In the same message, the IACHR explicitly highlighted the satisfaction of the families regarding their participation in the search process. It has also praised the reaction of the investigative authorities in one specific instance (upon finding mortal remains, the authorities first notified the family, and only then shared the information with the media).<sup>469</sup>

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<sup>464</sup> For a more detailed description of the GIEI's work and findings, see GIEI, "Informe Ayotzinapa. Investigación y primeras conclusiones", 2015.

<sup>465</sup> OAS, ["IACHR Suggests that Mexico Restore the Interdisciplinary Group of Independent Experts for Ayotzinapa"](#), Press Release No. 327/19, 17 December 2019.

<sup>466</sup> Ibid.

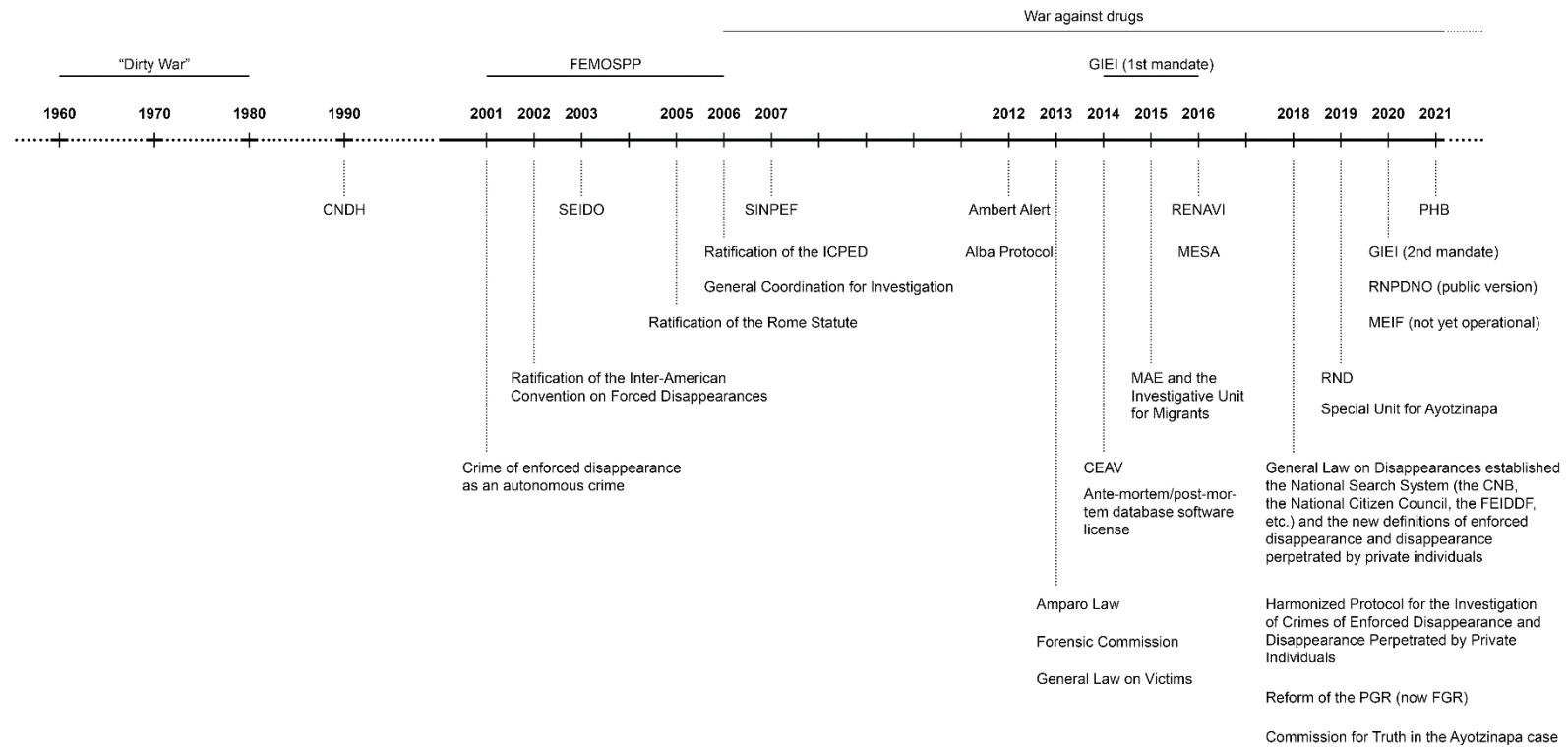
<sup>467</sup> Ibid.

<sup>468</sup> OAS, ["IACHR and Mexican State Sign Agreement to Reinstate the Interdisciplinary Group of Independent Experts \(GIEI\) for the Ayotzinapa Case"](#), Press Release No. 104/20, May 2020.

<sup>469</sup> OAS, ["Six Years On, the IACHR Acknowledges Progress in the Investigation and the Search for 43 Missing Students from Ayotzinapa and Stresses Its Commitment to the Students' Families"](#), Press release No. 234/20, September 2020.

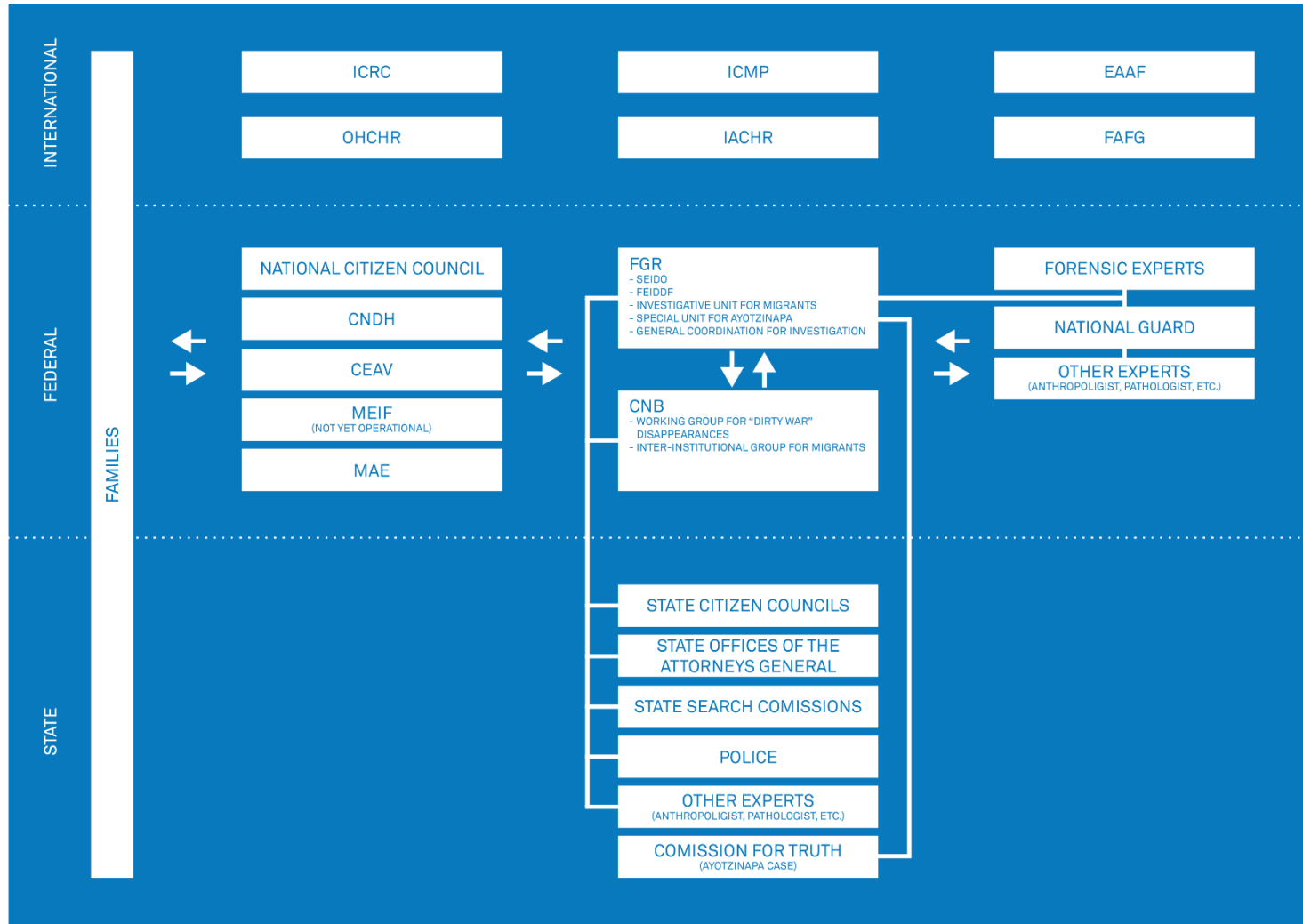


## IV. Timeline of key events and institutions



### 3.3 Coordination

#### I. Actors mapping



## II. Preliminary remark

In a country with such a complex structure and enormous differences between the laws and practice adopted in states and the Federation, it is impossible to draw “general” conclusions regarding coordination, in the sense that they would apply to all states and the Federation in all situations. The description below should thus at no point be understood as a comprehensive description of all existing channels for coordination regarding disappeared persons in Mexico. Instead, it is an attempt of a short recap of the rules on the information exchange between the key institutions that are examined in this study, in particular those in charge of the search for disappeared persons, bearing in mind that coordination goes beyond the mere exchange of information. This part contains no information on coordination between investigative institutions, given that no such information could be acquired from any of the interviewees. Moreover, although various investigative institutions have been approached with the request for an interview, with one single exception, none of them responded.

It must also be pointed out that the coordination is described as envisaged by the law and does not necessarily reflect reality. Since a great deal of this process flows from the recently adopted PHB, its actual implementation can be hardly evaluated. On the basis of exchanges with the interviewees, the following should be borne in mind to apprehend the dynamics of coordination: first, there is no real time management in addressing and solving cases of disappearances (it simply depends on the will and capacities of each institution), and second, institutions involved in the search and criminal investigations have different approaches towards solving cases of disappearances and one institution cannot dictate how others conduct their work. This is particularly felt in the relationship between search mechanisms vis-à-vis investigative authorities, where the latter are clearly reluctant to follow any instructions given by the former.

## III. Theoretical framework

The General Law on Disappearances refers to the importance of coordination between governmental institutions, mechanisms for the search and investigative authorities in various provisions.<sup>470</sup> It gives the competence to establish guidelines on the coordination between search mechanisms and investigative authorities to the National Search System.<sup>471</sup> Since January 2021, the PHB is the most comprehensive instrument providing standards for coordination between the two processes. It establishes procedures for five different types of search: immediate search (*búsqueda inmediata*), individualized search (*búsqueda individualizada*), search by pattern of disappearance (*búsqueda por patrones*),<sup>472</sup> generalized search (*búsqueda generalizada*),<sup>473</sup> and search for family (*búsqueda de familia*).<sup>474</sup> Given that the coordination between the search and criminal investigations is particularly important in the context of the individualized search, and the individualized search can be understood as a form of immediate search, both of them are examined in greater detail below.

The legal framework entrusts the main responsibility for the search to the CNB and to the local search commissions.<sup>475</sup> After receiving a complaint on a disappearance (which can be either reported to the CNB directly or transferred from other authorities),<sup>476</sup> the institutions in charge of the search generally follow the process of immediate search.<sup>477</sup> This process is foreseen for cases when it is unclear in which

<sup>470</sup> For example, Arts. 2(I), 49(I, II, VIII) and 70(II) of the General Law on Disappearances.

<sup>471</sup> Art. 49(I) of the General Law on Disappearances.

<sup>472</sup> Examples of search by pattern of disappearance as regulated in section 3 of the PHB are enforced disappearances during the „Dirty War“ and disappearances of migrants.

<sup>473</sup> The main question in the generalized search as regulated in section 4 of the PHB is “who are they/who is here?” (*¿quiénes están aquí?*). In most cases, this question arises whenever a competent institution acquires information on the location of mortal remains without knowing to whom they belong.

<sup>474</sup> Search for family is regulated in section 5 of the PHB. It aims, among other things, to re-establish contact between a family and one of its members with whom the contact has been lost for any reason.

<sup>475</sup> Art. 79 of the General Law on Disappearances.

<sup>476</sup> Art. 95(a) of the PHB.

<sup>477</sup> The immediate search and what needs to be done when the missing (*no localizada*) or disappeared is found alive or his or her mortal remains are found is described in Section 1 and Section 6 of the PHB respectively.

circumstance the person disappeared and whether he or she should be considered as “missing” (*no localizada*) or disappeared, and was designed with the objective of decoupling the beginning of the search from the investigative authorities.<sup>478</sup> Conversely, when the presumable reason for the disappearance is criminal, the applicable procedure is called individualized search.<sup>479</sup> While this procedure to a certain extent overlaps with the immediate search, the main difference is that the former requires the intervention of the investigative authorities.<sup>480</sup>

In cases where the report of a missing (*no localizada*) or disappeared person is made to the CNB, the CNB interviews the reporting person and then registers the case in the RNPDO.<sup>481</sup> In some cases, the disappearance is reported to other institutions, which are also obliged to conduct a first interview with the complainants and then enter the data on the disappearance in the RNPDO. If the institution that registered the case of disappearance in the RNPDO is not competent for the search, it must transfer the case to one of the competent institution(s) (e.g. the CNB, the state search commission, the FGR). If there are various competent institutions (e.g. a specialized state attorney general's office for disappearances and the state search commission), the first one notified of the disappearance must notify all other competent authorities (including the institutions for public security, if needed). The notifying institution is also in charge of coordinating the work of the notified institution(s).<sup>482</sup>

Always when the disappearance of a person is accompanied with indication of any crime, the competent investigative institutions must also begin a criminal investigation into the disappearance.<sup>483</sup> The CNB (and state search commissions) are responsible for notifying investigative authorities of the presumption of a crime. The investigative institutions then internally decide, which of the specialized state offices of the attorneys general will take over the case; there is no general criteria, which dictates the division of competence between them.<sup>484</sup>

For the time being, all notifications are made by entering information on the disappeared or missing (*no localizada*) person in the RNPDO, which then channels the data through the Unified System (*Sistema Único*) directly to one of the specialized state offices of the attorneys general for disappearances and/or one of the state search commissions (unless the disappearance was first reported to the competent state search commission or state attorney general's office), depending on the place where the person whose fate is unknown was last seen and on the identity of possible perpetrators.<sup>485</sup> The RNPDO is thus, apart from being a register, also a system that assigns cases to the competent search or investigative institutions.<sup>486</sup> The PHB foresees that notifications are also made through the Links Directory (*Directorio de Enlaces de Búsqueda Inmediata*), which the CNB is in the process of creating.<sup>487</sup> This will have, however, no effect on the use of the RNPDO as a channel of communication, as it maintains the same function.<sup>488</sup>

Operational deployment of the search is launched by a state search commission, police and/or

<sup>478</sup> Data gathered through written observations, 1 February 2021.

<sup>479</sup> Section 2 of the PHB.

<sup>480</sup> Data gathered through written observations, 1 February 2021.

<sup>481</sup> Data gathered through written exchange, 22 January 2021.

<sup>482</sup> Even though the institution responsible to coordinate the immediate search is the search commission or ministerial authority where the missing (*no localizada*) or disappeared person was last seen, the CNB can assume the coordination in certain situations. The CNB is always responsible for coordination if there are indications of enforced disappearances perpetrated by Federal agents. Data gathered through written exchange, 22 January 2021.

<sup>483</sup> Art. 70(I) of the General Law on Disappearances and Section 1.10 of the PHB describe the circumstances, in which the commission of a crime should be presumed.

<sup>484</sup> There is one exception: the FGR is obliged to investigate disappearances whenever they are considered Federal crimes, and it has also the power to attract cases from state offices of the attorneys general whenever the latter prove to be inefficient or inactive. For a list of requirements for a case to fall within the competence of the Federal investigative authorities, see Arts. 24-26 of the General Law on Disappearances.

<sup>485</sup> Para. 205 of the PHB.

This has been also confirmed by one of the interviewees, 12 January 2021.

<sup>486</sup> Data gathered through written exchange, 22 January 2021.

<sup>487</sup> The Links Directory is a list with names and telephone numbers of institutions involved in the search and investigations, which aims at facilitating coordination among them.

<sup>488</sup> The reason for keeping the RNPDO as the main tool for notification is that it allows maintaining control over the information flow, e.g. data on the reporting institution and the competent institution to do the search.

investigative authority of the state where the person whose whereabouts and fate are unknown was last seen, or where the last contact was established with the missing (*no localizada*) or disappeared person.<sup>489</sup> Sufficient capacity and resources are relevant factors in deciding which of the competent institutions will take over the search. The missing (*no localizada*) or disappeared person is sought by the state search commission or/and police in different places, including hospitals, police stations, etc.<sup>490</sup>

If the missing (*no localizada*) or disappeared person is found, the institution leading the coordination issues a final report and performs localization. If the search process is unsuccessful, the same institution must only issue a report. In any case, the search does not end until the missing (*no localizada*) or disappeared person is found or the trace of the person is lost. Whenever there is a need to perform an individualized search, the search process does not end until the disappeared person is found alive or his or her mortal remains are discovered.<sup>491</sup>

#### IV. Coordination at the operational level in the field search

If the competent institution wishes to inspect property that could be helpful in advancing the search for a specific individual or where the mortal remains of unknown persons are supposedly to be found, it must engage in the search on-site (*búsqueda en campo*).<sup>492</sup> In the course of this process, the CNB seeks to coordinate and exchange information with the institutions of the concerned state (e.g. the state search commission).<sup>493</sup> To be able to access private property, the search commission (at the Federal or state level) has two possibilities: it can obtain the authorization of the owner of the property in question or request the competent attorney general's office to file a motion for a search warrant in court.<sup>494</sup> In the latter case, the attorney general requests the search warrant for his/her own entry accompanied by the CNB. The search commission is fully dependent on the competent attorney general and has no power to file a motion for the search warrant itself. If the owner of the property consents or the court decides to issue the search warrant, the search commission may begin with its activities in the field (in the latter case, only while accompanied by the attorney general).<sup>495</sup>

The attorneys general are mostly present during the inspection of the property or sometimes even in the lead (in states where the search commissions are very small or have no resources).<sup>496</sup> Their presence is in some cases indispensable, e.g. whenever the search warrant is granted by a court or if it becomes necessary to exhume the found body.<sup>497</sup> Prior to the exhumation, the attorney general must obtain the authorization of the control judge (*juez de control*).<sup>498</sup> Since clandestine and mass graves also represent a crime scene relevant for the collection of evidence for criminal investigations, the mortal remains have to be treated carefully and in accordance with certain rules and processes. Different forensic operations can be performed, e.g. by the forensic experts of the state offices of the attorneys general, independent experts to whom authorization is given by the investigative institution, etc.<sup>499</sup>

Sometimes, also other institutions get involved in the search conducted in the field. For example, the CNB is entitled to request the accompaniment of institutions of public security, e.g. the National Guard (*Guardia Nacional*), with the purpose of guaranteeing security.<sup>500</sup> In other cases, state or municipal police

<sup>489</sup> Data gathered through written exchange, 22 January 2021.

<sup>490</sup> Data gathered through written exchange, 22 January 2021.

<sup>491</sup> Ibid.

<sup>492</sup> Section 4.7 of the PHB.

<sup>493</sup> See, e.g. Section 4.7.1. of the PHB.

<sup>494</sup> Art. 252(II) of the Mexican National Criminal Procedural Code.

<sup>495</sup> Data gathered through written exchange, 16 February 2021.

Also, according to information provided during the written exchange, the CNB can engage in the field search even without receiving a court order in cases of emergency, where the purpose of the search is to rescue a person held captive.

<sup>496</sup> Data gathered through various interviews.

<sup>497</sup> Data gathered through written exchange, 23 January 2021.

<sup>498</sup> Art. 70(XVIII) gives the competence to file a motion to exhume in court to the FGR.

<sup>499</sup> Art. 252(I) of the Mexican National Criminal Procedural Code.

At the same time, there is no need to receive authorization from the judge on some other occasions, e.g. for removing the corpse and identification of the mortal remains. Art. 251(VI) of the Mexican National Criminal Procedural Code.

<sup>500</sup> Data gathered through written exchange, 23 January 2021.

<sup>500</sup> Art. 53(IV and XV) of the General Law on Disappearances.

are present to provide adequate security. In addition to investigative authorities, relatives of disappeared persons often accompany officials to the alleged grave sites, but only under the supervision and following the instructions given by different experts (e.g. experts in forensics science).<sup>501</sup> However, family members' ability to participate depends on the individual circumstances (e.g. security situation) and practices of the search commissions (e.g. the CNB mostly allows the families to be physically present during exhumations, whereas other search commissions may not) and forensic experts. They also may not be able to participate in certain parts of the forensic work (e.g. they may be allowed to dig, but not to participate in the storage of the mortal remains found). The physical presence of family members as observers may be allowed even at more sensitive stages of the exhumation process, again depending on the circumstances.<sup>502</sup>

## V. Information exchange

On a more general level, search mechanisms in Mexico have the obligation to collaborate with investigative authorities and vice versa.<sup>503</sup> As previously described, the search and criminal investigation process are usually set in motion by receiving the information of a case of disappearance, reported directly to the competent institution (for the search and/or investigation at the Federal and/or state level, depending on the circumstances of the case). Whenever the information is reported to the CNB, the informant has no obligation to disclose his or her name, or to notify the investigative authorities simultaneously.<sup>504</sup> However, the CNB must always share information that could be useful for a criminal investigation with the competent investigative authorities.<sup>505</sup> Apart from the competent investigative authority, the CNB must also always share information on the reported case with the competent search commission.<sup>506</sup> In fact, the CNB has no possibility to disclose any information on the actions or omissions of public officials that could constitute a violation of the General Law on Disappearances; it must share it with the Public Ministry and the so-called "authorities competent for administrative responsibilities".<sup>507</sup> The latter are organs of control in each of the institutions, whose tasks include monitoring the work of public officials, transferring complaints against officials, etc. They can impose administrative sanctions such as suspension, official warning, etc.<sup>508</sup>

As for the FGR, it is obligated to inform the CNB of the beginning of any investigation related to the question of disappeared persons (e.g. by registering the case in the RNPDO) and to share information throughout the investigation concerned.<sup>509</sup> Whenever the investigation is conducted by a state attorney general's office, the latter is likewise obligated to pass any potentially useful information for the search to the CNB and/or to the competent state search commission (depending on the circumstances, e.g. if the state search commission is already operational).<sup>510</sup> The CNB must also have unrestricted access to any files, databases or records of all authorities, which could contribute to a more efficient search for disappeared persons, including those possessed by the FGR.<sup>511</sup> At the same time, investigative authorities are bound by a contradictory provision, namely the prohibition to disclose any information from investigative files, unless access is required by the "disputed parties", victims, the injured party or legal counsel.<sup>512</sup> While it is not entirely clear how this contradiction is solved in practice, the impression is that the investigative authorities tend to rely on the prohibition to disclose data from files whenever they fear that this may lead to identifying potential irregularities in the investigation process.<sup>513</sup>

<sup>501</sup> Data gathered through written exchange, 22 January 2021.

<sup>502</sup> Data gathered through written exchange, 1 February 2021.

<sup>503</sup> Arts. 53(XXI) and 70(II) of the General Law on Disappearances.

<sup>504</sup> Art. 80 of the General Law on Disappearances.

<sup>505</sup> Art. 53(XX) of the General Law on Disappearances.

<sup>506</sup> Art. 53(XXXVIII) of the General Law on Disappearances.

<sup>507</sup> Art. 53(XL) of the General Law on Disappearances.

<sup>508</sup> Data gathered through written exchange, 27 January 2021.

<sup>509</sup> Art. 70(III and IV) of the General Law on Disappearances.

<sup>510</sup> Art. 71 of the General Law on Disappearances.

<sup>511</sup> Art. 53(XIII) of the General Law on Disappearances.

<sup>512</sup> Art. 218 of the Mexican National Criminal Procedure Code.

<sup>513</sup> Data gathered through interview, 7 July 2020.

When dealing with a failure to share information (or to comply with any other of its provisions), the General Law on Disappearances stipulates that public officials should be sanctioned in accordance with the existing provisions regarding the administrative duties of public officials.<sup>514</sup> While there is no absolute clarity about the applicable provisions pursuant to the General Law on Disappearances, the most plausible option is the General Law on Administrative Responsibilities (*Ley General de Responsabilidades Administrativas*), where Arts. 75 to 89 provide for different administrative sanctions.<sup>515</sup> Even though it is not explicitly mentioned in the General Law on Disappearances, all public officials are – in addition to their administrative responsibility – subject to criminal responsibility (certain actions or omissions amount to administrative offenses, others to crimes, and some to both crimes and administrative offenses).<sup>516</sup> In this regard, the Code of Criminal Procedure stipulates that a public official (or any person) must provide any information required by the Public Ministry and the police while investigating a specific crime.<sup>517</sup> In fact, anyone with the knowledge of any act that could possibly constitute a crime, must report it to the Public Ministry, and in a case of emergency, to any police agent. When such knowledge is possessed by a public official, he or she must immediately report it to the Public Ministry, together with all the information in his or her possession.<sup>518</sup>

## VI. Benefits for disclosure of information

In cases where the perpetrator agrees to share certain information useful for advancing a criminal investigation regarding disappeared persons, the attorney general has the possibility to offer a reduction of the sentence (plea bargaining), but only if the perpetrator is charged with the crimes of enforced disappearance and/or disappearance perpetrated by private individuals, and the information provided relates to the disappearance of a victim that the perpetrator is charged with. The information provided must also relate to the location of the burial site, the whereabouts of the victim or facts that contribute to the identification of other perpetrators.<sup>519</sup> Moreover, cases where the disappeared victim is spontaneously released after 10 days or less, also qualify for such benefit.<sup>520</sup> Conversely, the CNB has no possibility to offer any benefit for the disclosure of information that could benefit the search.<sup>521</sup>

## VII. Coordination between the search mechanisms

Pursuant to the General Law on Disappearances, the duties of state search commissions are at least partially analog to those of the CNB.<sup>522</sup> However, the CNB must assist them while they are carrying out their search and conduct its own search in a coordinated manner with the state search commissions.<sup>523</sup> The CNB is also obligated to hold regular meetings with the state search commissions and exchange on their work, as well as provide them with needed advice.<sup>524</sup> As for the duties of the state search commissions towards the CNB and exchange of information among state search commissions, the continuous exchange of information must be maintained.<sup>525</sup>

<sup>514</sup> Art. 42 of the General Law on Disappearances.

According to data gathered through interviews, no case is known where this provision was applied in practice.

<sup>515</sup> The General Law on Administrative Responsibilities is available [here](#).

<sup>516</sup> Data gathered through written exchange, 27 January 2021.

<sup>517</sup> Art. 215 of the Mexican National Criminal Procedure Code.

The article says that the violation of this obligation may result in holding any person or public official responsible and subject to sanctions in accordance with the applicable laws (in the case of disappearances, this would most likely point to the previously mentioned administrative legislation).

<sup>518</sup> Art. 222 of the Mexican National Criminal Procedure Code.

<sup>519</sup> Art. 33 of the General Law on Disappearances.

<sup>520</sup> Apart from Art. 33 of the General Law on Disappearances, Art. 256 of the Mexican National Criminal Procedure Code allows for another tool for effective collaboration, the so-called “criteria of opportunity” (*criterios de oportunidad*). A precondition for the reduction of the sentence is that the perpetrator agrees to appear at the trial and that the information shared is essential and accurate and it concerns the gravest crime for which the perpetrator is charged. However, this benefit cannot be applied to certain crimes, including those affecting public interest (which would certainly be the case for enforced disappearances and disappearances perpetrated by private individuals).

<sup>521</sup> Data gathered through interview, 27 July 2020.

<sup>522</sup> Art. 50 of the General Law on Disappearances.

<sup>523</sup> Art. 53(XII) of the General Law on Disappearances.

<sup>524</sup> Art. 53(XIX) of the General Law on Disappearances.

<sup>525</sup> The same rule applies between the specialized offices of the attorneys general. They are obliged to share information with the FGR and exchange it internally.



The coordination between the CNB and state search commissions varies and is, at least to a certain extent, conditioned by the existing financial resources, knowledge and staff of each state search commission. For example, in states where the search commissions are not operational yet, or they operate, but with very limited resources, the CNB would be in the lead. If a state search commission requests support in conducting a search in the field, the CNB physically participates in the search and, if needed, brings along forensic experts, anthropologists, the National Guard, etc.<sup>526</sup>

### VIII. Other institutions involved and further ways of sharing information

The National Citizen Council may contribute to the exchange of information in the search and criminal investigations by issuing opinions, recommendations and suggestions, which must be communicated to all the members of the National Search System. The wording used in the General Law on Disappearances suggests that such recommendations are issued by the National Citizen Council on its own initiative,<sup>527</sup> and they can be taken into account in the process of adopting a decision.<sup>528</sup> In cases where the recommendations of the National Citizen Council are not taken into account, the institutions rejecting them has to provide a justification.<sup>529</sup> Similarly, the state citizen councils, to be formed by the competent institutions of states, act as “consultative organs” to the state search commissions.<sup>530</sup> The General Law on Disappearances further entrusts the National Citizen Council with the mandate of requesting information needed to exercise its competences from any of the members of the National Search System, and to make pertinent recommendations.<sup>531</sup> As for the duties of the CNB towards the National Citizen Council, it must monitor and address their recommendations concerning the topics that fall within the mandate and competence of the CNB.<sup>532</sup>

Concerning the role of the CEAV in the coordination process, the FGR must provide it with information (or to state victim commissions) whenever needed to improve the support to victims.<sup>533</sup> If the FGR or the CNB desire the participation of victims in a certain activity related to a criminal investigation or the search (e.g. by sharing information relevant for evidence collection or the location of mass graves), the CEAV cannot offer any protection to the victims that decide to participate. While the General Law on Disappearances does not entrust the CNB with any power to protect victims, the CNB has the competence to request the CEAV to adopt the necessary measures so that the families of the presumed victims of disappearances receive financial support (*gastos de ayuda*).<sup>534</sup>

The CNDH may also play a certain role in the relationship between the search and criminal investigation. In more general terms, all authorities and public officials are obliged to collaborate with the CNDH.<sup>535</sup> The CNDH’s chief investigator has the competence to request any document or report from public officials, authorities and individuals when needed for the investigation of a certain matter,<sup>536</sup> and the latter should in principle comply with the petition of the CNDH.<sup>537</sup> Whenever public officials or authorities are requested to share or disclose information that is considered confidential, they have to justify why it should be considered as such.<sup>538</sup> In any case, the final decision regarding the nature of such documentation, and whether the information can be shared with the CNDH, rests with the chief investigator.<sup>539</sup>

<sup>526</sup> The CNB recently shared that in 2020, more than 660 search actions were organized. See the news [here](#).

<sup>527</sup> Art. 62 of the General Law on Disappearances.

<sup>528</sup> Art. 61 of the General Law on Disappearances.

<sup>529</sup> Ibid.

<sup>530</sup> Art. 62(XI) of the General Law on Disappearances.

<sup>531</sup> Art. 62(V) of the General Law on Disappearances. See also Art. 70 (XXIII) of the same law, which stipulates that the FGR has the competence to provide information needed for the functioning of the National Citizen Council upon request by the latter.

<sup>532</sup> Art. 53(XXXVII) of the General Law on Disappearances.

<sup>533</sup> Art. 70(XXII) of the General Law on Disappearances.

<sup>534</sup> Art. 53(XLII) of the General Law on Disappearances.

<sup>535</sup> Art. 69 of the Law of the CNDH.

<sup>536</sup> Art. 39(I and II) of the Law of the CNDH.

<sup>537</sup> Art. 67 of the Law of the CNDH.

<sup>538</sup> Art. 68 of the Law of the CNDH.

<sup>539</sup> Ibid.

Finally, an important contribution to the progress achieved in both the search and criminal investigations and coordination between them is provided by international organizations, such as the ICRC, the OHCHR, the IACHR, the ICMP, the EAAF and the FAFG. For example, the ICRC supports the authorities in trainings on forensic identification and in the elaboration of technical forensic protocols. As previously mentioned, it has supported the FGR with the establishment of the ante-mortem/post-mortem database system. It is also raising awareness on the existing international mechanisms to deal with enforced disappearances. As for the OHCHR, it has engaged in the documentation of cases of enforced disappearance (e.g. it has documented the pattern of at least 23 enforced disappearances presumably committed by members of the security forces in Nuevo Laredo, Tamaulipas, in 2018),<sup>540</sup> and has issued a report on the irregularities in the search and criminal investigation regarding enforced disappearances (e.g. arbitrary detentions and torture of the detainees in the Ayotzinapa case).<sup>541</sup> With regard to coordination, both the ICRC and the OHCHR have an advisory role towards different institutions in Mexico and often act as intermediaries between the families and the search mechanisms or investigative authorities, with the aim of achieving a more effective dialogue.<sup>542</sup> As for the IACHR, the ICMP, the EAAF and the FAFG, their presence and different forms of support (e.g. technical, technology-related, forensic) have been particularly helpful, if not even decisive, for improvements in the search and/or criminal investigations in some states.<sup>543</sup>

## IX. Key rules on sharing information

LAW	<b>General Law on Disappearances</b>	Art. 49 (II) (unofficial translation):  “The National Search System has the following competences:  to establish, in coordination with the federal authorities and the Federal entities, the integration and operation of a single information technology system that allows access, processing and use of all relevant information for the search for, location and identification of disappeared or missing (non-localizada) persons; as well as for the investigation and prosecution of crimes under this Law.”  Other relevant provisions (the list is non-exhaustive): Arts. 53 (XIII, XXXVIII), 70 (III, IV, VI), 94, 116
	<b>RND</b>	— Fed with data by the police and public ministries — Is partially open to the public — Is fully accessible to all authorities in charge of public safety
REGISTERS	<b>Ante-mortem/post-mortem database</b>	— Fed with data from the FGR and state offices of the attorneys general (most offices do not input data in practice) — Is not open to the public
	<b>RNPDO</b>	— Is partially open to the public — Is accessible to institutions of the National Search System in detail (but not in full) based on an <i>ad hoc</i> agreement with the CNB — Is fully accessible to the CNB — Serves as a funnel to transfer data facilitating regular communication and the exchange of information between the institutions competent for the search and criminal investigations
	<b>SINPEF</b>	— Fed with new data by the CNDH — Is not open to the public at any point in time — Is accessible to institution of the National Search System upon request
	<b>RENAVI</b>	— Is accessible to the public with restrictions — Fed data from all registers of members of the National Victim System by the CEAV — Provides information that the CEAV may share with the mechanisms of the National Victim System, and possibly outside the System but unclear under which conditions

<sup>540</sup> OHCHR, “[Zeid urge a México a actuar para poner fin a la ola de desapariciones en Nuevo Laredo](#)”, May 2018.

<sup>541</sup> OHCHR, “[México: investigación del caso Ayotzinapa afectada por torturas y encubrimiento, señala informe de Naciones Unidas](#)”, March 2018.

<sup>542</sup> E.g. the OHCHR acted as intermediary between the families and authorities in Coahuila and Veracruz. Information gathered through written exchange, 5 October 2020.

<sup>543</sup> Data gathered through various interviews.

INSTITUTIONS	<b>SEGOB</b>	<ul style="list-style-type: none"> <li>— Shares information without specific rules</li> <li>— Is overall responsible for the implementation of the General Law on Disappearances (thus, by extension, for the information exchange between all institutions of the National Search System)</li> </ul>
	<b>The Ministry of Foreign Affairs</b>	<ul style="list-style-type: none"> <li>— Must share information with consulates and embassies</li> <li>— Must guarantee the flow of information between the MAE mechanisms abroad and search and investigative institutions in Mexico</li> <li>— Must promote the exchange of information with countries of origin, transit and destination of the disappeared migrant</li> </ul>
	<b>CNB</b>	<ul style="list-style-type: none"> <li>— Receives information reported anonymously</li> <li>— Continuously interfaces formal and informal communication among all mechanisms involved in the search</li> <li>— Must always coordinate its decisions with the state search commissions</li> <li>— Obligated to hold regular meetings with the state search commissions and exchange on their work, as well as to follow up on the progress achieved in the search in specific cases</li> <li>— Provides support to state search commissions on case-by-case basis</li> <li>— Manages the RNPDO</li> <li>— Must inform the competent local search commission of any disappearance</li> <li>— Must inform the FGR on the presumption of a crime</li> <li>— Has the competence to maintain regular communication and explore channels for coordination with the offices of the attorneys general</li> <li>— Must share with the competent investigative authorities any information that could be useful for the criminal investigation</li> <li>— Must share information on the potential location of a grave with the competent attorney general, who is in charge of requesting the exhumation order from the court</li> <li>— Must inform the FGR if the disappeared person is found</li> <li>— Must have unrestricted access to any files, databases and records of all authorities, which could contribute to a more efficient search</li> <li>— Must promote coordination and exchange of information with countries of origin, transit or destination of disappeared migrants, together with the FGR and the Ministry of Foreign Affairs (but unclear how information must be exchanged)</li> <li>— Has to maintain regular contact with the MAE through the Ministry of Foreign Affairs (but unclear how information must be exchanged)</li> <li>— May have a regular channel of communication with the Special Unit for Ayotzinapa and the Commission for Truth in the Ayotzinapa case (unclear)</li> <li>— May have administrative and/or criminal responsibility in case the obligation to share information (or the General Law on Disappearances in general) is violated</li> <li>— Has no possibility to offer benefits to those who share information that could benefit the search</li> </ul>
	<b>FGR</b>	<ul style="list-style-type: none"> <li>— Must always coordinate its decisions with the state specialized offices of the attorneys general</li> <li>— May request information from any governmental authority, as long as such information concerns collections of evidence</li> <li>— Exchanges information between its units (methods unclear)</li> <li>— Obligated to inform the CNB of the beginning of any investigation that relates to the question of disappeared persons (e.g. by registering the case in the RNPDO)</li> <li>— Must inform the CNB if the disappeared person is found</li> <li>— Must share with the CNB any information that could assist the search</li> <li>— May, under certain conditions, refer to the prohibition to disclose information from the investigation files</li> <li>— Is in charge of requesting search warrants and lodging motions to exhume in court</li> <li>— May, under certain conditions, offer to reduce the sentence if the perpetrator agrees to share certain information on a disappeared victim (but not used in practice)</li> <li>— Must provide information to the CEAV whenever needed to improve the support to victims</li> <li>— Must promote coordination and exchange of information with countries of origin, transit or destination of disappeared migrants, together with the CNB and the Ministry of Foreign Affairs (but unclear how information must/is exchanged)</li> <li>— May have administrative and/or criminal responsibility in case the obligation to share information is violated</li> </ul> <p>(Regarding the Special Unit for Ayotzinapa, no information could be acquired on how it exchanges information with other units of the FGR and with the institutions of the National Search System.)</p>

INSTITUTIONS	<b>CEAV</b>	— Manages and enters data in the RENAVI (No information on how it shares information could be acquired.)
	<b>National Citizen Council</b>	— May request information considered relevant to discharge its mandate from any of the institutions of the National Search System — Is a consultative organ (in this sense it contributes to the exchange of information) — May issue opinions and recommendations, which must be communicated to all institutions of the National Search System
	<b>State search commissions</b>	— Should be in constant formal and informal communication with other mechanisms involved in the search, in particular with the CNB — Must share information with the competent state investigative authorities in a similar way as the CNB shares it with the FGR (e.g. state search commissions are responsible for notifying investigative authorities if the commission of a crime is presumed) — Must coordinate the search with the CNB and with the competent attorney general's office
	<b>State offices of the attorneys general</b>	— Must share information with the competent state search commission in a similar way as the FGR shares it with the CNB — Must be in constant communication and share information with the FGR
	<b>National Guard</b>	(No information on how the National Guard exchanges information could be acquired.)
	<b>Police</b>	(No information on how the police exchange information could be acquired.)
	<b>Forensic experts</b>	(No information on how forensic experts exchange information could be acquired.)
	<b>MAE</b>	— Bridges communication between Mexican consulates and embassies abroad and the persons reporting the disappearance of a migrant (this includes facilitating access to justice and search activities), and search and investigative institutions in Mexico (No information on how the MAE exchanges information could be acquired.)
	<b>Forensic Commission</b>	(No information on how it shares information could be acquired.)
	<b>Commission for Truth</b>	— Has a mandate to design and implement initiatives offering benefits to those who would valuable information and contribute to the clarification of facts in the Ayotzinapa case (unclear whether this has already occurred) (No information could be acquired on whether it has a regular channel of communication and exchanges with other institutions involved in the search and criminal investigation in the Ayotzinapa case.)
	<b>CNDH</b>	— Has the function to request any document or report from public officials, authorities and individuals when this is needed for the "investigation" of a certain matter
	<b>IACHR</b>	— Has established different mechanisms for supporting the criminal investigation and the search in the Ayotzinapa case (i.e. the GIEI, the MESA) and in this sense has contributed to the exchange of information — Has an advisory role towards Mexican institutions (encourages and exercises pressure with the aim of achieving coordination) — Has an advisory role towards different institutions in Mexico and often acts as an intermediary between the families and the search institutions or investigative mechanisms (in this sense it contributes to the exchange of information)
	<b>ICRC</b>	— Has an advisory role towards different institutions in Mexico and often acts as an intermediary between the families and the search institutions or investigative mechanisms (in this sense, it contributes to the exchange of information)
	<b>OHCHR</b>	— Has an advisory role towards different institutions in Mexico and often acts as an intermediary between the families and the search institutions or investigative mechanisms (in this sense, it contributes to the exchange of information)
	<b>ICMP</b>	(No information on how the ICMP exchanges information could be acquired.)
	<b>EAAF</b>	(No information on how the EAAF exchanges information could be acquired.)
	<b>FAFG</b>	(No information on how the FAFG exchanges information could be acquired.)

### 3.4 Challenges

#### 3.4.1 General

##### **I. Search**

- The lack of forensic experts, technical equipment and capacities, or the so-called “forensic crisis”, is one of the most persistent challenges in the successful conduct of the search for disappeared persons. This issue is clearly reflected in the around 40,000 unidentified bodies and countless skeletal remains stored in mortuaries and elsewhere across the country.<sup>544</sup>
- Given that the search is separated from the process of identification of found mortal remains (because the CNB and state search commissions have no powers, capacity, knowledge and personnel to carry out forensic work), the search institutions maintain no control over the bodies found once they are handed over to the forensic experts. Thus, the search cannot be conducted thoroughly.
- The existing norms, practices and expectations regarding the search, which go much beyond the search for victims of enforced disappearance, represent a key challenge for the search mechanisms. For example, the broad and open-ended mandate of the CNB is a particular challenge in its work. Given that the CNB cannot dedicate the same amount of time to each of the cases received, this has a direct consequence on the overall efficiency of the search.
- Even though specialized search mechanisms are created with good reason (to fix the flaws of the previous system, where the investigative authorities were supposed to carry out the search), success can hardly be expected if the new institutions have very limited legal and material resources to perform their work. In this environment, the search commissions face enormous challenges to achieve any meaningful results.
- The confidentiality of information obtained in the course of criminal investigations, data privacy and secrecy of sensitive information are common excuses used by the attorneys general when justifying why they cannot disclose certain information. When requested to enable access to files to the general public or to any other institution, they tend to rely on the prohibition to disclose investigation files. The impossibility to access data obtained in the course of criminal investigation hinders the search.
- The lack of powers of the search commissions to give any kind of benefit to those who provide useful information for the search reduces the efficiency of their work.

##### **II. Criminal investigation**

- The lack of trust and regular exchanges, in particular between the families of disappeared persons and investigative authorities, is one of the most deeply rooted issues, especially due to the rampant impunity, which undermines the credibility of the work conducted by these institutions.
- In the past, families of the disappeared were not always aware that by carrying out exhumations on their own, they could destroy evidence needed for criminal investigations. Hence, tampering with evidence represented a challenge to conduct investigations. However, today most families are aware and reduce their intervention, unless it is regarded as indispensable for exerting pressure on institutions.
- The authorities’ general lack of knowledge of the content of existing protocols has been referred to as an obstacle to criminal investigations,<sup>545</sup> in the sense that they cannot conduct their work regarding

<sup>544</sup> María Teresa Menéndez Taboada, “[México: entre la crisis forense y las personas fallecidas por COVID-19](#)”, Animal Político, May 2020.

<sup>545</sup> Data gathered through interview, 7 July 2020.

disappeared persons in accordance with the existing standards and rules, if they have no knowledge of their substance.

- Faulty analysis and evaluation of the facts may hinder the possibility to conduct effective investigations into disappearances (because a case would be assigned to the wrong criminal investigative unit, e.g. unit for kidnappings, on the basis of facts reported in the complaint). As an example of how fragmented the investigation at the Federal level is, it has been mentioned that cases of enforced disappearances are currently under investigation in 40 different units of the FGR.<sup>546</sup>
- Although the option to increase the efficiency and effectiveness of criminal investigations by way of reducing a sentence in exchange for information exists, attorneys general do not use this tool in practice.<sup>547</sup> There is also no case known where the investigative authorities take advantage of reward programs established in some state offices of the attorneys general with the aim of encouraging information sharing and advancing investigations.<sup>548</sup>

### III. Search and criminal investigation

- Widespread impunity and low efficiency of criminal investigations concerning disappeared persons, often conducted just as a formality without the seriousness required, pose a significant obstacle to the implementation of criminal justice until today. Prior to the establishment of the National Search System, when the investigative institutions were solely responsible for the search, the inefficiency of criminal investigations also hampered the progress of the search.
- Today, the search and criminal investigations are conditioned by the scope and the complexity of disappearances in Mexico, and the fact that they are being conducted while the crimes continue being perpetrated. This affects the priorities: the enforced disappearances from the “Dirty War” are not treated with the same degree of urgency as those recently occurred, where the likelihood to find the victim alive is higher.
- Given that many disappearances take place in areas where the levels of violence and criminal activity are extremely high, conducting the search and criminal investigation safely, in particular with regard to the participation of the families, whose exposure to risks is often inevitable, is one of the greatest challenges.
- In the past, families of disappeared persons faced challenges due to their limited conceptual understanding of the two processes (the institutions involved in the search and criminal investigations including their mandates and conditions for their own participation). While families nowadays have a better understanding of the existing system, the level of its complexity still poses challenges to their participation.
- The initiative to find out about the stage and progress of the search and criminal investigation almost always comes from the families, which can expose them to fatigue and emotional exhaustion.<sup>549</sup> The failure of the search and investigative institutions to be in regular communication with the families is thus a major challenge for their participation in both processes.
- Given the common lack of trust in investigative authorities, families of the disappeared often request search commissions not to share certain information with the investigative authorities.<sup>550</sup> However, the search commissions have no discretion in this matter (any information linked to a crime and useful for the collection of evidence must be shared with the investigative authorities). This might undermine the trust of the families and create a barrier to access information in their possession.

<sup>546</sup> Karla I. Quintana Osuna, [“Hacia una reforma integral de justiciar”](#), Animal Político, December 2020.

<sup>547</sup> Data gathered through interview, 17 August 2020.

<sup>548</sup> Data gathered through written observations, 1 February 2021.

<sup>549</sup> Data gathered through interview, 9 July 2020.

<sup>550</sup> Data gathered through interview, 27 July 2020.



- Until today, families of disappeared persons are often not informed about their rights with regard to the search and criminal investigations. This prevents them from meaningfully participating in the information exchange with the authorities and mechanisms concerned. For example, although pursuant to the applicable legislation there is such an obligation, relatives may not be notified about their right to obtain a copy of the transcript of their communication with investigative authorities, even though such a copy could potentially assist the search mechanisms in clarifying certain facts needed for the determination of the fate and whereabouts of the disappeared.<sup>551</sup> The lack of notification of existing rights (which includes rights as basic as the right to report the disappearance of their loved one) further prevents the families of missing and disappeared migrants to exercise their rights pursuant to Mexican legislation in their countries of origin.
- Difficulty in accessing data relevant for the search or criminal investigations arises also with respect to information in the hands of private companies (e.g. financial institutions and telephone operating companies).<sup>552</sup> Accessing, for instance, credit card data or phone records is difficult for various reasons. In many cases, the power to request access is the exclusive competence of the investigative authorities, who may not be willing to invoke it, or are not aware of the procedures to do so.<sup>553</sup> Additionally, private companies might have their hands tied because sharing private data can be considered a criminal offense.<sup>554</sup>
- Regarding the capacity building programs in Mexico, whose number has increased in the past years, they are not subject to evaluation. Given that their impact on the members of search and investigative institutions is not assessed, they might not bring about improvements in the work of the competent institutions.
- Unnecessary formalities, slow procedures and excessive bureaucracy have been described as reasons for limited and insufficient progress of both the search and criminal investigations. The MAE and the Investigative Unit for Migrants have been referred to as examples of institutions where highly bureaucratic and slow procedures hinder access to justice, truth and reparation for the families of disappeared or missing migrants.<sup>555</sup> For example, due to the lack of regular communication between the consulates and embassies with the institutions in Mexico, it sometimes takes months for complaints on the disappearances to “travel” from the country of origin to Mexican authorities.<sup>556</sup> Bureaucratic obstacles have also been described as one of the main causes for the huge delays in the work of the Forensic Commission.<sup>557</sup>
- The lack of collaboration among the various institutions involved in the functioning of the MAE and the Investigative Unit for Migrants has been referred to as hinderance to both the search and criminal investigations.<sup>558</sup>
- The domestic institutions in charge of the search for the disappeared and criminal investigations might perceive certain demands from international organizations (e.g. the OHCHR and the ICRC) as casting doubts on their efficiency, especially when the demands impose additional burdens.<sup>559</sup> In other words, domestic institutions are often under the impression that, by requesting copies of transcripts, statistics and other official documents, international organizations would waste their time

<sup>551</sup> Data gathered through interview, 7 July 2020.

<sup>552</sup> An example of such a telephone operating company is [Locatel](#).

<sup>553</sup> In practice, families are often the ones who acquire such information through private channels and then share it with investigative and search institutions. Data gathered through interview, 22 January 2021.

<sup>554</sup> Data gathered through written observations, 1 February 2021.

<sup>555</sup> FJEDD and TRIAL International, “Informe presentado al Comité contra la Desaparición Forzada”, October 2018, para. 59.

<sup>556</sup> Data gathered through interview, 13 November 2020. This is also confirmed in FJEDD and TRIAL International, “Informe presentado al Comité contra la Desaparición Forzada”, October 2018, para. 106.

<sup>557</sup> FJEDD and TRIAL International, “Executive Summary of the Report to the Committee on Enforced Disappearances”, 2018, para. 15.

<sup>558</sup> FJEDD and TRIAL International, “Informe presentado al Comité contra la Desaparición Forzada”, October 2018, paras. 87, 92, 114.

<sup>559</sup> Data gathered through interview, 7 July 2020.

and exhaust the already poor financial resources, which could otherwise be used for substantive progress in their work, including coordination.<sup>560</sup>

- In some more complex cases, where the high-level perpetrators are extradited to the United States of America (due to the transnational nature of the crimes they have allegedly committed), they are usually only charged with certain offenses, such as drug trafficking or money laundering. Even though they might also be involved in disappearances committed in Mexico or they possess crucial information in this respect, these crimes are not included in the charges. As a consequence, perpetrators may not be offered benefits for the exchange of information, which could assist the search. This is also a challenge for criminal investigations, as the perpetrator is not sentenced for the crime of disappearance.

### 3.4.2 [Specific to coordination](#)

- The lack of understanding that search and criminal investigations are two autonomous – albeit interrelated – obligations has been identified as one of the main challenges to the coordination between the two processes. Investigative authorities seem to perceive the search as an intermediate stage or as subordinate to criminal investigations, and thus consider it less important.
- The federal structure of the country, which is characterized by an unclear division of powers between the Federation and states, jeopardizes the effective coordination of the search and criminal investigations. Difficulties that arise with respect to coordination among the Federal and state governments are particularly visible when the information is highly dispersed, and the institution competent to carry out the search and criminal investigation cannot be easily determined, e.g. when the disappeared person is a migrant.
- Another factor that complicates the coordination is the fragmentation of laws and institutions dealing with the search and criminal investigations. The division of competences between the institutions at the Federal and state levels adds another layer of complexity, especially because the responsibilities are not always clearly divided.
- Vague terminology in Mexican laws, protocols and guidelines can pose challenges to coordination. For example, the use of phrases such as “has the competences” (*tiene las atribuciones*) or “has the functions” (*tiene las funciones*) might create confusion as to whether something is a legal obligation or not, even by the institutions themselves. Likewise, broad reference to coordination, collaboration, or indication has no added value if there is no accompanying explanation stipulating in greater detail what these terms actually mean in a specific case.<sup>561</sup>
- A peculiar challenge to coordination is linked to the non-recognition of the “right to be searched”.<sup>562</sup> It has been suggested that the explicit acknowledgment of such a right would eliminate the investigative authorities’ claim that the right to be searched can neither be the trigger nor the legal basis for carrying out an investigation because such a right allegedly does not exist.<sup>563</sup>
- Insufficient financial, human and technical resources – in the search and investigative institutions at all levels – decreases the scope of potential coordination activities. For example, many of the state search commissions have little to zero resources and no qualified personnel, and thus cannot discharge their respective mandate. Given that the state offices of the attorneys general usually have

<sup>560</sup> This is, however, only one side of the coin as this can be also perceived as an (exaggerated) excuse of domestic institutions (in particular investigative authorities) who would rather prefer that international organizations do not intervene in their work.

<sup>561</sup> Data gathered through interview, 3 July 2020.

<sup>562</sup> This is at least the opinion of representatives of some Mexican institutions. It would be, however, inaccurate to say that the claim has been put forward by all the interviewees. For example, another interviewee suggested that there is no need to recognise a new right, but rather to ensure that the right to be searched is correctly deducted from other already existing rights enshrined in IHRL treaties. Data gathered through written observations, 31 August 2020.

<sup>563</sup> In a [recent public hearing before the IACHR](#), the head of the CNB explained that it would be important to explore how to balance the right to be searched with other rights (e.g. data privacy).

more resources and a stable team, they tend to be the ones who are carrying out the search in practice (e.g. in Nuevo León). Furthermore, the search mechanism remains dependent on investigative authorities even in states where search commissions have the needed resources to conduct their work. This is because some of their tasks require the involvement of the institutions in charge of the investigation (e.g. only the attorney general can request a search warrant in court for accessing a private property). This is not a problem *per se* if investigative authorities are willing to collaborate, but if not, this can result in an impasse of the search process.

- At the Federal level, the coordination is undermined by the general reluctance of the FGR to be part of the National Search System. This includes (but is not limited to) the refusal to follow any suggestion put forward by the CNB, to collaborate with any other institution of the National Search System and to insist that the investigative authorities should be completely relieved from the obligation to search. In addition, the attitude of state attorneys general towards the search mechanisms in some states has been identified as problematic for and harmful to coordination. The investigative authorities approach the search mechanisms in a very authoritative way, with no interest in learning about concerns and suggestions related to their work. This in turn prevents setting the basis for smooth coordination (i.e. a relationship based on appreciation and mutual trust).<sup>564</sup> Reluctance of investigative authorities to collaborate, coordinate and exchange information with the search mechanisms is further reflected in their common use of the provision to limit the access to data in investigation files by referring to data privacy (which is not necessarily justified).
- The pre-existing, personal relationship between state offices of the attorneys general and search commissions for the coordination can be seen as a challenge because of the danger that comes with this type of backstage coordination, without the participation of the families. Such coordination may be lost when the persons in charge change, for whatever reason.
- Efforts of international organizations to encourage coordination between the search, investigative institutions and the families are conditioned by the pre-existing working conditions. International organizations can achieve meaningful results only when and if domestic authorities and mechanisms are willing to interact with them, and follow the advice provided.
- The main challenge to the implementation of GP 13 is the reluctance of attorneys general to acknowledge and accept coordination with search mechanisms as a legal obligation.

### 3.5 [Lessons learned and good practices](#)

#### 3.5.1 [Lessons learned](#)

- The term “coordination” is overused and often abused to avoid taking clear responsibilities, especially in the conversational language.<sup>565</sup> Generic reference to coordination in laws and protocols has little value if it is not accompanied with detailed explanations on what it does imply regarding the obligations and the concrete tasks of each of the concerned institutions. Thus, whenever using the word “coordination”, there is a need to specify (in as much detail and as concretely as possible) what it actually entails. Whenever possible, concrete examples of the activities to be undertaken to fulfill the obligation to coordinate should be spelled out.
- Instead of referring to the coordination between the search and criminal investigations, it would be more accurate to refer to the “coordination circle”, as many other institutions (e.g. forensic experts and family associations) are also indispensable in the conduct of search and investigative activities.

<sup>564</sup> Data gathered through various interviews.

<sup>565</sup> Data gathered through written observations, 31 August 2020.

- A precondition for coordination is the existence of laws prescribing clear mandates of mechanisms and authorities at all levels (Federal, state, municipal). However, a law cannot replace the will, which everyone involved in the coordination processes must share.
- Laws and protocols imposing channels for coordination should use simple and concise language, and avoid being too technical or ambiguous. Simplicity of the language could contribute to their better understanding and faster dissemination among the institutions involved in the search and criminal investigations.
- While the General Law on Disappearances is seen as a positive development for coordination overall, it is weak in that it tries to cover too many problems that are too different in too short a period of time. If the obligation to coordinate would have been regulated in a gradual way, the institutions could better assume their responsibilities and would be better equipped to assume their functions and fulfill their responsibilities.
- Given the number of different institutions involved in the search and criminal investigations due to the federal structure of the state, there is no unique answer on what is needed to solve the tensions in coordination between the two processes. However, one way to improve it, is to simplify the existing legislative framework and avoid further institutional fragmentation.
- In situations where a certain degree of coordination between state offices of the attorneys general and search commissions exists, it is mostly due to a pre-existing good personal relationship between the individual search commissioner and the attorney general. It has been mentioned that personal relationships are decisive for the progress of work on cases, and that information is more likely to be shared between the search commissioner and the attorney general if there is mutual trust between them.<sup>566</sup> The personal relationship also shapes the collaboration between the individual search commission and family associations (e.g. the search commission in Nuevo León has a more or less friendly attitude towards the existing family associations, depending on the kind of relationship it has established with them).<sup>567</sup>
- The families of disappeared persons and civil society organizations may actively contribute to coordination and, in some cases, even trigger it by exerting pressure on different institutions, urging them to collaborate. However, for the families to trigger or contribute to the coordination, they need to dedicate significant time and resources to studying the existing laws, standards and regulations (concerning their possibilities for participation and the existing channels for the coordination).
- Since investigative authorities do not always know how to effectively conduct investigations (e.g. by allowing the participation of the families), the families of the disappeared are the ones who assist them in understanding the logic to be adopted in the process. More in general, the progress of criminal investigations is often strongly dependent on the input received by families, who are therefore expected to “replace” the otherwise passive attorneys general.
- While this has not been endorsed by everyone, some interviewees explicitly highlighted that the separation between the search and criminal investigations is only a temporary solution and that, given the interrelation of both processes, having only one institution in the lead would be more desirable and efficient.<sup>568</sup>
- A supervisory mechanism could facilitate coordination.<sup>569</sup> Such a supervisory role could be assumed either by an external, possibly international institution, or by one of the judicial institutions in Mexico, which could impose sanctions on persons (or entire institutions) that fail to comply with the rules of coordination.

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<sup>566</sup> Data gathered through various interviews.

<sup>567</sup> Data gathered through written observations, 3 December 2020.

<sup>568</sup> Data gathered through interview, 9 July 2020.

<sup>569</sup> Ibid.

- In the case of migrants, the consulates and embassies should be aware of their duties and tasks with respect to the MAE, and communicate these to a broader public. All mechanisms involved in dealing with the disappearances of migrants should collaborate with institutions in the countries of origin, transit or destination of the disappeared migrants, in particular (but not exclusively) with those institutions that are in charge of the same tasks in the respective country (e.g. the CEAV should collaborate with an institution that is in charge of assisting victims).
- The added value of GP 13 has been particularly acknowledged by the families, who believe that the principle reaffirms the importance of guaranteeing the interrelation between the search and criminal investigations and provides further guidance on what the obligation to coordinate entails in practice.

### 3.5.2 [Good practices](#)

- The use of mobile phone applications is considered useful for a quick and prompt coordination of activities, and has thus been referred to as an example of good practice.<sup>570</sup> WhatsApp has been used for official and unofficial communications among search mechanisms, between search mechanisms and families, as well as between investigative authorities and search mechanisms.
- Despite the fact that the Ayotzinapa case remains “unsolved” (in the sense that, with the notable exception of the mortal remains of two forcibly disappeared students, the fate and whereabouts of the rest of the disappeared has not been established and the perpetrators have not been identified with certainty), it shows the crucial role of the families and civil society organizations in coordination activities. It also proves that the pressure exercised by international actors on domestic institutions to engage in coordination can truly make a difference. In this sense, the efforts of families and international institutions to continuously monitor actions taken by domestic institutions can be regarded as an example of good practice for the purposes of coordination, at least to a certain degree.
- Another example of good practice in coordination activities comes from the state of Sinaloa, where high-level authorities begun to coordinate after being pressured by civil society organizations to comply with the CED urgent actions pursuant to Art. 30 of the ICPED.<sup>571</sup>
- The process that led to the adoption of the agreement for the establishment of the MEIF has been regarded as an example of good practice because it allowed for the participation of different national and international institutions, as well as the families.<sup>572</sup> The IACHR has positively regarded the MEIF’s creation, holding that it is a result of an inclusive process, which strived for independence and a high level of expertise of the mechanism.<sup>573</sup>
- With regard to coordination concerning disappeared migrants, an example of good practice comes from the beginning of 2019, when the coordination between the CNB, the attorney general’s office in Tamaulipas and the state search commission resulted in the successful location of disappeared migrants.<sup>574</sup>
- Immediate search groups such as the one in Nuevo León are known as good practice, because they can be activated as a first immediate response, with their work also being an inherent part of investigations.<sup>575</sup>

<sup>570</sup> Data gathered through interview, 10 July 2020.

<sup>571</sup> Data gathered through interview, 8 July 2020.

<sup>572</sup> Data gathered through interview, 7 August 2020.

<sup>573</sup> OAS, “[La CIDH saluda avances del Estado mexicano para la entrada en funciones del Mecanismo Extraordinario de Identificación Forense](#)”, Press Release No. 300/20, December 2020.

<sup>574</sup> The detailed description of the case can be viewed here: IBERO, “[ANÁLISIS Estado minimiza búsqueda de desaparecidos en San Fernando](#)”, IBERO, March 2019.

<sup>575</sup> Data gathered through written observations, 9 February 2021.

### 3.6 Conclusions

The search for disappeared persons in Mexico encompasses a broad scope of cases (both in terms of the number of disappeared persons involved and the time span to be covered) and does not focus solely on the search for mortal remains. Especially in more recent disappearances, the likelihood of the disappeared person to be alive is often high. Mexico has until now developed extensive and extremely detailed legislation for the search and criminal investigations concerning disappeared persons specifically. The first steps for the criminalization of enforced disappearance were taken already 20 years ago, and even though the initial framework was rather basic (and incompatible with international standards), combined efforts of the families of disappeared persons and various international and domestic institutions triggered the adoption of a comprehensive legal framework.

Nevertheless, many institutions set up based on the new norms are still in the process of establishment and have not fully defined their working policies and practices. While it is premature to issue any conclusions regarding whether or not the current model for the search and criminal investigations could be considered a good practice, it is clear by now that the creation of specialized search mechanisms has increased the complexity of the coordination in practice and has, at least to a certain extent, deepened the divide between the criminal investigation and the search.



## 4 General conclusions

- Coordinating the search and criminal investigation is not a matter of a choice, or an option, it is a legal obligation – notwithstanding the challenges of doing so.
- Coordination between the search for disappeared persons and criminal investigations can be facilitated regardless whether the processes are pursued by one or two or more institutions. What is indispensable for successful coordination is the acknowledgment of the relationship between the search and criminal investigations, and the opportunities created if they are perceived as two parts of the same, broader process.
- Search and criminal investigations are more likely to be implemented effectively as two interrelated obligations if all institutions involved in the two processes are able to contribute to setting up, implementing and monitoring activities of cooperation and communication.
- The challenges to coordination depend not only on the chosen model for the search and criminal investigations, but also on many other factors such as the pre-existing characteristics and specificities of the country, e.g. the same solution may bring different results in a small country or in a big State with a complex structure. Further examples of pre-existing characteristics are the strength of existing institutions, bureaucratic, technical and forensic capacities and political will. Moreover, the strength of the rule of law in a country has a direct influence on how the search and investigative institutions carry out their mandate, and how well they coordinate. Thus, there is no unique solution that could be extended to all contexts and countries on how to best ensure coordination.
- For coordination to be successful, the search and criminal investigations must be envisaged as inclusive and integral processes by law, and understood as such by all the actors involved in the two processes. Provisions regulating coordination should be formulated with sufficient precision to allow active participation and engagement of institutions at all levels (whenever this is necessary due to the organizational structure of the State) throughout the process.
- While having coordination prescribed by laws and formal agreements is crucial to ensure the greatest level of transparency in the relationship and duties among different institutions, it is insufficient to ensure, *per se*, effective coordination. In this regard, strong political and institutional will are crucial.
- Clearly defined tasks falling within the mandate of all institutions involved in the search and criminal investigations, and an understanding of what they entail in practice, facilitates coordination and lowers the risk of avoiding responsibilities. Especially in situations where the search and criminal investigations are entrusted to two or more separate institutions, designing search and investigative mandates as complementary and in a way that they do not compete with each other can prevent overlapping and eliminate tensions between the two processes.
- Before establishing channels of coordination between the search and investigative institutions, regular exchange and cooperation among the search mechanisms and investigative authorities themselves is required. It is only when the search and criminal investigation are both smooth and well-organized processes, and regular channels of communication exist within the framework of the search and criminal investigations, that effective coordination between them can be pursued.
- Whether the search and criminal investigations are entrusted to one or two or more separate institutions, limited human, financial and technical resources generate tensions between the two processes and hinder their effectiveness. Especially when such limitations are so significant that they force the responsible institutions to define priorities and make choices on their basis (e.g. in case where one institution is in charge of both processes, to decide whether preference should be given to the search or to criminal investigations; or, in situations where two or more separate institutions are dealing with the search and criminal investigations, to refuse any activity seen as not directly useful

for the criminal investigations or the search), they may render coordination excessively difficult or practically impossible. Moreover, more resources should be invested in supporting local search and investigative institutions to reduce the inequalities with the institutions at the State level.

- Capacity building programs may strengthen the work of the search and investigative institutions and set the grounds for coordination between them, but only when such programs are subject to regular evaluation designed to appraise their impact.
- Technology and science are indispensable for the progress of the search and criminal investigations. To speed up the work and decrease the possibility of potential mistakes in the results obtained, both technology and science should be introduced and used in both processes as early as possible.
- Greater importance should be assigned to forensic science and the role of the forensics in both the search and criminal investigations. Forensic capacity should be seen as essential for establishing coordination between the two processes. Joint capacity building in forensic science among the institutions that carry out the search and criminal investigations might foster good will, trust and genuine understanding as to how interdependent they are – and therefore enhance coordination.
- The establishment of a minimum dataset shared among all search mechanisms and investigative authorities could contribute to the regular exchange and sharing of information, especially if information in such databases is duly entered by the search and investigative institutions. Upon the establishment of such a database, all institutions should be entrusted with the responsibility of storing data safely and use it for the purposes that benefit the search and criminal investigations, keeping in mind the existing regulation(s) on data privacy and the primary concern of the safety of the disappeared and their families.
- Ensuring that institutions in charge of the search and/or criminal investigations, as well as their representatives, are held accountable when they fail to coordinate could boost effective cooperation between them and increase the general trust towards institutions.
- The use of benefits for those who provide information should not be refused merely on the grounds that “there is no will” to share information with the institutions for the search and criminal investigations. If the assumption is that such will is non-existent, the institutions should do everything in their power to change that, e.g. through capacity building programs and raising awareness of the importance of sharing information.
- Whenever the issue of disappeared persons goes beyond the borders of one single country, regional agreements increase the chances for successful coordination, especially when there is a sufficient political and institutional will for their implementation, and the responsibilities and means of communication between the authorities in each of the concerned countries are defined with precision.
- The regular exchange of information between institutions for the search and criminal investigations in different States is indispensable to address the disappearance of migrants. The details and specificities of such an exchange should be clearly stipulated in regional or international agreements, and not left to the discretion of internal country regulations or will.
- The physical presence and support of international organizations in countries where the search and criminal investigations are being conducted can improve their efficiency and technical capacity (e.g. by capacity building or providing technical and forensic capacities). It may also contribute to the legitimacy and transparency of both processes, and to guaranteeing a participatory approach, in particular as regards the inclusion of the families of the disappeared.
- International organizations and mechanisms have the potential to make a significant impact in fostering coordination. In countries with a federal structure, the assistance and support of international organizations and mechanisms (e.g. by funding or playing an intermediary function)

should not focus or be given exclusively to institutions at the highest level of government. Instead, it should be divided among search and investigative institutions at all existing levels, considering that such an approach will strengthen coordination between all institutions involved in the search and criminal investigations in the long run.

## 5 References

*The bibliography and other sources enlisted below encompass only the most relevant references and are non-exhaustive. National and international legislation, protocols, international and institutional agreements, as well as jurisprudence mentioned in this study are not included in the list of references.*

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## 6 Annex: List of organizations of the interviewees

The purpose of this list is to illustrate who has been invited to participate in the interviews. Nevertheless, it is important to reiterate that the interviewees did not speak on behalf of their respective organizations and that their views thus do not necessarily represent those of their organizations. Furthermore, given that some of the organizations have not agreed to include their names in this study, the list is not comprehensive.

### 6.1 Bosnia and Herzegovina

#### Organization

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[Family Association Izvor](#)

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[Human Rights Ombudsman of BiH](#)

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[International Commission on Missing Persons](#)

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[Missing Persons Institute](#)

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[Prosecutor's Office of Bosnia and Herzegovina](#)

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[State Investigative and Protection Agency](#)

### 6.2 Mexico

#### Organization

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[Executive Commission of Support to Victims](#) (*Comisión Ejecutiva de Atención a Víctimas*)

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[National Search Commission](#) (*Comisión Nacional de Búsqueda*)

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[Argentinian Forensic Anthropology Team](#) (*Equipo Argentino de Antropología Forense*)

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[Fray Juan de Larios Diocesan Center for Human Rights](#) (*Centro Diocesano para los Derechos Humanos Fray Juan de Larios*)

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[Foundation for Justice and the Democratic Rule of Law](#) (*Fundación para la Justicia y el Estado Democrático de Derecho*)

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[Human Rights Program of the Ibero-American University](#) (*Programa de Derechos Humanos de la Universidad Iberoamericana*)

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[i\(dh\)eas](#)

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[International Committee of the Red Cross Mexico](#)

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[Office of the High Commissioner for Human Rights Mexico](#)

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[Search Commission of Mexico City](#) (*Comisión de Búsqueda de personas de la Ciudad de México*)

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[United Forces for Our Disappeared in Nuevo León](#) (*Fuerzas Unidas por Nuestros Desaparecidos en Nuevo León*)



## About swisspeace

swisspeace is a practice-oriented peace research institute. It analyses the causes of violent conflicts and develops strategies for their peaceful transformation. swisspeace aims to contribute to the improvement of conflict prevention and conflict transformation by producing innovative research, shaping discourses on international peace policy, developing and applying new peacebuilding tools and methodologies, supporting and advising other peace actors, as well as by providing and facilitating spaces for analysis, discussion, critical reflection and learning. swisspeace is an associated Institute of the University of Basel and member of the Swiss Academy of Humanities and Social Sciences. Its most important partners and clients are the Swiss Federal Department of Foreign Affairs, the State Secretariat for Education, Research and Innovation, international organizations, think tanks and NGOs.

The Dealing with the Past Program at swisspeace supports governmental and non-governmental actors in the design, implementation, monitoring and evaluation of dealing with the past activities. The program provides a wide range of training opportunities and contributes to the research-policy nexus through its research projects, conferences, publications and teaching.

## About the author

Ana Srovin Coralli is a PhD candidate at the Graduate Institute Geneva, Switzerland and a Teaching Assistant at the Geneva Academy of International Humanitarian Law and Human Rights. Before joining the Geneva Academy, Ana worked for the Dealing with the Past Program at swisspeace.

Since 2018, Ana has focused on enforced disappearances, in particular on questions related to the principle of non-retroactivity, search for the disappeared persons and more recently, on the coordination between the search and criminal investigations concerning disappeared persons. She has published on various topics of international law, including enforced disappearances, jus cogens, migrants, R2P and the regulation of handling waste from electrical and electronic equipment in the European Union. Apart from enforced disappearances, Ana's research interests span the fields of international criminal law, law of state responsibility, transitional justice, international human rights law and migration law.

She holds a Master in International Law from the Graduate Institute Geneva and a Master and Bachelor in Law from the Faculty of Law of the University of Ljubljana, Slovenia.

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