


DISAPPEARANCE OF PERSONS IN NUEVO LEÓN

A SYSTEMATIZATION OF EXPERIENCES
IN SEARCH OF JUSTICE AND TRUTH



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Prologue

Towards a new strategy to search for missing persons

It is not simple to write a prologue for a publication that reflects the praiseworthy work that is being done to progress in the investigation of disappearances in Nuevo Leon. Therefore, rather than attempting to summarize in short paragraphs and pages the main elements that this document presents, I will try to put into context the practices of the meetings here explained and analyzed in regards to some elements that, in my opinion, define an efficient global strategy to search for missing persons.

I am convinced that it is imperative to develop new and better strategies to obtain satisfactory results when searching for missing persons. We cannot continue with the inertia, lack of interest, inefficiency, inefficacy and disdain. The good practices that this publication reflects are, without a doubt, a path to imitate and improve, as well as an invitation to reflect about the strategies to search for our missing persons. (And I would like to insist on the word "our"), they are not *the missing persons, their missing persons; they are our missing persons* because we all should have a commitment with the solution and the clarification of the truth.

I would like to use the good practices that this document summarizes to give them a national and global dimension. This is to highlight the need that all search strategy should begin with the recognition of the local methods of disappearances without ignoring that national strategies are always required, and in a lot of cases, international cooperation as well. Let us think of the disappearances in the Southern Cone in the context of the Condor Operation or of the current immigrants disappearances, to name a few obvious examples.

These good practices presented here reflect the reality and the local opportunity developed to respond to a problem that arose in Nuevo Leon. Commitment, willingness to dialogue, and persistence were required of all the parties involved, starting with the relatives, the Attorney General and his team, and CADHAC. But the following pages call us to think also about the results that could have been obtained if these practices had existed before the disappearances took place.

One of the obstacles that the document points out is time lapse and the deficiencies in the first investigative phases. In this sense, the first lesson and strategy that we have to consider is that all the states must have search protocols regardless of whether there occur enforced disappearances or not in the country. This is essential to be adequately prepared in case of a disappearance. Obviously, this is even more necessary in those countries (and entities belonging to the Federation like in the Mexican case) where disappearances occur. But the lack of

such search protocols may never be used as an excuse not to make all the adequate and necessary investigations to locate the missing person.

When facing a report of an enforced disappearance, the state reaction must be immediate. There cannot be waiting time, since the first hours and days are crucial to ensure the success of the search and, many times, to guarantee the life of the missing person.

The search for a missing person must assume, at the beginning, that the person is alive. Only before the existence of enough reasonable traces, the search must be focused on finding the remains of the person. From this perspective, we must also be aware that sometimes, it is not possible to find those who have gone missing. This is particularly true in the disappearance cases where the body of the victim has been destroyed or cannot be recovered for different reasons, or those that took place several decades ago and whoever may have had information regarding the whereabouts of the remains have died. However, even the impossibility of finding the remains of the missing persons does not relieve the states from acting with due diligence and adopting all possible and reasonable measures to find them. The very least the states must do is to establish the circumstances of the disappearances, including how and why they have occurred, what happened with the missing person, and who was responsible, should be prosecuted and sanctioned. All this is an essential part of the rights to the truth, justice, and reparation, and serves as a guarantee of non-repetition.

Any efficient search strategy, as this publication demonstrates, requires a serious and consistent political will and a persistent, sustainable, integral, coordinated, cooperative and collaborative policy. All policies must be assumed as state duties and not as duties of governments in particular and must not depend on the victims. When reading the following pages, the importance of institutionalizing the basic principles and directives that guide the search in Nuevo Leon and in any other place becomes clear. We read this document as the foundations for the institutionalization of this mechanism no matter who is in charge of the government or of the Attorney General's Office. The states should develop an appropriate legislative framework and guarantee the delivery of financial and human resources, as well as technical equipment for forensic investigations of enforced disappearances. In addition, recognizing the dimension of the enforced disappearances problem is a necessary step in order to develop such integral and effective measures. If it is not accepted and recognized that there is a problem that needs to be faced, there is no possibility of developing public policies concerning it.

States with a considerable number of enforced disappearances must establish, besides the protocols, a national program to search for missing persons. Think about the results that might have been obtained in Nuevo Leon and in Mexico in

general if there had been or if there were an efficient national program to search for missing persons that would include, among other things, a) the ex officio search without delay; b) the coordination of the efforts of the different security agencies to locate the person, the removal of any legal or factual obstacle that may reduce the effectiveness of the search or prevent the start of it; c) highly qualified staff (including in the exhumation and identification of mortal remains) with the financial, logistical, scientific, and any other resources needed for the search's success; d) checking the report of the missing person against all the databases that exist on the subject; e) giving priority to the search zone where it would be more probable to find the missing person, without arbitrarily discarding other areas or possibilities; and f) the execution of the search with plain budgetary and operative independency. Imagine the results that could be obtained if the strengthened, amplified, energized model of Nuevo Leon became nationalized and federalized. How many more cases of enforced disappearances might have been solved?

The suffering of the victims and relatives remains even when the very disappearance has ended. But for sure, there is anguish while the luck or the whereabouts of the missing person remains unclear. The philosophy on which this publication insists and that I fully share is that efficient policies must support the heroic efforts of various organizations whose labor tries to include and promote the perspective of the victims in the development of the programs and policies regarding enforced disappearance. All the efforts in this area require to take the victims point of view, and it is my conviction that the victims must have a central role in designing, carrying out and evaluating public policies in this subject. And these search policies require the sensitivity of the public servants to treat the victims with dignity and respect. This is precisely what these pages reflect.

The participation of the victims is not only required to guarantee their rights, but is also essential to achieve substantive progress. And when we talk about victims, we do so in the broad sense of the term as defined in Article 24 of the International Convention for the Protection of All Persons from Enforced Disappearance, that is to say *"the disappeared person and any individual who has suffered harm as the direct result of an enforced disappearance."* The participation and recognition of the victims' rights, and particularly their roles as central actors in the criminal proceedings, are essential to break impunity patterns. The studies available at present, together with the personal experience of observing the region during the last decades, allow us to sense how the victims and their allies are the ones who have managed to keep open the judicial cases, boost investigations, and deepen the treatment of the kind of committed violations. In most countries, the victims were alone, occasionally with very little state support, and, in most of the cases, suffering great hostility and indifference. Experience also shows that the law enforcement agents can and should be allies of great importance in guaranteeing the rights of the victims. When the authorities assist the relatives in the search, concrete results can be obtained even decades after the disappearance, as has

been proven by Nuevo Leon's experience. In Argentina, the reunion of the president of the Grandmothers of Plaza de Mayo, Estela de Carlotto, with her grandson 36 years after his disappearance, shows the kind of results that can be obtained when the relatives of the missing persons and the organizations that represent them are fully supported by the states. It also constitutes a hope and an incentive for all the families in the world who unrelentingly keep looking for their loved ones.

However, in many parts of the world—and Mexico is not the exception—the threats, intimidations, and retaliations against the families of the missing persons, as well as against the human rights activists that assist them, not only persist but also seem to increase in intensity. Policies of search for missing persons cannot be dissociated from the necessity for the states to take specific measures to prevent such acts, to punish those responsible, and to provide due protection to activists and relatives.

Another important element that I would like to highlight is the recollection and generation of statistical data, disaggregated by gender, age, place, and allegedly involved authorities, about enforced disappearances. For this, a database should be created and permanently updated with the personal information available about the victims of enforced disappearances. Full access to such register should be guaranteed for the prosecutors, police investigators, relatives, lawyers, human rights activists and any other interested person.

The right to the truth and the right to justice, as this publication shows, are intimately related, and they should complement each other, but without confusing the act of searching for the missing persons with the investigation to determine criminal responsibility. Criminal investigation can and generally does contribute to the clarification of the disappearance cases. An effective criminal investigation can allow the provision of incentives so that those who hold information that may be relevant render it to the authorities doing the search for missing persons; for example, article 4.2 of the Declaration on the protection of all persons from enforced disappearance contemplates establishing mitigating circumstances for those who, having participated in enforced disappearances, contribute to bringing the victims forward alive or voluntarily provide information that helps clarify cases of enforced disappearance. It should also be allowed for the victims to participate actively, not in the search as these practices indicate, but in the efforts in the matter of justice and, particularly, in the criminal proceedings. Obviously, the relatives must be regularly provided with information about the progress in the criminal investigations just as much as about the search investigations, and it must be assured that the burden of proof does not fall upon them.

Particularly, it should be guaranteed that all information that may serve to shed full light on the disappearances is available and accessible. In this sense, all kinds of archives where this information could be found should be open to the public, and laws regarding access to information that would allow requesting information from the state should be adopted. Circumstances such as national security, state secrets and the like should not preclude, in principle, the access to information relevant to establishing the luck and whereabouts of the missing persons.

Also, the use of forensic advances and experiences and of DNA tests should be expanded, besides making an appropriate use of all available technological and scientific measures like satellite images, geophysical studies, and computational models, among others. Even though DNA tests are only useful when a body is found, due to the irrevocable course of time it is important to take samples from the relatives to be available in case the body is found. For this, the creation of genetic banks with samples from relatives looking for missing persons is an indispensable step. If mass graves or human remains buried anonymously in cemeteries are found and the DNA of such remains can be identified, but there is not any genetic database, it will not be possible to solve enforced disappearance cases. Thus, a database with the available personal information of the enforced disappearance victims should be created nationally and permanently updated; it would include genetic information, particularly the DNA and tissue samples obtained from mortal remains and from the victims' relatives, with their prior consent. The State must permanently protect the personal information contained in these databases. This national registry of missing persons should guarantee that the relatives, lawyers, human rights activists and any other interested person will have plain access to this registry.

All these measures require a permanent training of the civil servants in charge of investigating enforced disappearances and of searching for missing persons. Enforced disappearance is a serious, complex and permanent violation that requires the civil servants involved in the investigations to understand these characteristics. It is not the same to investigate a disappearance and much less an enforced disappearance, than to investigate a robbery or a homicide. Likewise, it is not the same to investigate an enforced disappearance that requires the state participation or connection of the offender and the refusal to recognize the deprivation of liberty, as to investigate an abduction that is precisely looking to obtain a reward, and where, therefore, the deprivation of liberty is recognized. The training for the search for missing persons must strengthen the abilities of the civil servants to investigate these cases with a systematic vision to understand the pattern of the enforced disappearances, including the chain of command. The training programs must also lead to a better understanding of how to develop specific investigation lines according to patterns of the area, time, period, and/or involved authorities.

Neither the victims, nor the organizations that assist them, nor the civil servants who investigate the disappearances should be left alone, marginalized and/or stigmatized. Hence, efficient search policies require the development of sensitivity campaigns for society as a whole to help them raise their awareness about this phenomenon, to ease the provision of evidence for whom may hold them, and to give support and solidarity to the victims.

The precautionary measures against enforced disappearance must also be connected to those of the search for missing persons. So, for example, the guarantee of the full identification of all the competent authorities in the apprehension of persons, may bring about quick progress in the investigation of the luck and whereabouts of a missing person. The establishment and strengthening of a central apprehension registry makes it possible to monitor the physical location of detainees. Monitoring this registry guarantees that it will be permanently updated and harmonized with other databases and includes strict controls with regard to the authorities responsible for the apprehension registry, and appropriate sanctions for those who do not do it. The apprehension registry must indicate the motives for the apprehension; the exact hour of arrival of the detainee to the place of custody; the length of the deprivation of liberty; the identity of the authorities that ordered the apprehension of the person, as well as of the officers in charge of it; the chain of custody of the detainee; precise information about the place of custody; and the moment in which the detainee is presented for the first time before the judicial authorities or any other competent authorities. All this not only prevents disappearance, but also facilitates its clarification in case it occurs.

In all these strategies, the gender perspective must be incorporated, considering the particular characteristics of the violence against women, as well as the social responses that such situation requires, with the purpose of eliminating the enforced disappearances of women, attending the particular needs, and overcoming the special obstacles that women suffer when searching for their loved ones. In fact, this publication shows how an organization mainly composed of women is the one that leads the struggle for the clarification of disappearances in Nuevo Leon. This is a phenomenon that can be seen replicated in almost the whole world. Women lead the efforts against enforced disappearances.

Twenty years ago, I visited Mexico for the first time, and in these two decades, I have had the opportunity to work with victims (and I hope that others can say that I have worked for the victims). In the following paragraphs, I would like to include some more personal reflections in relation to this journey alongside the victims. I have understood that talking about the victims in a generalized way conceals the fact that each victim is a unique human being who is positioned and lives the situation in his/her particular way. We can talk about victims but without losing sight of the fact that many times, they may have different visions before their cases, requests, hopes, disappointments, and commitments. As these pages

show, it is not the same to be the victim of an enforced disappearance as an ongoing crime as being a victim of any other crime. All rights are equal; all victims have suffered a violation of one or more of their rights, but manifestations, sequels, and impacts are different. It is not the same when a victim is a woman, a native, an immigrant, a girl, a rural worker, as a middle-class professional white male. Those are different experiences that many times we render invisible. As a lawyer, I must understand these similarities and differences, these individualities and collectivities.

Secondly, when talking about and working with victims, I do not pretend to idealize them. Personally, I respect them and recognize what it means to have one's rights violated, but I can dissent or agree only partially with their approaches. In other words, I do not think that the victims always hold the truth, the correct position, or the best strategy. They have one position, one strategy, one truth, the one of the victim or victims. And this takes me to the third learning. We who represent the victims and the victims are not the same. The victims' agenda and the agenda of the organizations with which we work are different. They frequently coincide. But, sometimes, they diverge. To represent a victim in a concrete case can signify justice, truth, and reparation for the victim. However, the human rights organization may be looking for a jurisprudential development, or a case that could give visibility to the organization or that would make the strengthening of a court possible, among other things. The victim may be thinking just about his/her case, but the organization may be thinking in the past and future cases and in the consequences that his/her case may have for other persons. This requires a high level of professional responsibility in order always to have in mind that the case is of the victim and that the human rights organizations must serve the victims.

Finally, what I have learned the most is that I always learn from the victims. I learn law, not the law from the books that I can read in my office or the one from the court rulings, but the law of real life, i.e., how human rights are lived, how they translate into daily life: how rights are made manifest in the interaction with state authorities, with security forces, with judges, with prosecutors, and also with the non-government actors, such as transnational corporations, organized crime, or *maras*. The law that this publication fathoms. I learn to have a realistic view, not to create false expectations, to be professionally responsible, how to think strategically. The document that I preface summarizes this law in action.

This publication is not only a compilation of good practices, but, for me, it is an invitation to remember that behind each one of the meetings held, the reviewed files, and the proceedings carried out, there is a personal, human story. A story of pain, fear, sadness, distress, unrest. But also a story of hope, strength, courage, love for those dear to one. In each good practice, there is a mother, a father, a brother, a wife, children, friends, colleagues, partners.

To conclude, these pages demonstrate that the moment of promises has passed. We are facing the time to act. It is urgent to approach the anguish of the relatives of the missing persons and to revitalize the investigations of disappearance cases. The experience here represented and accumulated is an essential starting point that must serve as a model.

At a recent visit that the Working Group on Enforced or Involuntary Disappearances of the United Nations made, the mother of a missing person requested us to pose this question to all authorities: "If your son had disappeared, what would you do?" This question not only summarizes the calvary that families suffer, but also synthesizes the call for the adoption of effective and efficient public policies to ensure the rights to the truth, justice, reparation, and memory.

Ariel Dulitzky

Austin, October 30th, 2014

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The joint work of civil society organizations and state authorities, launched in June 2011, aims the whereabouts of missing persons and the need to obtain justice in an environment where impunity prevailed.

The perseverance of the families of the Women's Group Organized by the Executed, Abducted and Missing in Nuevo Leon (AMORES), the opening of the Attorney General's Office in the State of Nuevo Leon and the support of Citizens in Support of Human Rights (CADHAC), together with the technical collaboration of national and international experts have made it possible to build small roads that bring us to eradicate disappearances in Nuevo Leon.

We will keep looking until we find these victims of violence in our state.

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