UNDENIABLE ATROCITIES

CONFRONTING CRIMES AGAINST HUMANITY IN MEXICO

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The Open Society Justice Initiative bears sole responsibility for any errors or misrepresentations.

ABBREVIATIONS USED IN THIS REPORT

AFI	Federal Agency of Investigation
AIC	Criminal Investigation Agency
ASP	Assembly of States Parties
CADHAC	Citizens in Support of Human Rights, A.C.
CAPUFE	Mexico's Highway and Bridge Agency
CAT	UN Committee Against Torture
CCDH	Citizens' Commission of Human Rights of the Northeast
CDHDF	Mexico City Human Rights Commission
CDJI	Center for the Development of International Justice
CEAV	Executive Commission for Attention to Victims
CED	Committee on Enforced Disappearances
CEDAW	Convention of Elimination of All Forms of Discrimination Against Women
CENAPI	Center for Planning, Analysis and Information for the Fight Against Crime
CGI	Unit for the General Coordination of Investigations
CIA	Central Intelligence Agency
CIDE	Center for Economic Research and Teaching
CISEN	Research and National Security Center or Federal Intelligence Agency
CMDPDH	Mexican Commission for the Promotion and Defense of Human Rights
CNDH	National Human Rights Commission
CNPP	National Criminal Procedure Code
CNS	National Security Commission
CONAGO	National Conference of Governors
DAC	Development Assistance Committee
DNA	Deoxyribonucleic acid
EAAF	Argentine Forensic Anthropology Team
ENVIPE	National Poll of Victimization and Perception on Public Security
FEMOSPP	Special Prosecution for Political and Social Movements from the Past
FEVIMTRA	Special Prosecutor for Violence against Women and Human Trafficking
FGR	Federal Attorney General's Office (Fiscalia)
FIDH	International Federation of Human Rights
FJEDD	Foundation for Justice and Democratic Rule of Law

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ABBREVIATIONS (CONTINUED)

FUNDAR	Center for Analysis and Research
FUNDEM	Coalition in Search of the Disappeared in Mexico
FUUNDEC-M	Coalition in Search of the Disappeared in Coahuila
GAFES	Military Special Operations Force
GAN	General Archive of the Nation
GAT	Autonomous Working Group
GATE	Specialized Weapons and Tactics Group
GEBI	Group Specialized for the Immediate Search
GIEI	Interdisciplinary Group of Independent Experts
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
IAP	International Association of Prosecutors
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IFAI	Federal Institute of Access to Information
INEGI	National Institute of Statistics and Geography
INSYDE	Institute for Security and Democracy
ITAM	Autonomous Technological Institute of Mexico
MPJD	Movement for Peace with Justice and Dignity
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organization
NSJP	New Criminal Justice System
OAS	Organization of American States
OECD	Organization for Economic Cooperation and Development
OMCT	World Organization Against Torture
OTP	Office of the Prosecutor (ICC)
PAN	National Action Party
PEMEX	Mexican national petroleum company
PF	Federal Police

ABBREVIATIONS

PFM	Federal Ministerial Police
PFP	Federal Preventative Police
PGR	Federal Attorney General's Office
PRD	Party of the Democratic Revolution
PRI	Institutional Revolutionary Party
PROVÍCTIMA	Social Prosecution for Attention to Victims of Crimes
RNDDHM	National Network of Human Rights Defenders in Mexico
RNPED	National Registry of Information of Missing or Disappeared Persons
RTI	right-to-information
SCJN	Supreme Court of Justice
SEDATU	Ministry for Land, Territory and Urban Development
SEDENA	Ministry of Defense
SEGOB	Ministry of the Interior
SEIDO	Federal Specialized Prosecution Office against Drug Trafficking
SEMAR	Department of the Navy
SRE	Ministry of Foreign Affairs
SERAPAZ	Services and Counseling for Peace
SETEC	Technical Secretariat for Justice Sector Reform
SIEDO	Special Prosecutor's Office for Organized Crime
SNSP	National System of Public Security
SSP	Department of Public Security
UN	United Nations
UNAM	National Autonomous University of Mexico
UNHCR	United Nations Human Rights Council
UNODC	United Nations Office on Drugs and Crime
UPR	Universal Periodic Review
WGEID	UN Working Group on Enforced or Involuntary Disappearances

METHODOLOGY

THE OPEN SOCIETY JUSTICE INITIATIVE has been working on justice sector reform in Mexico for more than a decade. The Justice Initiative's international and Mexican staff has worked with Mexican government entities and civil society on issues of arbitrary and excessive pretrial detention, personal liberty, and the rights to information and truth. At the end of 2006, Mexico's federal government ordered the large-scale domestic deployment of security forces to combat organized crime, and rates of killing, disappearance, torture, and other atrocities shot up. In 2012, after it became evident that Mexico was in crisis, the Justice Initiative launched a new project to understand the dimensions of that crisis, the nature of the crimes, and why Mexico's justice system was struggling to hold perpetrators criminally accountable. This report is the main product of that effort. It builds on Justice Initiative expertise gained through similar studies conducted in the Democratic Republic of Congo, Uganda, and Kenya, together with the deep contextual knowledge of the Justice Initiative's Mexico team and that of Mexican partner organizations.

This report was written and primarily researched by the Justice Initiative, with extensive contributions from Mexican and international experts in international justice, right to information, and Mexican law. In addition, five national and local Mexican human rights organizations provided crucial analysis and additional research throughout a three-year collaborative process. These organizations are: the Mexican Commission for the Defense and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*), the Diocesan Center for Human Rights Fray Juan de Larios *(Centro Diocesano para los Derechos Humanos Fray Juan de Larios)*, I(dh)eas Human Rights Strategic Litigation (*I(dh)eas Litigio Estratégico en Derechos Humanos*), Foundation for Justice and Rule of Law *(Fundación para la Justicia y el Estado Democrático de Derecho)*, Citizens for Human Rights *(Ciudadanos en Apoyo a los Derechos Humanos–CADHAC)*.

The main focus of this report is on the national level and the actions of federal government actors. However, to ensure proper consideration of Mexico's federal structure, research extended into five of Mexico's 31 states: Coahuila, Guerrero, Nuevo León, Oaxaca, and Querétaro. Significant levels of killings, disappearances, and torture have been experienced in all of these states since 2006. These states spread across southern, central, and northern areas of the country, range from poor (Guerrero and Oaxaca) to relatively prosperous (Nuevo León and Querétaro), and have been governed by different political parties. Security concerns ruled out some particularly violent states as research targets.[1] In some of the five states selected, there have been notable, if limited, initiatives to seek justice for atrocity crimes,[2] while others illustrate more comprehensive obstacles to justice in Mexico at the state level.

In September 2015, the Justice Initiative, with partners the Center for Human

Rights Miguel Agustín Pro Juárez *(Centro de Derechos Humanos Miguel Agustín Pro Juárez)* and the Center for Human Rights of the Mountain Tlachinollan *(Centro de Derechos Humanos de la Montaña Tlachinollan)*, released findings from the most detailed of these state-level analyses: *Broken Justice in Mexico's Guerrero State*. Guerrero was selected for special attention because, of the five states examined, it has suffered the highest rates of atrocity over a period extending back decades, and faces particularly challenging structural and political obstacles to achieving justice.

This report focuses on the nine-year period of December 1, 2006 to December 31, 2015. This covers the entirety of Felipe Calderón's presidency (December 1, 2006 to November 30, 2012), and just over half of the six-year term of current President Enrique Peña Nieto. To put statistics and institutional developments in context, however, the report includes some information from previous years, and especially the final years of the Vicente Fox presidency (December 1, 2000-November 30, 2006). The current crisis is the most intense period of violence in Mexico's modern history, but not its first. Accordingly, the report includes a brief overview of prior periods in which the government was also implicated in atrocity crimes for which there has been no accountability—including the period of the so-called "Dirty War," waged by the government against left-wing students and dissidents from the late 1960s to 1980s—in order to situate the recent surge in violence within a broader historical and political context.

WHAT ARE "ATROCITY CRIMES"? The United Nations defines the term as encompassing the crimes of genocide, crimes against humanity, and war crimes.[3] This report uses the term to refer to particular forms of violent crime that have affected many tens of thousands of civilians and may amount to crimes against humanity. Those affected include not only Mexicans but migrants from Central America, who travel a perilous path through the country and are increasingly the victims of vicious cartel violence. Specifically, the report examines three types of atrocity crimes: killings, disappearances, and torture and other ill-treatment.[4]

The report attempts to paint a composite picture based on a good-faith effort to synthesize all available statistics on and documentation of atrocity crimes in Mexico from December 2006. But that picture is only partial. Only accurate and complete data can reveal the full nature and scale of these crimes.

The bulk of the data on which the analysis rests necessarily comes from government sources. This creates a considerable methodological challenge because government data on atrocity and other crime in Mexico is notoriously incomplete, skewed towards minimization, and therefore often unreliable. Collection of crime data is decentralized; states vary in their capacity and will to collect and share data with the federal government and public; some states keep data electronically and online, while others still keep records on paper, which are difficult to access. Particularly for atrocity crimes, data suffers from inaccurate and inconsistent categorization, itself a symptom of enduring denial about the scope and gravity of the situation. For instance, if charged at all, torture

is often categorized as a lesser crime, such as "abuse of authority," and enforced disappearances may instead be classified as "kidnappings." Decades of impunity have engendered popular distrust in the justice sector, culminating in one of the greatest barriers to collecting accurate crime statistics: the fact that over 90 percent of crimes in Mexico are never reported to authorities in the first place.[5] All of this has contributed to widely varying assessments of the scale and nature of atrocity crime, and confusion over the adequacy of the justice system's response.

Some government data used here comes from public reports and statements from agencies including the federal Attorney General's Office (PGR), the Executive Secretariat of the National System of Public Security (SNSP), the autonomous government statistics office (INEGI), the Ministry of Foreign Affairs (SRE), and the Defense Ministry (SEDENA). Reports and publications of Mexico's National Human Rights Commission (CNDH) provide another important, if flawed, source of data.[6]

BEYOND PUBLIC REPORTS FROM GOVERNMENT ENTITIES, this report relies on information obtained through extensive use of Mexico's progressive legal regime on the right to information. Although critical public information is still too often withheld, the Open Society Justice Initiative, its partners, and others have been able to gain new insight into atrocity crime data, specific cases, and the functioning of justice institutions through information requests submitted to the federal and state governments.

This report also relies on an extensive review of United Nations and Inter-American treaty body jurisprudence and reports; federal and state human rights commissions; national, regional, and international civil society reports; legal scholarship by Mexican and non-Mexican academics and political analysts; as well as investigative reports from Mexican and international media.

These resources were augmented by over 100 first-hand interviews conducted by Mexico-based and international Justice Initiative staff and consultants, in person and by email and telephone, over the course of 2013-2015. Most in-person interviews were conducted in Mexico City, Coahuila, Guerrero, Nuevo León, Oaxaca, and Querétaro, although a small number were conducted in Morelos and Geneva. Almost all interviews were conducted in Spanish; for some, there was simultaneous interpretation into English, with the Spanish version considered definitive.[7] All interviews were conducted with the verbal consent of the interviewee. Some sourcing has been anonymized at the request of the interlocutor.

Those interviewed included government officials at the federal and state levels, including prosecutors, police, judges, members of congress and congressional staff, and officials at human rights and truth commissions. Research also included numerous interviews with Mexican and international experts and civil society representatives, as well as diplomats and academics.

The Justice Initiative team also collected several individual testimonies

directly from victims and survivors of atrocity crimes, including relatives of the disappeared. The report's analysis of individual cases and patterns across cases relies heavily on direct documentation conducted by others, and augmented by legal analysis from the Justice Initiative. Case documentation has been conducted by federal and state human rights commissions; Mexican organizations, including partners in this report; and international human rights organizations.

The report benefited from a thorough vetting process. Drafts were extensively critiqued through ad hoc bilateral consultations and multi-day workshops held in Morelos in June 2014 and May 2015.[8] Participants in these workshops included independent lawyers and human rights defenders from the Justice Initiative's partner organizations as well as lawyers with the War Crimes Research Office at the American University Washington College of Law. Additionally, the crimes against humanity analysis found in chapter three benefited from extensive comments provided by several independent international criminal law experts, who reviewed the initial draft and offered critical feedback. Where permission was granted, the names of reviewers and workshop participants can be found in the Acknowledgments.

EXECUTIVE SUMMARY AND RECOMMENDATIONS

AYOTZINAPA. TLATLAYA. SAN FERNANDO. These places in Mexico are known for the atrocities committed there—they are perhaps the best known of the country's open wounds. But there are many others, perhaps less well known, such as Ojinaga, Allende, and Apatzingán. Nine years after the Mexican government first deployed federal armed forces to combat organized crime, civilians continue to suffer: killings, disappearances, and torture are carried out both by cartels and by the federal and state forces who are supposedly fighting them. From December 2006 through the end of 2015, over 150,000 people were intentionally killed in Mexico. Countless thousands have disappeared.

The Open Society Justice Initiative and five independent Mexican human rights organizations have spent four years examining the extent and nature of this crisis. We have concluded that there is a reasonable basis to believe that both state and non-state actors have committed crimes against humanity in Mexico.

This "reasonable basis" standard is used by the prosecutor of the International Criminal Court (ICC) to determine whether to move to open an investigation. Some Mexican individuals and organizations—including some of the partners in this report—have already filed communications with the ICC Office of the Prosecutor (OTP), urging it to pursue an investigation in the country.[9] ICC intervention in Mexico is not, however, this report's purpose; instead, it is to ensure that these atrocity crimes are prosecuted to the full extent of the law in Mexican courts, regardless of the perpetrators. This is particularly important when such violence is carried out by government security forces, whose duty it is to combat crime, not perpetrate it. Resorting to criminal acts in the fight against crime is a contradiction, and one that fatally undermines the rule of law.

Seeking accountability before the ICC is an option if Mexico persistently fails to investigate and prosecute atrocity crimes. But a far better outcome is for the Mexican government to pursue domestic prosecutions itself, regardless of whether the perpetrators are government actors or criminal groups. Under international law, the primary obligation to investigate and prosecute atrocity crimes rests with Mexico; the Mexican government's ratification in 2005 of the Rome Statute (which created the ICC) affirms this responsibility. Moreover, the ICC, located in The Hague, can never equal the advantages of proximity, breadth of inquiry, or lasting impact on the development of the rule of law that credible domestic proceedings would bring.

Mexico has also made numerous other relevant treaty commitments within the Inter-American and United Nations systems, and has been a champion of human rights standards on the international stage. It has been a reliable voice for human rights in many other countries around the world.[10] Mexico has ample resources and human capital to effectively prevent, prosecute, and punish atrocity crimes—most of all those carried out by its own forces. The question is whether Mexico has the political will.

Successive Mexican governments have almost completely failed to ensure accountability for atrocities carried out by federal and state actors, or by organized crime. Political obstruction—beginning with government denial of the extent and nature of the problem—is the overwhelming reason for this failure. By identifying the main barriers to effective criminal justice for atrocity crimes in Mexico, this report intends to assist the Mexican state and people in overcoming them.

To ensure accountability for atrocity crimes, it is necessary for the Mexican government to continue promoting significant but slow-moving reforms to the justice sector, as well as improving its technical capacity. But technocratic fixes will go only so far in addressing what are fundamentally political problems. The government must act without delay to acknowledge the gravity of the situation: it must initiate urgent, extraordinary measures, including the invitation of international assistance to ensure independent, genuine investigations and prosecutions.

That recommendation forms the core of this four-year, independent investigation of atrocity crimes and accountability in Mexico, spanning the presidencies of both Felipe Calderón (December 1, 2006–November 30, 2012) and Enrique Peña Nieto (December 1, 2012–present). This report reviews crime nationally from December 2006 through December 2015, but in examining the hurdles to justice, also includes information from field research in five of Mexico's 32 federal entities: Coahuila, Guerrero, Nuevo León, Oaxaca, and Querétaro.

THE REPORT BREAKS NEW GROUND by synthesizing and analyzing a broad range of existing information and uncovering—through the use of freedom-of-information law requests—new facts on atrocity crimes, international criminal responsibility, and the causes of impunity. It offers the first extensive analysis of crimes against humanity in Mexico by examining the activities of federal security forces since their expanded domestic deployment in December 2006. It also examines this question with regard to a non-state actor that has perpetrated some of the worst violence Mexico has seen: the Zetas cartel.

The report provides the first systematic analysis of the barriers to criminal accountability for atrocity crimes at the federal level. However, it does not systematically assess technical hurdles to accountability, including skill and resource shortcomings, because the research concluded that these are secondary to political obstruction and cannot be sufficiently redressed until political obstruction ends.

DIMENSIONS OF THE CRISIS

DATA ON CRIME AND JUSTICE IN MEXICO is notoriously incomplete and unreliable, with a bias toward undercounting the extent and gravity of atrocities.[11] Yet even on the basis of the partial data that is available, it is undeniable that atrocities in Mexico are widespread.

Reported killings in Mexico began rising in 2007 with the implementation of a new national security strategy to combat organized crime.[12] From 2007 to 2010, Mexico was the country with the highest rate of increase in intentional homicides.[13] The annual number of reported intentional killing (*homocidios dolosos*) peaked in 2011 at 22,852 before subsiding somewhat to levels still markedly higher than pre-2006.[14] From December 2006 through the end of 2015, over 150,000 people were intentionally killed in Mexico.[15] Evidence strongly suggests that this increase was driven by organized crime violence and the state's security strategy, which relied on the extrajudicial and indiscriminate use of force. If anything, official statistics on killings undercount the true toll: tens of thousands of disappearances remain unsolved and hundreds of clandestine and mass graves remain insufficiently investigated. The prosecution of homicide is rare; there were convictions in only about one of every ten homicide cases from the beginning of 2007 through 2012.[16] Federal prosecutors issued indictments in only 16 percent of homicide investigations they opened between 2009 and July 2015.[17]

Nobody knows how many people have disappeared in Mexico since December 2006. The oft-cited figure of 26,000 is misleading and largely arbitrary—a flawed government accounting of missing persons. Recorded numbers of missing persons have steadily risen since 2006, reaching an annual peak of 5,194 disappearances in 2014.[18] But these figures fail to distinguish among categories of disappearance, and include persons missing for non-criminal reasons. Nevertheless, there is strong reason to believe that the true number of persons missing for criminal reasons is significantly greater. Victims who are fearful of retaliation against their missing family members, or who are afraid for their own security, often do not report disappearances to authorities. Victims from rural areas, with few economic resources and no easy access to prosecutors, are less likely to report disappearances. Prosecutors have also often inappropriately reclassified cases involving state perpetrators—enforced disappearances—as "kidnapping," at a time when these crimes have reached alarming levels. A respected government statistical survey of Mexican households estimated that there had been nearly 103,000 kidnappings in 2014 alone.[19] This does not include kidnappings of migrants in transit to the U.S. border, numbering many thousands annually.[20] Of a rough estimate of 580,000 total kidnappings from the end of 2006 through 2014,[21] there is no way to know how many could be categorized as other forms of criminal disappearance, including enforced disappearances.

It is clear is that there has been very little accountability for criminal disappearances, and almost none for enforced disappearances—those perpetrated

by the police, military, or other agents acting on behalf of, or in collusion with, the state. According to the highest government claim, as of February 2015 there had been only 313 federal investigations of and 13 convictions for enforced disappearance.[22] Although many cases of military-perpetrated enforced disappearances have been documented, it took until August 2015 for a single soldier to be convicted of the crime.[23]

Complaints to the National Human Rights Commission regarding torture and ill-treatment more than quadrupled in the six years after the launch of the government's national security strategy.[24] The commission received 9,401 complaints of torture and ill-treatment from January 2007 through December 2015.[25] This is a partial and imperfect indication of the problem, and government data is deeply flawed. Officials responsible for collecting data on torture and ill-treatment, including prosecutors and police, have been heavily implicated as perpetrators. Many jurisdictions have inadequate definitions of the crimes, or none at all. Yet the figures from the National Human Rights Commission and many cases documented by civil society organizations suggest a broad practice, including the routine use of torture and ill-treatment by police, military, and prosecutors to obtain coerced confessions and testimony that they and many Mexican judges accept as evidence. Much of this abuse occurs during pretrial detention, including the prolonged form called *arraigo*, following the detention of suspects allegedly "caught in the act" (*flagrancia*)[26] or in "urgent cases"[27] without judicial authorization or oversight. Torture and ill-treatment are similarly inflicted with almost absolute impunity. By the highest available government figures, from 2006 through the end of 2014, there had been 1,884 federal investigations for torture, but only 12 indictments and eight judgments. For torture perpetrated from January 2007 through April 2015, there were only six convictions.[28]

CRIMES AGAINST HUMANITY

BASED ON THE INTENSITY AND PATTERNS OF VIOLENCE committed since December 2006, there is compelling evidence that the murders, enforced disappearances, and torture committed by both federal government actors and members of the Zetas cartel constitute crimes against humanity. This analysis finds that the situation in Mexico meets the legal definition of crimes against humanity as defined in the Rome Statute of the International Criminal Court (to which Mexico has been party since January 2006), as well as the jurisprudence of the ICC and other international tribunals.

Article 7 of the Rome Statute defines crimes against humanity as a number of different acts committed "as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack." Eleven underlying acts are listed, including murder, torture, and enforced disappearance. The Statute further defines an "attack" as "a course of conduct involving the multiple

commission of acts…against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack." This means that crimes against humanity can be perpetrated by government forces, as well as by organized armed groups.

Importantly, investigating and prosecuting atrocities as crimes against humanity, rather than as ordinary domestic crimes, enables criminal responsibility to be examined up the chain of command, so that it can include those who either gave orders, or those who failed to take action to prevent or punish crimes which they knew (or should have known) were being committed.

Every government is responsible for the security of its people. Consistent with that responsibility, Mexico's federal government has pursued a legitimate goal: subduing organized crime. But it has done so through a policy that deployed the military and federal police to use overwhelming extrajudicial force against civilian populations perceived to be associated with criminal cartels, without adequate regulations on the use of force, and with almost no accountability for any of the abuses that followed.

Moreover, these failures to appropriately limit the use of force and establish accountability were not an accident—rather, they have been an integral part of the state's policy. As a result of this policy, federal forces have committed numerous acts of murder, enforced disappearance, and torture that have shown clear patterns in how they were committed. These were neither isolated nor random acts. The victims include criminal cartel members, but they also include many "false positives": civilians accused without basis of involvement in organized crime, often tortured into incriminating themselves and others, and frequently disappeared or murdered. Other civilians have been caught in the crossfire of a reckless strategy, killed as "collateral damage" in the battle between the government and the cartels. The magnitude of murder, disappearance, and torture over a number of years meets the legal threshold of being "widespread." The extent, patterns, and intensity of the crimes strongly suggest that they have also been "systematic." For these reasons, this analysis finds that the situation in Mexico meets the legal definition of crimes against humanity as defined in the Rome Statute, as well as the jurisprudence of the ICC and other international tribunals.

Under international criminal law, non-state actors can also commit crimes against humanity. The actions of the Zetas cartel, analyzed in this report, most clearly fit the legal definition, but further investigations may conclude that other cartels have also committed crimes against humanity. The Zetas cartel qualifies as an "organization" under the Rome Statute because of its hierarchical structure, its control over territory, and its capability to carry out widespread or systematic attack against civilians; it has expressed an intention to launch such attacks, and has done so in fact. The Zetas appear to have pursued a policy of controlling territory through violence in order to force other criminal actors to pay them a portion of their profits. In the course of this policy, the Zetas have committed a brutal string of atrocities, including murder, torture, and disappearances that

follow identifiable patterns. The cartel has targeted civilian populations to maintain territorial control through terror. The cartel's commission of numerous acts of murder, disappearance, and torture over a period of years, in a highly organized fashion, strongly suggests that the Zetas committed these crimes in a manner that is widespread and systematic.

This report does not identify individual suspected perpetrators among federal government actors or members of the Zetas cartel. To do so would require the gathering of additional testimony, documentation, and other evidence sufficient to establish actual or constructive knowledge on the part of perpetrators. Did someone directly order these crimes to be committed? Did senior officials know, or should they have known, that these crimes were being committed? Did they act to prevent the crimes or punish perpetrators? These are among the additional factors that Mexico's justice system must investigate. A full investigation of this kind could expose the criminal accountability not just of direct perpetrators, but of those ultimately responsible for policies that have led to widespread or systematic attacks on Mexico's civilian population.

OBSTACLES TO CRIMINAL ACCOUNTABILITY AT THE FEDERAL LEVEL

WHY HAS THERE BEEN SO LITTLE JUSTICE FOR ATROCITY CRIMES IN MEXICO? The roots are complex, but fundamentally political. They begin with the rhetoric of denial and deflection that has characterized both the Calderón and Peña Nieto administrations. Senior officials have consistently denied and minimized the scale and nature of killing, torture, and disappearance and they have made sweeping, unfounded assertions that victims of these crimes are themselves criminals. Instead of reckoning with the problem, senior officials have engaged in a pattern of attacking United Nations and Inter-American Commission on Human Rights officials, civil society organizations, and others who highlight atrocity crimes. At times, under public pressure, officials have made promises that too often remain unfulfilled.

Downplaying atrocity crimes is a central element of Mexico's history of impunity. A government that does not want to recognize disappearances, killings, and torture—especially by state actors—obscures data on the extent of these crimes. Families have looked on in frustration and anger as government officials have counted disappearances with incomplete data or unclear criteria, and then announced wildly divergent estimates of the disappeared. The government has made virtually no systematic attempts to locate clandestine or mass graves, or to exhume and account for the bodies in the scores of the graves that have been found across the country. Similarly, statistics on torture often come from the very agencies implicated in committing these offenses. When they are investigated at all, numbers are often twisted through the routine re-categorization of torture and ill-treatment as lesser crimes.

The same political leaders who deny and minimize atrocity crimes have also failed to properly investigate them. In practice, this has manifested itself in several ways:

1. The government accepts the continued use of torture by prosecutors and police to mete out extrajudicial punishment, to manufacture "evidence" to support criminal prosecutions, and to search for disappeared individuals. Apart from the fact that torture is a crime in itself and prohibited in all circumstances, it is also a notoriously unreliable investigative tool that has led to perverse outcomes: imprisonment of the innocent, impunity for the guilty, and abandonment of the disappeared, kidnapped, and trafficked, whose fates are not properly investigated.

2. Successive governments have sought to protect the Army and Navy from credible criminal investigation for atrocity crimes. Reforms in this area, as yet incomplete, were largely forced by decisions of the Inter-American Court of Human Rights and Mexico's Supreme Court of Justice that curtailed the use of flawed military courts. But senior government officials have still resisted an end to military jurisdiction in cases of human rights abuse against civilians, and federal prosecutors have participated in cover-ups of military atrocities.

3. The Calderón and Peña Nieto administrations have promoted militarized policing. This has resulted not only in the reckless use of force by federal and state-level police forces, but has highlighted their lack of skill at conducting criminal investigation by means other than coercion and torture.

4. Federal prosecutors have avoided prosecuting state and non-state actors for atrocity crimes. Prosecutorial obstruction has taken various forms: reclassifying atrocity crimes as lesser offenses, miring investigations in bureaucratic confusion, discouraging victims from filing complaints, and tampering with or fabricating evidence. This has been possible in large part because forensic and witness protection services are not independent, but located within the implicated prosecution office itself.

5. When pressed on criminal accountability for atrocities, the Calderón and Peña Nieto governments have demonstrated a pattern of launching initiatives and reforms with great fanfare, only to starve them of resources and political support. Various special mechanisms and plans have failed to locate the disappeared and provide victims of crime with support, representation, and reparation.

6. The executive branch has largely failed to work with Congress and the states to prioritize laws and protocols that could establish jurisdictional clarity and institutional rationality within the criminal justice system. This maintains plausible deniability for federal and state officials who can avoid or actively obstruct the investigation and prosecution of atrocity crimes through the manipulation of complexities in Mexico's federal system and federal-level bureaucracy.

INSUFFICIENT ASSURANCES OF REFORM

MEXICO'S CRISIS OF ATROCITY AND IMPUNITY has taken place against a backdrop of general, far-reaching criminal justice reform, as well as recent proposals that are more specific to atrocity crimes. Congress and the Calderón administration launched a transition from a largely inquisitorial to an adversarial justice system at federal and state levels in 2008, which is supposed to be implemented by mid-2016. A unified, national criminal procedure code will likewise supplant a confusing patchwork of mostly inferior codes this year. Both measures, if properly implemented, promise to strengthen safeguards against the use of torture in criminal investigation. Congress has also cleared the way for passage of general laws on torture and enforced disappearance, which could address shortcomings in the current laws, and the federal government has promised to create new protocols for the investigation of disappearances

Relevant institutional reforms are also underway. In 2018, the federal Attorney General's Office, *(Procuraduría General de la República,* PGR*)* will transition to a *Fiscalía General de la República (*FGR*)*, led by an attorney general with a nine-year term, whose appointment and removal relies not just on the president, but also the Senate. Current proposals in Congress would make forensic services independent of the prosecution, but it is unclear whether they enjoy sufficient support to pass. No proposals to make witness protection services independent of federal prosecutors exist.[29] Police reform discussions have focused on where command should lie (at municipal, state, or federal levels), with insufficient attention to the crucial issues of police accountability and the militarized nature of policing.

Successful reform also relies on institutional accountability, which has been weak. Internal oversight mechanisms within the PGR have been ineffective. While Congress has passed some important reforms, it has long failed to adequately define atrocity crimes and crimes against humanity in domestic law, end military jurisdiction over all human rights abuses, ensure the independence of forensic and witness protection services, and safeguard the integrity and qualification of executive appointees to key justice sector positions. Within the judiciary, Mexico's Supreme Court of Justice and other federal courts have issued important rulings that ended military jurisdiction over most human rights abuses, and that hold promise to strengthen defense rights and reduce the incidence of torture. But the federal judiciary's record as a defender of human rights remains mixed. And state-level courts have frequently failed to dismiss evidence obtained through forced confessions or to order the investigation of alleged torture and ill-treatment, even in courts already operating under the new adversarial system.

The National Human Rights Commission has brought some atrocities to light—often under pressure from civil society organizations—but could do much more. It is well-financed, but has a weak mandate, which its leadership has further limited for what appear to be political reasons. This has taken the form of a tendency to downgrade the severity of the complaints it receives, as well as a reluctance to

issue or follow up on recommendations that ascribe responsibility for human rights violations to specific state authorities.

Especially in the absence of stronger institutional accountability, the impact of legal and institutional reforms that have already been adopted will take time to assess. Considered against a history of failed justice sector reforms, it would be naïve to believe that these approved reforms or pending new proposals will necessarily lead to substantial improvement in criminal accountability for atrocity crimes.

The administration of President Enrique Peña Nieto, which came into office in 2012 hoping to shift public focus to economic reform and modernization, has found that it cannot escape Mexico's twin crises of atrocity and impunity. The Mexican public, long disillusioned by the criminal justice system, has become even more skeptical of state authority and is unlikely to place faith in new, untested promises of reform. Demonstrating clear political will and ability to end the crisis would require the Mexican government to take a bold step—one that harnesses international goodwill toward Mexico, and injects the criminal justice system with objectivity and expertise as essential building blocks of public trust.

RECOMMENDATIONS

TO DEMONSTRATE POLITICAL WILL AND INSPIRE GENUINE HOPE for an end to Mexico's ongoing crisis of atrocity and impunity, bold steps are needed. Central to these must be the creation of an internationalized investigative body, based inside Mexico, which is empowered to independently investigate and prosecute atrocity crimes as well as cases of grand corruption.[30] To create this entity, Mexico should engage in broad consultations, including with civil society. Such a body would have the mandate to:

- independently investigate atrocity crimes and cases of grand corruption and introduce cases in Mexican courts;
- provide technical assistance to the Attorney General's Office/Fiscalía and investigative police;
- develop justice sector reform proposals for consideration by the Mexican government, Congress, and public;
- produce public reports on the state of justice sector reform and the rule of law in Mexico, as well as progress on criminal justice for disappearances, torture, and killings.

Furthermore, the entity would need to be empowered to enter into witness protection agreements with trusted domestic agencies and outside states. Its mandate would be renewable, and of sufficient length in the first instance—

meaning longer than one presidential term—to ensure that it has adequate time to conduct complex investigations, research, and reporting.

In the immediate term, the government should also undertake three additional measures to address the impunity crisis:

1. URGENTLY CREATE INTEGRATED TEAMS TO INVESTIGATE DISAPPEARANCES.

The government should create integrated units within the office of the deputy prosecutor for human rights to search for disappeared persons and prepare criminal charges against perpetrators. The units should be multidisciplinary, including prosecutors, police investigators, and social workers, and should have primacy in all investigations they open. Special emphasis should be put on context and crime pattern analysis. All staff should be vetted by the National Commission on Human Rights and civil society organizations for past human rights abuses. The units should operate under the scrutiny of an oversight board made up of the attorney general, president of the National Human Rights Commission, a designee of the Congress, and civil society representatives, including victims' groups. The units and oversight board should hold regular meetings with families of the disappeared, to share updates on cases, identify common challenges, and solicit ideas and feedback. The UN Office of the High Representative should be invited to send a representative to each meeting. Separately, each unit should discuss its active cases with family members on a monthly basis to provide updates on investigative steps taken and identify next steps. The oversight board should have responsibility for entering into agreements domestically and internationally to seek technical assistance for the units to address general capacity building needs, or gaps in specific cases. Results on the cases under investigation must be made public.

2. MAKE FORENSIC SERVICES AND WITNESS PROTECTION AUTONOMOUS, OUTSIDE OF THE ATTORNEY GENERAL'S OFFICE.

Congress should pass legislation creating an independent national forensic institute, outside of the Attorney General's Office and Interior Ministry, and in place of existing forensic agencies at the federal and state levels. The institute should have a mandate to conduct independent forensic examinations for prosecutors and defense counsel. It should have an oversight board made up of the president of the National Human Rights Commission, a representative selected by the medical faculty of the National Autonomous University of Mexico *(Universidad Nacional Autónoma de México, UNAM)*, and an independent forensic expert experienced in Mexico who is selected by representatives of civil society.

Congress should also pass legislation making the Witness Protection Center autonomous from the Attorney General's Office and Federal Police. Judicial oversight over the work of the center, including decisions to grant and terminate protection measures, should be strengthened. All staff should be required to meet clear minimum standards and be vetted by the National Human Rights

Commission and civil society organizations for past involvement in human rights abuses. There should be a clear firewall protecting access to operational information, and strengthened accountability for the performance and professionalism of the center's staff.

3. WITHDRAW THE MILITARY FROM PUBLIC SECURITY OPERATIONS AND PASS LEGISLATION THAT REGULATES THE USE OF FORCE.

The president should announce a plan to withdraw the military from public security operations, in concert with police reforms that aim to strengthen community policing and police investigative capacities. Furthermore, Congress should urgently:

- pass legislation that regulates the use of force in accordance with international standards;
- transfer jurisdiction over all human rights violations to the civilian justice system (including violations committed against other members of the military);
- establish the primacy of civilian investigations for human rights abuse over the military investigation of violations of the military code, where cases involve the same underlying incidents.

I. THE ROOTS OF CRISIS: AUTHORITARIANISM, ORGANIZED CRIME, AND MILITARIZATION

THE SPIKE IN KILLINGS, DISAPPEARANCES, AND TORTURE IN MEXICO THAT STARTED IN LATE 2006 DID NOT HAPPEN IN A VACUUM. NEITHER DID THE JUSTICE SYSTEM'S FAILURE TO INVESTIGATE AND PROSECUTE THE BULK OF THESE CRIMES. HOW DID MEXICO ARRIVE AT A POINT WHERE THERE COULD BE SO MANY ATROCITIES AND SO LITTLE ACCOUNTABILITY? A BRIEF REVIEW OF THE COUNTRY'S PAST PLACES THE CURRENT CRISIS IN CONTEXT. MEXICO'S MODERN HISTORY HAS BEEN CHARACTERIZED BY REPRESSION AND INCREASING MILITARIZATION EXERCISED BY A STATE PRONE TO CORRUPTION AND TO EXTERNAL INFLUENCE, OFTEN FROM THE UNITED STATES.

ATROCITIES UNDER ONE-PARTY RULE

BEGINNING IN 1929, THE INSTITUTIONAL REVOLUTIONARY PARTY (*Partido Revolucionario Institucional*, PRI) maintained one-party rule in Mexico. It controlled all state governments until 1989, an absolute majority in the Federal Chamber of Deputies until 1997, and the federal presidency until 2000.[31] By appearances, the PRI presided over a strong, centralized state. However, to maintain power, the party relied on the practice of co-opting key areas of Mexican public life in three broad sectors: middle class state workers, labor unions, and the large class of small farmers and farmworkers.[32]

As the PRI succeeded in securing broad popular support by wrapping itself in the glory of the 1910 revolution and managing dissent with corruption, co-optation, privileges and patronage,[33] party leaders bargained away some power in return for support at the polls. The three sectors' leaders were apportioned political posts, and the PRI ensured that the choices of each would be mutually supported. Popular representation gave way to representation of sectoral interests.[34]

However, some segments of society resisted co-optation. The inefficient state, catering to elite interests even as it espoused the egalitarian principles of the revolution, could not or would not provide for all. Rural poverty persisted and indigenous populations were neglected. Students, labor leaders, and others began to chafe at injustice, inequality, corruption, and authoritarianism.

These dissenters became targets. Against them, PRI leaders deployed a fallback strategy: the deployment of security forces. The patronage that permeated Mexico's state bureaucracies under one-party rule included the security institutions: police were rewarded for political loyalty and became tools of repression and corruption for those in power.[35]

Resistance to the PRI mounted in the early 1960s, prompting a violent state response. Three successive Mexican Presidents—Gustavo Díaz Ordaz (1964-1970), Luis Echeverría (1970-1976) and José López Portillo (1976-1982)—maintained systematic campaigns of violence against progressive social movements, in what would become known as the Dirty War.[36] At the time, the United States, viewing the world through a Cold War lens, feared leftist activism and encouraged countries across Latin America to take a hard line.

Mexican police and military forces targeted rural peasants, students, and workers for abduction, disappearance, and torture.[37] They also perpetrated killings, including infamous massacres. In 1968, state forces attacked an unknown number of protesting students in Tlatelolco Plaza, Mexico City. There is no official tally of the dead, but estimates range from 14 to 325.[38] The massacre galvanized a growing conflict with the PRI government and spurred the formation of leftist and guerilla groups.[39] Three years later, in what became known as the Corpus Christi massacre, a government-trained security unit killed 25 young demonstrators while police watched without intervening.[40]

Dirty War atrocities were most severe in the state of Guerrero. The final report of the Truth Commission of Guerrero, released in October 2014, concluded that state agents perpetrated crimes against humanity against the civilian population during this period, as part of a state policy to subdue and control those suspected of supporting guerrilla or subversive movements in rural and urban areas.[41]

The López Portillo government ultimately made concessions, granting amnesty for guerrilla organization members and legalizing left-wing opposition parties in 1978.[42] Although these measures helped bring the Dirty War to an end, the PRI-controlled state continued to use violence to repress dissent.

In 1995, more than 400 police ambushed a protest by unarmed farmers in Aguas Blancas, Guerrero, killing 17. The farmers were demanding information on the disappearance of a community member and protesting state neglect of peasant communities. While some of the survivors and families of the deceased have received compensation or governmental support, full accountability for the massacre remains elusive.[43] In particular, several senior officials whom the Supreme Court of Justice deemed responsible have never been prosecuted.[44]

The southern state of Chiapas also experienced state violence following the Dirty War. In 1994, the Zapatista Army of National Liberation, a leftist political and militant group, launched a rebellion in the state to demand political autonomy and protest inequality, neglect of rural and indigenous people, and the North American Free Trade Agreement (NAFTA) with the United States and Canada. The Mexican government responded with a violent counter-insurgency marked by atrocity.[45] In December 1997, in what became known as the Acteal massacre, a paramilitary group killed 45 unarmed indigenous people, mostly women (four of them pregnant) and children.[46] Police and soldiers stationed nearby did not intervene during the hours-long attack. Reports have identified government support for the paramilitary group responsible for the killing, and concluded that soldiers helped to cover up the gruesome scene.[47] A decade later, 34 people–mostly indigenous, and none of them high-ranking officers–were convicted for involvement in the massacre, though virtually all were released years later, after the Supreme Court identified irregularities in the prosecution.[48]

FROM THE DIRTY WAR TO THE DRUG WAR: MILITARIZING CRIME CONTROL

FROM THE EARLIEST YEARS OF PRI RULE IN THE 1930S, Mexican leaders deployed federal forces to combat drug production and trade.[49] The military undertook major eradication initiatives against Mexico's opium and marijuana production, which flourished throughout the 1940s in response to demand from the United States.

Such efforts took on new dimensions with the election of U.S. President Richard Nixon in 1968.[50] Nixon popularized the phrase "War on Drugs," and his tough-on-crime policies—which included the creation of the Drug Enforcement Agency—had an enormous impact on Mexico. The launch in 1976 of an aerial eradication program known as "Operation Condor" became the first American-backed spraying operation in the country and a pioneering tactic in the effort to combat the drug trade. Over time, these eradication programs helped drive up the price of illegal drugs in Mexico, fueling cartel rivalries and increasing public demand in both Mexico and the United States for stronger measures to crack down on drug-related crime.[51]

These developments dovetailed with and fueled the ongoing Dirty War. The Mexican state increasingly transferred responsibility for crime control from the police to the military. In turn, this loosened legal protections for civilians and made heavy weaponry the tool of choice for social control. The transformation also prevented the development of well-functioning police institutions; police were marginalized from the process of state modernization.[52] Increasingly, the government's "permanent campaign" against drug traffickers served a useful pretext for attacking political dissidents; the war on drugs and the Dirty War became intertwined.[53]

THE RISE OF DRUG CARTELS AND EROSION OF THE STATE

EVEN AS THE PRI EMBRACED THE U.S.-BACKED DRUG WAR as a rationale and tool for attacking its opponents, its actions were allowing and strengthening the formation of powerful cartels. The PRI approached these emergent power structures by attempting to co-opt them. But as the cartels grew more powerful, they would contribute to the decline of the PRI itself, and in the process, further hollow-out state authority.

During the Nixon administration (1969-1974), Mexico became an important intermediate transit route for the shipment of Colombian cocaine to the United States. The emergence of so-called "cocaine cartels" focused on trafficking, along with the government's ongoing aerial eradication campaigns, changed the nature of public corruption.[54] For drug producers and traffickers, it no longer sufficed to secure local political protection for the sites where cultivation took place. Rather, protection of drug crops from federally conducted aerial campaigns and the establishment of trafficking routes across the country required more extensive official bribery at progressively higher levels of government.[55]

This, in effect, led to a spoils system: state officials colluded with and extorted traffickers within their districts. But because PRI structures were so centralized, emerging cartels had strong incentive to collude across multiple states by corrupting political officials at the highest levels.[56] For its part, the PRI attempted to subordinate drug trafficking to its interests, simultaneously extorting, controlling, countering, and protecting drug traffickers using the state's political and security machinery, while barring their access to political power.[57]

Meanwhile, counterproductive U.S. drug policy continued to abet the growth of Mexican cartels. Through its support of the Contra rebellion in Nicaragua, the administration of U.S. President Ronald Reagan (1981-1989) aided the rise of the Guadalajara cartel in Mexico.[58] In return for covert assistance the cartel provided by passing U.S.-supplied guns to the Contras, U.S. authorities "turned a blind eye to the huge quantities of crack cocaine processed in Mexico that were arriving on street corners throughout the United States."[59] Incentives for organized crime also continued to build as a result of U.S.-backed, militarized drug interdiction efforts in South and Central America. As supplies from these areas fell, prices rose, and Mexican cartels grew to satisfy an unquenchable demand from the north. With burgeoning resources and power, the cartels increasingly supplanted PRI party bosses as the masters of infiltrating and co-opting potential opposition. They also became increasingly violent, vying for "hegemony of the criminal terrain."[60]

Pressure from Washington[61] encouraged Mexico's governments to rely increasingly on the military to fight the cartels. Since the early 20th century, the Mexican military has demonstrated a culture of subordination to political power, particularly to the sitting president.[62] Mexican leaders now had new incentive to increase the

involvement of a loyal force to face the growing threat posed by the cartels. Under successive presidents, the military role grew, and political leaders transformed institutions, including through constitutional amendment, to pave the way for this greater military influence. Academics have described this as the "constitutional costs of the war against drugs."[63]

President Miguel de la Madrid (1982-1988) was the first federal government leader to frame drug trafficking as a national security issue.[64] Further militarization of civilian law enforcement agencies extended from his administration and through that of his successors Carlos Salinas (1988-1994) and Ernesto Zedillo (1994-2000). By the end of Zedillo's term, 28 of Mexico's 32 federal entities had assigned military officers to police command positions.[65] In 1996, President Zedillo also invited senior military officials to form part of the National Public Security Council, where they took on a formal role in steering civilian law enforcement policy.[66]

While the military was gaining greater control over civilian policing, PRI political control continued to crumble. As Mexicans increasingly viewed the party as corrupt and connected to the rise of organized crime, opposition political parties grew at the state level, and President Zedillo did not command the loyalty of governors the way his predecessors had.[67] The PRI lost its majority in Congress in 1997, and in 2000 Vicente Fox of the center-right National Action Party *(Partido de Acción Nacional,* PAN*)* was sworn in as president. PRI one-party rule was over.

NEW HOPE FOR ACCOUNTABILITY

FOX'S ELECTION RAISED HOPES that there might be accountability for atrocities committed under the PRI. His administration showed greater willingness to subject Mexico to international scrutiny on human rights. During his tenure, Mexico ratified the optional protocols of the Convention against Torture, the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Discrimination against Women.[68] Mexico entered into an agreement with the UN Office of the High Commissioner for Human Rights, allowing it to open an office in the country.[69]

When it came to the Dirty War, the Fox administration also made some concessions to civil society demands for truth and justice. These ultimately shed new light on government abuse and atrocity during the period, but led to accountability for few perpetrators.

After the National Human Rights Commission released a report on the Dirty War in 2001, based largely on information from secret government archives, the Mexican government acknowledged state responsibility for abuses for the first time.[70] Fox ordered the declassification of millions of pages of documents related to state-sponsored violence, transferring them from security agency archives to the General Archive of the Nation (GAN).[71] The records exposed the

inner workings of Mexico's security apparatus, and provided first-hand accounts of illegal spying, infiltration of student movements, kidnapping, interrogation, torture, and enforced disappearances.[72]

President Fox also took action to investigate and prosecute past crimes.[73] In 2001, he established a special prosecutor—*Fiscal Especial para Movimientos Sociales y Políticos del Pasado* (FEMOSPP)—under the office of the Attorney General (PGR) to investigate and prosecute acts likely to constitute federal crimes committed by state actors against persons linked with political or social movements.[74]

Special Prosecutor Ignacio Carrillo Prieto had a staff that eventually numbered 170, including a team of 25 prosecutors and six experts in research and documentary investigation, as well as a citizen investigative support committee.[75] The office carried out investigations and indicted some senior government officials, but ultimately had little success.[76]

Carrillo Prieto sought to charge former President Echeverría and other officials with "genocide" and illegal deprivation of liberty in relation to the 1968 Tlatelolco and 1971 Corpus Christi massacres, arguing that the killing of the students aimed to destroy a "national group that shared a complex set of material and spiritual bonds."[77] While a 2002 Supreme Court precedent opened a path to investigate the massacres,[78] judges ultimately rejected the charges: courts ruled that the statute of limitations for the charge of genocide had lapsed for both massacres and that genocide had not been proven.[79]

The FEMOSPP team opened 600-1,000 criminal investigations over five years, by various accounts leading to 15-19 indictments, 20 arrest warrants, and eight persons charged, but resulting in only six arrests.[80] The six were detained for short periods of time, and available information indicates that the Special Prosecutor's Office achieved only one conviction, in September 2009. A court convicted an officer of the Federal Security Directorate (*Dirección Federal*

CONSTRAINTS ON DIRTY WAR PROSECUTIONS

FEMOSPP operated under difficult legal and institutional constraints. For example, prosecutors had a mandate to investigate and prosecute enforced disappearances, but because of a legal definition of the offense that was (and remains)[81] inadequate, they had to pursue most cases as "illegal deprivation of liberty."[82] Further, the Supreme Court dismissed some cases because statutes of limitations had expired. This was possible because when Mexico ratified the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity in 2002, it made a reservation that restricted application of the convention only to crimes committed after its entry into force in Mexico.[83] And although President Fox had created FEMOSPP, it had to work under Fox's attorney general, Army General (on leave) Rafael Macedo de la Concha, who had conflicts of interest regarding past military abuses.[84]

de Seguridad, DFS) in relation to the 1977 enforced disappearance of a student in Sinaloa.[85]

For those hoping to finally see a substantial measure of justice for Dirty War atrocities, there were other disappointments. Promises to provide reparations to victims appeared to fall far short, and results were not transparent.[86] Special Prosecutor Carrillo Prieto established a program to provide psychological care to victims and relatives, but this only reached 20 individuals.[87] Having largely failed to prosecute perpetrators of atrocity or provide reparations to victims, FEMOSPP's signal achievement was the completion of a lengthy report on the history of the crimes under investigation. Without fanfare, it posted a version of the document to its website in November 2006.[88] President Felipe Calderón disbanded the Special Prosecutor's Office shortly after coming into office.[89]

BURYING THE FEMOSPP LEGACY

When FEMOSPP closed in 2006, it transferred 570 pending criminal investigations to the federal Attorney General's Office, but few advances have been made in the decade since.[90] State officials have provided conflicting statistics about the resolution or status of those cases, including cases remaining open, those closed, and those transferred to state-level prosecutors. Officials provided one set of information at a hearing held before the Inter-American Commission on Human Rights in October 2014, and another in response to right-to-information requests filed by the Open Society Justice Initiative in February 2015. The first set of data leaves the fate of 315 cases unaccounted for,[91] and the second leaves the fate of 203 cases without explanation.[92] Of 252 cases that the PGR reported as remaining open as of 2015, none concerned the crime of enforced disappearance.[93]

In 2014, nearly a decade after the end of FEMOSPP's mandate, a lack of transparency continued to impede the investigations of the Truth Commission of Guerrero: both the PGR and the General Archive of the Nation first delayed and then refused access to specific information on crimes perpetrated during the Dirty War.[94] Until the end of 2014, the government of President Enrique Peña Nieto sought to close direct access to the archives opened by Fox but, following an outcry by Mexican civil society, abandoned the attempt.[95]

CARTEL FRAGMENTATION AND CONTINUED MILITARIZATION

THE END OF PRI RULE HAD PROFOUND EFFECTS on drug-related violence in Mexico. Criminal organizations adapted to the more politically fragmented state, in which federal and state-level governments were controlled by different political parties.[96] The cartels themselves became more decentralized, and mid-level state actors once again became prized interlocutors.[97] The killing or capture of organized crime leaders also hastened the break-up of big cartels. With the fragmentation of cartels, competition among them increased. This led to rising inter-cartel violence, and a new willingness on the part of many cartels to push back more aggressively against the state. After 2000, previously unprecedented tactics became routine, including the formation of paramilitary units that attacked police, executed rivals, and engaged in extensive kidnapping.[98]

Fox had campaigned on a promise to remove the military from counter-drug operations; however, once in office, he not only continued but increased the military's involvement in civilian law enforcement. He named an Army general as his attorney general, who proceeded to bring other members of the military into the PGR during his tenure,[99] and moved thousands of military personnel into special units of the Federal Preventative Police (PFP).[100]

The militarization of civilian policing continued and accelerated under Fox's two successors: Felipe Calderón (2006-2012) and the first half of Enrique Peña Nieto's term (2012-present)—the period of focus in this report.[101] Calderón immediately ordered the large-scale domestic deployment of the military to combat organized crime, while continuing to increase its role in policing. He converted the thousands of military personnel integrated by Fox as "auxiliary units" within the PFP into a new Federal Police (PF) force in 2009.[102]

In 2012, President Peña Nieto came into office after having served as governor in the State of Mexico, where he oversaw the deployment of state, municipal, and federal police to brutally suppress a peasant protest against a planned airport.[103] From federal office, he has presided over a continued militarized approach to civilian law enforcement. Across the tenures of both Presidents Calderón and Peña Nieto, the size of the federal police force has grown, from around 11,000 PFP officers in 2006[104] to over 30,000 PF officers by 2014.[105]

From the outset of Mexico's ramped-up campaign against organized crime at the start of the Calderón administration, federal forces pursued a clear strategy of targeting cartel leaders. In this decapitation strategy, Mexico has been supported and prodded by the United States. Just as increased cartel fragmentation at the end of PRI one-party rule led to more brutal tactics by organized crime, the targeting of cartel kingpins appears to have contributed to Mexico's post-2006 crisis of violence. The arrest and killing of cartel leaders has led to fights over succession, the splintering into ever-smaller rival organizations, and an increase of territory that is violently contested among them.[106]

TAKING STOCK

MEXICO'S CURRENT CRISIS OF ATROCITY AND INJUSTICE has grown from roots of authoritarianism, corruption, and self-defeating drug and security policies that have been encouraged by the United States. Foreshadowed by the Dirty War, the recent spree of killing, disappearance, and torture has caused unprecedented suffering.

Although the number of atrocity crimes has grown recently, patterns of impunity are largely unchanged. For Mexicans, justice system failure has long been familiar. Of all crimes reported from 1999 to 2012, there were convictions in just 14.3 percent of federal-level investigations. And at the state level, over a 12-year period ending in 2013, only 7.2 percent of investigations ended in sentencing.[107] But these statistics relate only to crimes that were reported. In light of Mexico's long history of ineffective justice, surveys suggest that citizens report only less than ten percent of crimes to authorities.[108] The real degree of unpunished crime in Mexico is staggering.

Recent Mexican leaders have expounded on the need for economic growth and opportunity for the country's 121 million people. They have sought economic progress through a comprehensive free trade pact with the United States and Canada, oil exploration, the privatization of state enterprises, and reforms in such areas as education and justice. But the hoped-for image of a reform-minded, dynamic country on the cusp of prosperity has been overwhelmed by shocking scenes of a land awash in violence and injustice: mutilated bodies strewn on roadsides; detainees bruised and cowering; mothers and fathers standing silently, clutching photos of their disappeared children.

For a situation so painful and pervasive, there has been a stunning lack of answers to key questions. What is the overall extent of the atrocities that have gripped Mexican society, and how much criminal accountability has there been in response? What are the patterns of atrocity committed by state actors and criminal cartels? And why has Mexico's justice system provided so little justice to victims, and held so few perpetrators to account?

These questions are explored in detail in the ensuing chapters. They are questions that must be answered if Mexico is to reckon with its past and set a new course for the future.

II. DIMENSIONS OF THE CRISIS

THE PAST 10 YEARS IN MEXICO HAVE BEEN MARKED BY EXTRAORDINARY LEVELS OF VIOLENCE, FUELED BY ORGANIZED CRIME AND THE GOVERNMENT'S RESPONSE TO IT.[109] COMPARED WITH PREVIOUS YEARS, OVERALL CRIME RATES ROSE SHARPLY, AS DID THE RATES OF MURDER, VARIOUS FORMS OF CRIMINAL DISAPPEARANCE, AND TORTURE AND ILL-TREATMENT. THESE TYPES OF CRIME ARE CHARACTERIZED BY EXTREME VIOLENCE, AND INVOLVE THE VIOLATION OF SEVERAL FUNDAMENTAL RIGHTS. THEIR GRAVITY TRIGGERS SEVERAL OF THE STATE'S INTERNATIONAL OBLIGATIONS, INCLUDING THE INVESTIGATION, PROSECUTION, AND SANCTION OF PERPETRATORS AND THE PROVISION OF ASSISTANCE, REMEDIES, AND REPARATIONS TO VICTIMS.[110] YET MEXICO'S JUSTICE SYSTEM HAS LARGELY FAILED TO DELIVER ACCOUNTABILITY FOR THESE ATROCITIES.

The size of the gap between atrocity and justice, however, has been a matter of dispute. While many human rights activists in Mexico—as well as international observers—have decried the extensive suffering and rampant impunity, government officials have consistently downplayed the extent of the crisis.

This chapter seeks to plumb the broad dimensions of atrocity crimes and accountability (or lack thereof) for them since 2006. It does so by exploring the best available data on the scale of perpetration and prosecution of killings, disappearances, and torture and ill-treatment, regardless of the perpetrators. The next chapter looks at these atrocities through the lens of international criminal law, with specific regard to their perpetration by federal government actors and members of the Zetas cartel. But first it is necessary to reckon with the complexities of crime data in Mexico.

DATA SOURCES AND METHODOLOGICAL CHALLENGES

DETERMINING THE SCALE OF ATROCITY CRIMES and justice for killings, disappearances, and torture is no easy task, even though there are government bodies with a mandate to produce data on the topic. The quality and reliability of government data vary greatly across government institutions, as does the accessibility of that data. Government data for this report was obtained by the Justice Initiative through online portals, government reports, and freedom-of-information requests. Mexico has one of the most progressive laws on access to information in the world. While this has been a crucial source of information—one whose legal framework has been strengthened during the tenure of President Peña Nieto—its application continues to face frequent resistance in practice.[111]

One key agency tasked with collecting data on homicides and other crimes in Mexico is the Executive Secretariat of the National System of Public Security *(Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública, or SNSP)*, which is part of the federal Interior Ministry *(Secretaría de Gobernación, or SEGOB)*. It tracks limited information on criminal complaints, investigative files, and victims of some atrocity crimes as reported by federal and state prosecutors in its Crime Incidence *(Incidencia Delectiva)* database.

Another source of information is the National Institute of Statistics and Geography *(Instituto Nacional de Estadística y Geografía, or INEGI)*, an autonomous government agency founded in 1983. Since 2011, it has conducted a National Poll on Victimization and Perception of Insecurity *(Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública, or ENVIPE)* in which all federal entities are required to participate. INEGI has also provided the public with judicial statistics on criminal cases *(Estadísticas Judiciales en material penal)* since 1997, as well as some statistics on deaths and homicides.

The federal Attorney General's Office (PGR) issued guidelines in 2012 that require public officers to register information on investigations, prosecutions, and related judicial procedures.[112] In practice, while the PGR has records on some federal crimes, it has effectively refused to provide information on the results of investigations and prosecutions of homicides; it classifies homicides as "grave homicides" and "non-grave homicides"[113] and before 2009 it included homicide cases in a broader category titled "injuries, homicide and grave violation,"[114] making it impossible to know how many criminal investigations it has opened into homicides and providing information only after 2009. Furthermore, the PGR is not able to provide information on how many homicides have been perpetrated by public officers, nor on the results of its prosecution of this crime.[115]

In addition to SNSP, INEGI, and the PGR, there are other government bodies that produce data on atrocity crimes. The National Human Rights Commission (CNDH) provides data that is useful for the demonstration of trends, but less so for the

scope of atrocities because it has been reluctant to fully exercise its mandate to chronicle abuses in Mexico.[116] The recently created Executive Commission for Attention to Victims (CEAV) also provides limited statistics on victims of human right violations.

Despite the existence of relevant institutions and formal means of data accessibility, the weakness of government efforts to produce and collate data on atrocity crimes makes any attempt to understand the scope of the crisis difficult, and in some respects impossible. The compilation of data in Mexico is inherently challenging. Coherent data must be compiled from 33 different entities: the federal government, 31 states, and Mexico City. Within each, there are also different branches of government and agencies that have responsibilities for producing such data; bureaucratic complexities are thus layered upon federal complexities. The various agencies with mandates to collect data often follow different methodologies, which result in conflicting figures.

The most consequential challenge to collecting accurate data on crime is underreporting: according to INEGI, in 2014, 92.8 percent of all crimes in Mexico were never reported to the authorities.[117] Why is the number of unreported crimes (the *cifra negra*) so alarmingly high? One significant challenge is that parts of the country—including several of the states highlighted in this report—are under the *de facto* control of criminal organizations, thus limiting access to Mexico's justice sector.[118] In these regions, underreporting is more likely to occur. According to INEGI, fear of the perpetrators is one of the main reasons why crimes are not reported.[119]

Another, related, explanation for underreporting is that across the country, victims simply lack faith in government institutions. According to INEGI, the population thinks that reporting crimes is a waste of time because authorities can't be trusted.[120] INEGI's survey of Mexican households in 2014 found that 63 percent of those who didn't report crime cited a distrust of authorities, including fear of extortion and hostility from state officers.[121] The federal government itself has acknowledged that "[…]most of the population has low levels of trust in public servants and the police […] which prevents people from turning to authorities to solve their problems[…]"[122] As in other countries, there may be a greater reluctance to report crimes that carry social stigma, such as sexual and gender-based violence. And the percentage of unreported crime is likely even higher in cases where victims believe that state actors are responsible. Victims of torture and families of the disappeared and murdered naturally fear for themselves and their loved ones if they know or believe that state authorities were responsible for the crimes.[123] They face and fear reprisals.[124]

SCALE OF CRIMES AND LACK OF ACCOUNTABILITY

ACCORDING TO AVAILABLE INFORMATION, killings, disappearances, and torture all increased markedly since 2006, and remain at elevated levels. Furthermore, by all indications—including the government's own most optimistic assessments—there has been very little accountability for killings, and almost none at all for disappearances and torture.

Killings

There is some variation in the legal categorization of "killings." Various forms of homicide are included in Mexico's federal criminal code.[125] Homicide can be "intentional" or "non-intentional," and is considered "grave"[126] if, for example, the killing affects the fundamental values of society[127] and was not prevented due to negligence. Ultimately, judges have the authority to define the gravity of a homicide on a case-by-case basis. In response to a rash of killings targeting women, the crime of femicide has been explicitly defined in the code since July 2012.[128] Homicide is criminalized in similar form across all federal entities. Under international criminal law (which is addressed in chapter three), killings may qualify as the crime against humanity of "murder" if a perpetrator "caused death" as part of a widespread or systematic attack against a civilian population, and the perpetrator was aware that the conduct was part of the attack.[129] These could include some killings classified as "non-intentional" under Mexican law, although clearly very many of these are not related to criminal cartels or the state security strategy in response to them.[130]

Scale

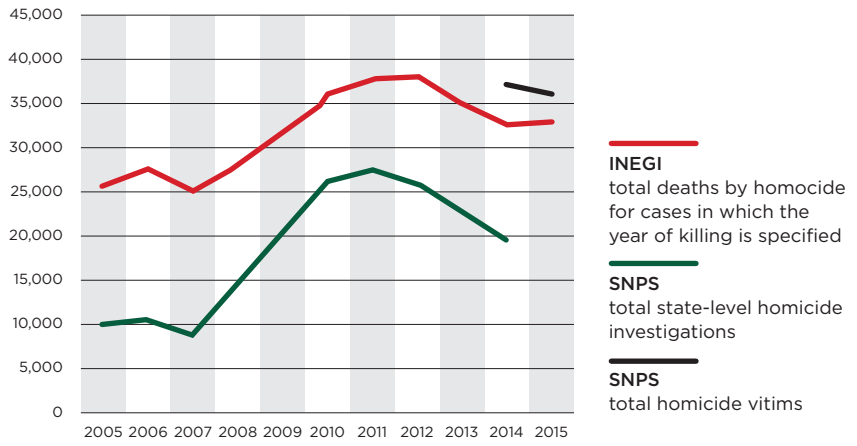
There have been over 150,000 intentional homicides in Mexico in the nine years from December 2006.[131] The remarkable rise in killings began in 2007 and continued throughout the six-year Calderón administration, which saw intentional homicides rise 35.7 percent over the previous six years.[132] Intentional homicides perpetrated by firearms increased sharply from 2005, reaching their peak in the years 2010 to 2012.[133] According to a survey of 86 countries by the United Nations Office on Drugs and Crime (UNODC), Mexico had the highest rate of increase in intentional homicide from 2007 to 2010.[134]

While government statistics show a reduction in homicide investigations under the administration of President Peña Nieto—particularly compared to a peak of over 38,000 intentional and non-intentional homicide cases reached in 2012—the rate remains higher than the annual averages prior to the start of the domestic deployment of military forces at the end of 2006. Furthermore, after falling in 2013 and 2014, the homicide rate may have climbed again in 2015.[135]

The variance in government statistics reflects different methodologies.[136] Data

Figure 1: Homicide in Mexico

INEGI[137] data on annual homicides and SNSP[138] data on annual total homicide investigations in Mexico (intentional and non-intentional), and SNSP data on annual victims of homicide.[139]



from INEGI includes intentional and non-intentional homicides. It is based on administrative records of deaths by homicide issued by Civil Registry Offices around the country, and is complemented by information from other authorities.[140] INEGI's database provides information by default on the year homicides were registered, but in 339 cases from the end of 2006 through 2015, it does not provide information on the year the alleged homicide was perpetrated.[141] These cases are excluded from the attempt to track killings perpetrated between 2006 and 2015.

The SNSP tallies homicides only on the basis of criminal investigations or investigative files opened by state-level prosecutors. One homicide investigation may relate to multiple victims, meaning these data understate the number of victims. Beginning in 2014, the SNSP also started tracking data on the number of homicide victims, not just the number of cases, and a comparison of the figures over two years, shows that on average, the number of victims exceeded the number of cases by over ten percent.[142] State-level records are critical because most homicides in Mexico fall under state rather than federal jurisdiction. Yet the lack of proper methodology for the registration of homicide cases, the misclassification of different types of homicide, divergent forensic and legal capacities among state-level prosecutor's offices, and the political manipulation of data impede the development of an accurate and complete picture of homicides at state level.[143] Further, because they are based on state-level reports, SNSP homicide statistics do not include federal homicide cases,[144]—yet the PGR provides no statistics on federal homicide cases.[145]

Neither INEGI nor SNSP statistics on homicide capture the actual number of killings in Mexico. The true figure is likely much higher than any official estimate.

Mass Graves

The hundreds of mass graves and clandestine graves dotting Mexico may help explain why data on killings is so uneven—and likely inaccurate. But before looking at how many people may be buried in such graves, it is important to note the distinction between public mass graves and clandestine graves.

Public mass graves are repositories for authorities to bury unidentified bodies in public cemeteries. By one conservative estimate, from 2006 to late 2012, state and municipal authorities sent a total of 24,000 unidentified bodies for mass burial in public cemeteries.[146] As a matter of law, officials are obliged to identify all bodies and human remains found throughout the country, and none of these should be buried without an official death certificate. Administrative and prosecutorial authorities are required to inform each other of cases that may require the opening of a criminal investigation or the issuance of a death certificate, as well as notify each other of potential cases of violent death.[147] In practice, however, legal procedures on the handling of unidentified human bodies and remains are not enforced and authorities lack adequate records of these cases. For example, in December 2015, it was discovered that the Attorney General's Office of Morelos had illegally buried 150 unidentified bodies in a clandestine grave.[148] Such practices make it impossible to know how many bodies may be those of homicide victims that are not reflected in any official statistics.

One element of the National Plan for the Search of Missing Persons announced by the government in July 2014 is the creation of a unified registry of mass graves.[149] No data from the registry has been made publicly available and the methodology is unclear. In response to a right-to-information request from the Open Society Justice Initiative on the registry's implementation in 2014, the PGR responded that "the unified registry of mass graves consists of identifying all existing cemeteries in the country, to inquire which ones have these types of graves."[150] From this answer, it is clear that the registry only intends to capture data on official public mass graves.

By contrast, clandestine graves, which may contain one or more bodies, have no legal status. There is strong reason to suspect that the persons buried in such a manner are victims of homicide. As of September 2015, the PGR had acknowledged the reported discovery since 2006 of 201 clandestine graves containing 662 bodies.[151]

One journalist's right-to-information requests to the federal government and the 32 federal entities yielded wildly divergent data from federal agencies and incomplete data from the states.[152] This research suggests a significant official undercount of clandestine mass graves, and also suggests that no one really knows how many there are. Notably, there are no clear requirements for states to report clandestine graves to the federal government, and the federal government maintains no comprehensive database of information on them. An unknown but significant number of anonymous victims thus remain invisible in official homicide statistics.[153]

Perpetrators

What is known about who is responsible for killings in Mexico from 2006 through 2015? By many accounts, members of criminal organizations have been responsible for a large proportion of them. For a brief time, the Calderón administration attempted to quantify the share of homicides perpetrated by organized crime, before abandoning the effort. In January 2009, it unveiled a "Database of Alleged Homicides Related to Organized Crime" *(Base de Datos de los Homicidios presuntamente relacionados con la delincuencia organizada)*.[154] According to this database, there were over 47,000 deaths due to violence between rival cartels in the period December 2006 to September 2011. But the methodology for the database was never clear: crimes were categorized in terms that did not correspond to legal definitions.[155] Ultimately, the government announced in November 2012 that it was abandoning the effort.[156]

Despite the unreliability of government claims and statistics, other sources suggest that organized-crime networks may be responsible for over half of all killings in Mexico. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, reported in 2014 that, "according to information received, almost 70 percent of the homicides recorded in recent years have been attributed to organized crime."[157] Two Mexican newspapers and a consulting firm have attempted to track murders linked to organized crime based on reported characteristics of the incident, such as type of weapon used,[158] but these attempts rely on many assumptions and questionable sources.[159]

Beyond organized crime, it appears that state actors have carried out many of the killings plaguing Mexico, as examined in the next chapter of this report. The CNDH, national and international civil society organizations, and international bodies have all documented extrajudicial killings committed by state actors. Federal forces have deployed across the country without appropriate guidance on the use of force, and there has been almost no accountability for their excessive use of force.

Victims

Victim identities and the circumstances of their deaths also matter greatly to an accurate legal assessment of killings. The government has frequently claimed that the vast majority of those killed since 2006 have been criminals, either killed by rivals in inter-cartel violence or by security forces using legally-sanctioned and legitimate force.[160] Yet, as discussed in the next chapter, evidence shows that many victims were perceived cartel members, broadly targeted for death by state agents using indiscriminate force. Among these dead are criminal suspects extrajudicially killed in cold blood, and also ordinary citizens falsely accused of criminal activity (so-called false positives or *falsos positivos*).[161]

Many victims of homicide are migrants, as was the case with the mass graves discovered in San Fernando, Tamaulipas, which contained the bodies of migrants from Brazil, Ecuador, El Salvador, Guatemala, and Honduras.[162] Migrants in transit to

the United States have proved a particularly vulnerable population for kidnappers and extortionists in Mexico, as well as for Mexican authorities, because they lack income, legal status, and local connections.[163]

Members of the police and security forces, municipal governments, and journalists have also been among the dead. According to records kept by the Defense Ministry (SEDENA), 468 members of the Army died between December 1, 2006 and January 1, 2016, "in the implementation of the permanent campaign against drug trafficking and the Federal Law on Firearms and Explosives."[164] At least 70 mayors and former mayors, as well as 98 journalists were also killed in violence associated with organized crime between 2006 and 2013.[165]

Women have been singled out for killing in some locations. In Ciudad Juárez, Chihuahua, hundreds, and possibly thousands, of women have disappeared and been murdered since 1993, well before the onset of the government's militarized security strategy, although continuing into the post-2006 period.[166] Many of the women's bodies have later been found in the desert, often having been murdered in very brutal ways.[167] Most were poor and working in factories or the informal economy; some were raped or mutilated, and more still remain missing. According to one source, there are reasons to believe that there were 4,306 femicides in Mexico between 2006 and 2012.[168] And the National Network of Human Rights Defenders in Mexico *(Red Nacional de Defensoras de Derechos Humanos en México, RNDDHM)*, identified 615 attacks on women human rights defenders between from the beginning of 2012 through 2014, including 36 killings.[169]

Accountability for Killings

By all available indications, even as Mexico's murder rate rose, peaking in 2011-2012, the number of homicide investigations, prosecutions, and convictions remained at a fairly constant, low level.[170] Taking INEGI statistics as an example, homicide numbers between 2007 and 2012 show that there were 122,319 deaths by homicide, with 22,613 judgments at state level (*fuero común*) and 83 at the federal level.[171] The rate of convictions per 100 victims of homicide was under 17, compared to a global average in 2013 of 43 convictions per 100 homicide victims.[172] The situation is similar with regard to federal prosecutions: Between 2009 and July 2015, the PGR opened 578 homicide investigations, leading to indictments in only 16 percent of them.[173]

Of the killings that the Calderón administration initially attributed to organized crime, very few cases resulted in investigations or prosecutions, and only a small fraction of those in convictions. Of 35,000 killings between December 2006 and January 2011 that the federal government claimed were committed by organized crime, the PGR said it had registered only 13,845 killings (40 percent). Furthermore, it made conflicting claims to have opened 1,687 and 997 homicide investigations, yielding charges against 343 suspects and just 22 homicide convictions as of August 2011 (a 1.3-2.2 percent rate of conviction for cases investigated).[174]

The majority of homicide cases, including some with a possible link to organized crime, are not taken on by federal prosecutors, but are left to prosecutors in Mexico's 31 states and the Federal District. Yet at the level of these entities, too, rates of investigation, prosecution, and conviction have been very low. For example, in Guerrero the annual rate of conviction for homicide never rose above 10 percent of reported murders in the years 2005 through 2014, and fell to around 5 percent in the years of greatest killing.[175] Similarly, of almost 10,000 overall homicides investigated by Chihuahua prosecutors from 2007 to March 31, 2011, just 242 resulted in convictions (approximately a 2.4 percent rate of conviction for cases investigated).[176] The failure of criminal accountability was evident even for crimes that drew significant national and international attention, such as the spate of femicide in Ciudad Juárez, Chihuahua.[177] Indeed, according to the non-governmental coalition National Citizen Femicide Observatory (*Observatorio Ciudadano Nacional del Feminicidio*), of 3,892 murders of women in 2012-2013, only 15.75 percent were investigated as femicides.[178] And according to INEGI, from 2009 through 2012, there were only nine judgments for femicide in Mexico: eight convictions and one acquittal.[179]

Disappearances

Quantifying disappearances in Mexico should start with defining terms, and this is where the confusion begins.[180] The simple term "disappearance" (as opposed to "enforced disappearance") is not defined as a crime in Mexican or international law, but rather often interchangeably used with the term "missing person."[181] While the term may apply to victims of crime, the category also includes those who go missing for non-criminal reasons, including runaways, victims of natural disasters, and some emigrants.

For people who go missing for criminal reasons, several possible legal categories may apply. Criminal cartels in Mexico, often with the collusion of corrupt government officials, engage in kidnappings for ransom, abductions for purposes of forced labor, and human trafficking related to the sex trade. There are various legal definitions at federal level and in many states that could encompass such crimes, including kidnapping,[182] illegal deprivation of liberty,[183] human trafficking,[184] and forced labor. Most importantly, if state actors have been directly involved in a disappearance, it should qualify under Mexican law as an "enforced disappearance."[185]

But the definition of "enforced disappearance" in Mexico's federal criminal code is deficient. Specifically, its focus on the *direct* involvement of state actors is too narrow, failing to address indirect involvement. Under international treaties that are applicable to Mexico, disappearances with *indirect* involvement of the state or its agents would also count as "enforced." In a landmark 2009 ruling, the Inter-American Court of Human Rights ruled that Mexico's 2001 code contravened the Inter-American Convention.[186] As of early 2016, legislation seeking to address these deficiencies remained pending in Congress.[187]

Under international law, the Rome Statute specifically enumerates "enforced disappearance of persons" as a crime against humanity and defines it as:

> **the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.**[188]

Under this broader definition, kidnapping and other disappearances carried out for profit by criminal cartels could also constitute enforced disappearances if they were perpetrated with the consent or acquiescence of Mexican public officials. When committed on a widespread or systematic scale, such disappearances could also constitute atrocity crimes under international law.

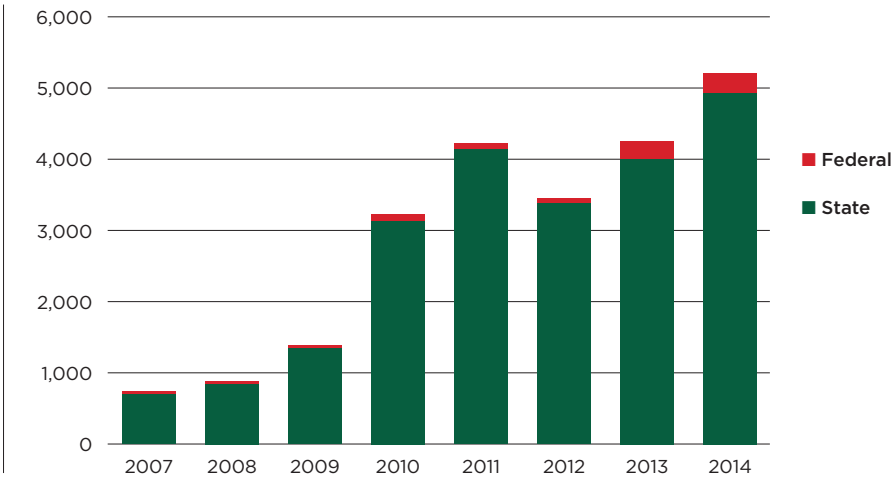
Scale

Nobody knows how many people have disappeared in Mexico since the end of 2006. Journalists, academics, activists, and policymakers frequently cite a government figure of around 25,000 disappeared in the country.[189] But as a measure of the scale of violent disappearances in Mexico, the data may underestimate true levels of victimization by an order of magnitude.

Given the confusion over definitions of "disappearance," which victims are included in the widely cited figure of approximately 26,000 "disappeared" persons in Mexico? The answer is not entirely clear.

Figure 2: Reported Missing Persons

Reports of missing persons, Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, RENPED.[190]



The data on which the total figure of 26,672 (as of February 2016)[191] rests indicate a rise in the number of persons reported missing, starting from the first years of President Calderón's term in office, and continuing to climb during first two years of the term of President Peña Nieto. Of the nine years for which data is available, the highest number of reported disappearances was in 2014, with 5,194.[192] Yet the numbers are problematic, and the firmest conclusion that can be drawn is that something caused a significant increase in reports of missing persons since 2007. As a PGR memorandum available briefly on the SNSP website acknowledged, "[…S]ince the 2007 wave of violence in Mexico, the number of disappeared persons has increased throughout the country […M]ost parts of the country suffer from disappearances[…]."[193]

The figures are tracked in the government's National Registry of Information of Missing or Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, or RENPED*), which was created by law in April 2012.[194] RENPED is a publicly searchable tool that provides information on individual cases[195] and statistics[196] on the missing. It does have its own confusing, broad definition of "disappeared person" for statistical purposes,[197] but the cases and numbers rely on federal and state-level cases and data.[198]

RENPED is essentially a database of persons reported missing, and some unknown proportion of these are runaways, emigrants, others missing from their families and communities of their own volition, or are victims of accidents and natural disaster. At first blush then, it appears that the inclusion of such non-criminal categories would mean that the oft-cited figure of 26,000 overestimates those missing for criminal reasons. However, upon closer inspection, the database substantially *underestimates* various kinds of disappearances resulting from violent crime.[199] There are three main reasons for this.

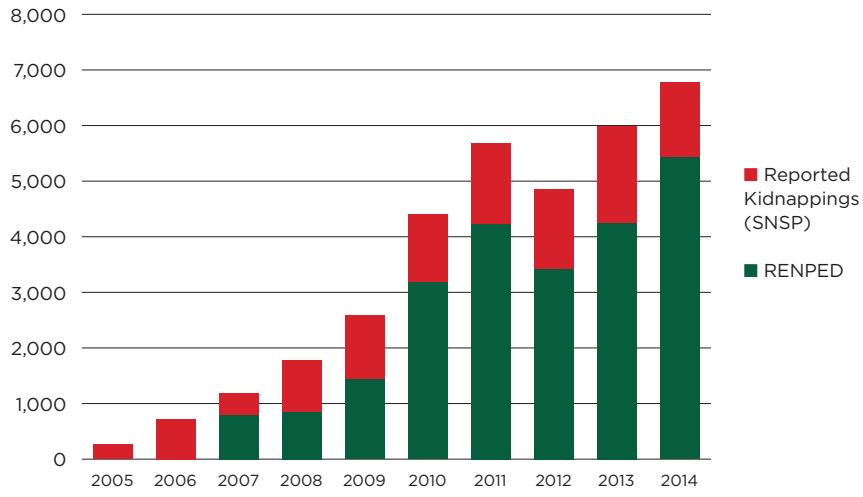
First, there are indications that clear victims of criminal disappearance have been removed from the database. Names can be removed on five different grounds[200] but there is no transparency in the process of removal.[201] Civil society organizations claim that the names of many who were clearly disappeared, including well-known cases relating to the Dirty War, were improperly removed.[202] If substantial numbers of cases have been improperly removed, there may also be many others that were improperly excluded in the first place.

Second, RENPED does not include kidnappings in the total figures at a time when kidnappings comprise an enormous proportion of disappearances in Mexico, including, potentially, enforced disappearances.[203] If it did, data from the Interior Ministry would add thousands of reported cases to the total (see Figure 3).[204]

However, even if *reported* kidnappings were included in RENPED, it would still greatly understate the problem because very few kidnappings are ever reported to authorities. Respected annual government surveys of Mexican households offer insight into the true scale of the problem because respondents likely have less fear when responding to an anonymous survey.[205] Although with a large

Figure 3: Reported Annual Kidnappings Beyond RENPED

Kidnapping investigations[206] added to RENPED[207] missing persons annual totals.



margin of error, these data indicate that there were between 102,800 and nearly 132,000 kidnappings each year from 2012 through 2014[208] (the three years that the statistics agency, INEGI, asked about kidnappings).[209] Comparing these figures to SNSP data on reported kidnappings reveals an underreporting rate of over 98 percent.[210] If it was also true in other years that only around two percent of kidnappings were reported to the authorities, then from the known numbers of reported cases (based on SNSP data), it can be roughly estimated that from the beginning of 2007 through 2014, the number of kidnappings in Mexico exceeded 580,000.[211] And this figure, because it is based on INEGI surveys of Mexican households, does not encompass tens of thousands of foreign migrants who have been kidnapped.[212]

These figures are relevant because, understood together with other shortcomings of the criminal justice system, they suggest that the numbers of documented disappearances that would constitute atrocity crimes could be significantly undercounted. Of the hundreds of thousands who have been kidnapped since 2006, the government has provided no estimate of how many remain missing.

Finally many enforced disappearances are never reported precisely because military, police, and other state authorities are the direct perpetrators. As examined in greater depth in the following chapter, there are indications that a significant number of reported disappearances that the government records as "kidnappings" are in fact "enforced disappearances," perpetrated by government actors. An unknown subset of the hundreds of thousands of *unreported* "kidnappings" reflected in the INEGI data may also involve state perpetrators, and should properly be classified as enforced disappearances.

Victims

Information on victims is difficult to ascertain. Targeted groups appear to vary according to the geography of criminal organizations. In Chihuahua, for example, where disappearances of women seemed pronounced,[213] this could be the result of trafficking for the sex trade.[214] Likewise, disappearances in Querétaro often appear to be linked to the trafficking in women.[215] In Coahuila, by contrast, 84.3 percent of the 370 disappearances documented by one organization were male.[216] Many migrants have disappeared along main transport routes between the Guatemalan and U.S. borders.

Accountability for Disappearances

There has been virtually no criminal accountability for the likely hundreds of thousands of disappearances since 2006, including enforced disappearances and disappearances perpetrated by non-state actors. The federal government has provided conflicting data. However, it is clear that in comparison to the number of disappearances, the numbers of investigations and prosecutions have been very small, and the number of convictions even smaller.

As detailed in the following chapter, the lack of criminal accountability for disappearances is most acute with regard to suspected state perpetrators. There have been 14 reported convictions for enforced disappearance, all but one of them police officers, and at least six of them for disappearances perpetrated before 2006.[217] Despite hundreds of documented cases of disappearances perpetrated by members of the military, prior to August 2015 no soldier had ever been convicted of enforced disappearance.[218] INEGI's judicial statistics do not report any judgments of enforced disappearance at federal or local level.[219]

Undercharging, like underreporting, skews the accuracy of these figures. Indeed, where public officials have been implicated in disappearances—which should qualify many of them as enforced disappearances—prosecutors often charge lesser offenses, including kidnapping and illegal deprivation of liberty.[220] In the military justice system, cases that bear the hallmarks of enforced disappearance[221] have instead been investigated as such lesser offenses as "abuse of authority," "providing false information," and "clandestine burial of a body."[222] This suggests that the number of public officials held criminally accountable for involvement in disappearances is greater than 14—but it also means that, in those additional cases, there has not been a full accounting for the severity of the crime or the state's responsibility.

How extensive have investigations, prosecutions, and convictions been for other disappearance-associated crimes, including those that are properly charged as different offenses? The PGR maintains no statistics on kidnapping cases.[223] Between 2007 and 2012, INEGI reported 32 federal judgments and 3,025 state-level judgments for cases classified as kidnappings.[224] For kidnapped migrants, recalling that over 9,500 were kidnapped over a six-month period in 2009 alone, available data suggests that little has been done. There is no comprehensive database on crimes against migrants, but according to the CNDH only three

cases of migrant kidnappings had been opened at the federal level between January 2008 and August 2009. At the local level, only eight states had initiated investigations in relation to 40 migrant victims, but the outcomes of these proceedings were not clear.[225] According to the PGR database, from 2007-2012, there were 5,062 criminal investigations for "deprivation of liberty" at the federal level, resulting in 595 indictments.[226] The PGR provided no information on convictions for the crime, but according to INEGI, there were 36 federal judgments and 1,741 state-level judgments for illegal deprivation of liberty between 2007 and 2012.[227] For "illegal deprivation of liberty for sexual purposes," INEGI reports that from 2007 through 2012, there were a total of 107 convictions and 14 acquittals.[228]

Torture and Inhuman Treatment

Mexico is party to multiple treaties that ban torture and other cruel, inhuman or degrading treatment or punishment, including the International Covenant on Civil and Political Rights, and the American Convention on Human Rights.[229] These and other treaties require it to investigate and prosecute torture and other forms of ill-treatment. Mexico's legal framework for defining and punishing these crimes can be measured against those found in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Inter-American Convention to Prevent and Punish Torture, and the Rome Statute of the International Criminal Court.[230]

The Mexican Constitution prescribes punishment under law for "ill-treatment during arrest and confinement, any molestation lacking legal justification,"[231] and the intimidation or torture of accused persons.[232] It also contains an absolute prohibition on torture, including in exceptional situations where other rights could be limited.[233] Torture is not included in the federal criminal code, but rather in a special federal law (*Ley Federal Para Prevenir y Sancionar La Tortura*) initially passed in 1991.[234] The definition of torture in the special federal law fails to meet international standards because it creates a limitation based on motive[235] and omits perpetrators who are not state actors, including members of criminal cartels.[236] Mexican federal law does not define "ill-treatment" at all.

Even if these shortcomings were fixed in the federal torture law, it would still only apply to federal public servants. Officials in the states are governed by state laws, where definitions of torture are included either directly in their penal codes or in separate special laws.[237] In almost all cases, these definitions—many modeled on the federal law—fall short of international standards.[238] In early 2016, legislation was pending in Congress that could potentially improve the definitions of torture at federal and state levels.[239]

Scale

International human rights bodies and independent UN experts have long documented that torture and ill-treatment are commonplace in Mexico. As early as 1998, then-UN Special Rapporteur on Torture and Ill-Treatment Nigel Rodley

reported that torture was a "common practice." [240] In 2003, the Committee Against Torture reported that torture in Mexico "was not exceptional or occasional…to the contrary, the police commonly use torture and resort to it systematically as another method of criminal investigation."[241]

As examined in greater detail in the following chapter, there are strong indications that government officials have engaged in torture and ill-treatment at a markedly accelerated rate following the launch of the federal government's militarized security strategy in December 2006.[242] From the beginning of 2007 through the end of 2015, the CNDH received 9,401 complaints of torture and ill-treatment.[243] This is a problematic proxy for a dearth of government data, and likely a significant undercount of the true dimensions of the problem.[244] For three main reasons, other government data on the prevalence of torture and ill-treatment are notoriously poor.

First, shortcomings in the legal definitions of torture and ill-treatment at the federal level and in many federal entities mean that acts by non-state perpetrators—including cartel members—are not counted. And given the patchwork of legal definitions, any attempt to create clear national data on the crimes would be impossible because different entities use different definitions of torture and ill-treatment.[245]

Second, perhaps due in part to mismatched definitions, there is no central register for data on the crimes. Each state and the Federal District generate their own data, independent of the federal government, and there is no attempt to collate information.[246] In its reporting to the UN Committee Against Torture, the federal government has failed to provide information in critical areas: how many criminal complaints had been lodged for these crimes, penalties imposed in cases of conviction, reparations provided, or actions taken in response to specific recommendations from the National Human Rights Commission.[247] Public information requests to different sections of the PGR yield different, sometimes vague, and ultimately conflicting information about the number of preliminary examinations, prosecutions and convictions for torture at the federal level.[248] The PGR stated in 2012 that it had no collective data on convictions for torture "due to the fact that the system in charge of counting the rulings prevents a breakdown requested for this crime."[249]

Finally, and most fundamentally, data on torture and ill-treatment in Mexico understate the incidence of these crimes because law enforcement agencies and judicial institutions that generate the data are often the same agencies accused of perpetrating or tolerating torture and ill-treatment.[250] This leaves the victims reluctant to report crimes, and leaves the perpetrators well positioned to stymie any investigation. In 2012, the UN Committee Against Torture expressed concern about the "allegations of complicity between public prosecutors and police investigators" as well as about "the reports that public prosecutors and, on occasion, judges themselves disregard defendants' claims that they have been tortured or classify the acts in question as constituting less serious offences."[251] Similarly, the report of UN Special Rapporteur Juan Méndez on his April-May 2014 visit to Mexico identified the misclassification of torture as a structural flaw that fosters impunity.[252]

Accountability for Torture and Inhuman Treatment

Despite Mexico's international and domestic obligations to investigate allegations of torture and ill-treatment, efforts to do so have been exceedingly limited. (Because ill-treatment is not defined in Mexican law, there have been no investigations or prosecutions for this crime.) According to the government's maximum claims, by the end of December 2014, there had been 1,884 criminal investigations of alleged torture; the vast majority of these (86 percent) were opened in 2014,[253] and there appear to be deep flaws in those investigations.[254] In the federal civilian court system there were only 12 prosecutions from 2006 through 2013,[255] and as of April 2015, there had been only six federal convictions for torture related to cases after the beginning of 2007.[256] In the military justice system, there have been 15 investigations of torture and no convictions.[257] At state level, there were seven convictions for torture from the beginning of 2007 through 2012.[258] Mexico's failure to properly investigate and prosecute alleged torture and ill-treatment is illustrated not only by this data, but also through the many torture cases taken to the Inter-American Court of Human Rights.[259]

Even in the rare instances where torture is investigated and prosecuted, the crime is often not properly charged: it is frequently categorized as a lesser offense, including "unauthorized exercise of public authority" and "abuse of authority." In 2011, Human Rights Watch found that within the military justice system, a significant number of torture cases were classified as less serious incidents, including 74 cases in which the CNDH found evidence of torture and ill-treatment, but where military prosecutors had downgraded accusations to the less serious offences of "assault" and "abuse of authority."[260] And according to SEDENA's own records[261] in at least six cases where the CNDH issued recommendations for torture, military investigations were opened for "abuse of authority" only.[262] And even when charged as lesser offenses, there have been only a small number of federal cases. In 2012, the government reported to the UN Committee Against Torture that, in addition to six verdicts in torture cases, since 2005 there had been a total of 143 trials for abuse of authority, 60 for misuse of public office, and 305 for unauthorized exercise of public authority.[263]

Violence in Mexico has risen sharply since late 2006, with massive increases in the numbers of people killed, disappeared, and tortured. But getting good data on the scale of these crimes is nearly impossible, which speaks to the state's failure and undermines accountability. The following chapter considers how these crimes may amount to crimes against humanity.

III. CRIMES AGAINST HUMANITY

UNDER INTERNATIONAL LAW, CRIMES AGAINST HUMANITY ARE CERTAIN ACTS OF VIOLENCE—INCLUDING KILLINGS,[264] TORTURE, AND ENFORCED DISAPPEARANCE—THAT ARE CARRIED OUT AS PART OF A WIDESPREAD OR SYSTEMATIC ATTACK AGAINST A CIVILIAN POPULATION. SUCH LARGE-SCALE VIOLENCE IS DIFFERENT FROM INDIVIDUAL ACTS OF VIOLENCE; CATEGORIZING THEM AS CRIMES AGAINST HUMANITY REQUIRES EXAMINING SYSTEMS AND PATTERNS OF CRIME IN ORDER TO BETTER UNDERSTAND THEIR ORIGINS, PARTICULARLY WHERE THERE IS EVIDENCE OF STATE ORCHESTRATION OR INVOLVEMENT. THESE PATTERNS CAN, IN TURN, HELP EXPOSE THE ROOT CAUSES OF VIOLENCE AND IMPUNITY, POINTING NOT ONLY TO THE DIRECT PERPETRATORS OF ATROCITY CRIMES—WHETHER STATE OR NON-SATE ACTORS—BUT ALSO THOSE INDIVIDUALS WHO CAUSED THEM TO BE COMMITTED AND THOSE WHO FAILED TO PREVENT OR PUNISH THEIR COMMISSION.

Exposing this failure is particularly important in a country like Mexico, where impunity has been an integral part of the violence that has gripped the country in the post-2006 period. An international criminal law framework can thus capture issues of context, scale, and patterns of violence that Mexican domestic criminal law has to date failed to do in either its legal standards or practice. The international law framework is also important because, as Mexico has recognized, there is no statute of limitations for war crimes or crimes against humanity.[265] "Atrocity crimes" include war crimes, genocide, and crimes against humanity,[266] but it is only the last of these that is considered here.

Under the definition of crimes against humanity applied by the International Criminal Court (ICC), which is the definition this report uses, an attack must be carried out pursuant to a "State or organizational policy."[267] This policy need not be explicit: it may be inferred from the "improbability that the acts were a random, coincidental occurrence."[268] It may also be defined "in retrospect, once the acts have been committed and in light of the overall operation or course of conduct

pursued."[269] The policy does not have to be undertaken for a particular purpose; indeed, the motive for the crimes is irrelevant.[270] These contextual elements distinguish crimes against humanity from random, isolated acts of violence; they reflect the "hallmarks" of atrocity, scale, and collectivity.[271]

These hallmarks of crimes against humanity have been present in the actions of state and non-state actors in Mexico. As the following analysis will show, there is credible information pointing to numerous violations of international human rights law by the federal government. Specifically, the government appears to have pursued a policy of indiscriminate and extrajudicial force—including through killing, torture, and enforced disappearance—against Mexico's civilian population in its efforts to combat organized crime. There is also credible information about such violations by members of the Zetas cartel, which has pursued a policy of terrorizing civilian communities for the control of territory and profit.

Organized crime poses a real threat to the safety and security of the Mexican state, and in analyzing the state response, it must be emphasized that combatting organized crime is both a legal and legitimate goal; indeed "[t]he human rights system as such… cannot be effective without [law enforcement] and, in some cases, without the use of force."[272] Nevertheless, it is equally clear that the "extensive powers vested in [law enforcement] are easily abused in any society, and [that] it is in everyone's interests for it to be the subject of constant vigilance."[273] Such vigilance requires that the use of force be strictly regulated, that it be carried out by authorities with a constitutional mandate to do so, and that any breach of law be expeditiously investigated and prosecuted to deter the likelihood of future atrocities.

While this analysis does not question the merits or wisdom of a policy to combat organized crime, or the Mexican government's right and obligation to protect its citizens, it does scrutinize the lawfulness of the means by which that policy has been implemented. Specifically, it considers the state's use of indiscriminate and extrajudicial force—force that is not justified by self-defense or the defense of others and/or is disproportionate under the circumstances[274]—by federal forces acting under the state's national security strategy against any person perceived as being connected to organized crime, as well as acts of torture and enforced disappearances against such persons. The question is whether certain of these acts, committed pursuant to a policy of fighting organized crime "by any means"—and in the absence of accountability or a sufficient regulatory framework for the use of force—amount to crimes against humanity. This chapter then addresses the responsibility of organizations engaged in criminal activity for potential crimes against humanity. Specifically, it focuses on crimes committed by the Zetas cartel. The Zetas were chosen for this analysis because there is evidence to conclude that the cartel meets the definition of an "organization" for purposes of establishing that crimes were carried out pursuant to an "organizational policy" under the Rome Statute. Although this report does not analyze in depth the nature and actions of other cartels in Mexico, they too may meet this qualification.

APPLICABLE LAW

THIS ANALYSIS IS BASED ON THE ROME STATUTE and the jurisprudence of the ICC. The reason for this is twofold: (1) because Mexico has been a state party to the Rome Statute since January 1, 2006, and thus falls under the ICC's jurisdiction;[275] and (2) because crimes against humanity have not yet been defined in Mexico's domestic law.[276] Reference to the Rome Statute as a legal standard is not only well-founded as a matter of law; it is consistent with this report's aim—to encourage and aid Mexican domestic authorities in investigating, prosecuting, and trying the perpetrators of these crimes.

Although the Rome Statute itself does not establish a domestic duty to investigate and prosecute crimes against humanity, Mexico is party to a number of treaties that impose an obligation to investigate and prosecute serious human rights violations and, by extension, the large-scale commission of such violations, including killings, enforced disappearance, and torture.[277] The Mexican Constitution also provides for the investigation of grave human rights violations, and Mexico's Supreme Court of Justice has further ruled that the state is obligated to investigate them.[278] As argued below, Mexico's failure to adequately investigate and prosecute these crimes has effectively encouraged the use of indiscriminate and extrajudicial force against any person perceived as being or alleged to be connected to organized crime.

Consistent with the Rome Statute, the following analysis relies on the "reasonable basis" standard that the ICC prosecutor must satisfy when seeking judicial authorization to open an investigation.[279] As the ICC has noted, this requires that there should be a "sensible or reasonable justification" to believe that a crime falling with the ICC's jurisdiction "has been or is being committed."[280] Importantly, the "'reasonable basis' test is not one of beyond reasonable doubt": it is a lower standard, meaning it "cannot be arbitrary, but must be reasoned [...] by critically assessing the reliability of the information" presented.[281] The information is "not expected to be 'comprehensive' or 'conclusive'"; rather, a "sensible or reasonable justification [must] exist for the belief that a crime falling with the jurisdiction of the Court 'has been or is being committed.'"[282] The "reasonable basis" test would also satisfy Mexico's national standard for opening an investigation, which requires only that the prosecution "receives notice of a fact that by law is defined as crime" (*"hechos que revistan características de un delito"*).[283] Mexico's National Criminal Procedure Code likewise obliges the prosecution and police to investigate such facts, without additional requirements.[284]

Although the national security strategy initiated in 2006 has been described as a "war on drug cartels," there is considerable debate about whether, legally, an armed conflict exists (or existed) in Mexico.[285] As the International Criminal Tribunal for Rwanda (ICTR) has noted, certain types of internal conflicts that fall below a minimum threshold would not be recognized as an armed conflict, namely, "'situations of internal disturbances and tensions, such as riots, isolated

and sporadic acts of violence and other acts of a similar nature.'"[286] This is legally significant because the existence of an "armed conflict" is a required element for war crimes charges—but not for crimes against humanity. This report does not seek to analyze the complex question of whether Mexico's violence amounts (or amounted) to an armed conflict; accordingly, its analysis is limited to crimes against humanity. Whether certain conduct described here may also constitute war crimes is thus not considered.

Article 7 of the Rome Statute defines crimes against humanity. In part, it states:

1. **For the purpose of this Statute, "crime against humanity" means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack: (a) Murder; … (f) Torture; … [and] (i) Enforced disappearance of persons…**

2. **For the purpose of paragraph 1: (a) "Attack directed against any civilian population" means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack…**[287]

Based on this definition, the ICC has identified five "contextual elements" that must be present if criminal acts are to qualify as crimes against humanity: (i) that an attack be directed against any civilian population; (ii) that the attack is committed pursuant to a state or organizational policy; (iii) that the attack is widespread or systematic; (iv) that there is a link between the individual act and the attack; and (v) that the perpetrator knew or intended his or her act to be part of the attack.[288]

This chapter analyzes the first four of these contextual elements, relating them to acts of murder, enforced disappearance, and torture, to determine whether there is a reasonable basis to believe that state actors and members of the Zetas cartel have committed crimes against humanity. Because this report does not identify suspects who bear individual criminal responsibility, the fifth element (knowledge) is not considered.[289] This is consistent with the threshold for opening an ICC investigation; the prosecutor must convince the judges that crimes under the Rome Statute have been committed, but need not yet have developed accusations against particular individuals.

The analysis begins by examining crimes by state actors, specifically Mexico's federal government, to assess if they were committed pursuant to a state policy. The policy element provides a broad framework for understanding the attack on a civilian population, including through linked acts of murder, torture, and enforced disappearance. It then conducts an analysis of the attack, including specific examples of enumerated acts—killings, enforced disappearances, and torture—and their nexus to that overall attack. Finally, the widespread and systematic nature of the attack is discussed. The Zetas are then considered according to the same criteria.

CRIMES AGAINST HUMANITY BY STATE ACTORS

THE CONTEXTUAL ELEMENTS FOR ESTABLISHING CRIMES AGAINST HUMANITY are present in the policies and actions of Mexico's federal government. Specifically, these actions have been carried out by the Department of Defense (*Secretaría de la Defensa Nacional, SEDENA*); the Department of the Navy (*Secretaria de Marina, SEMAR*); the now-defunct Department of Public Security (*Secretaría de Seguridad Pública, SSP*), which included the Federal Police; and the Attorney General's Office (*Procuraduría General de la República*, PGR). While this analysis is limited to actions taken by the federal government, a state policy may be carried out, in part, by individuals who are not members of the government—as long as those individuals were acting as part or as agents of the state apparatus—or by individuals at other levels of government, for instance state or municipal authorities.[290] In addition, there is growing evidence to suggest that authorities in Mexico have also colluded with organized crime to commit acts that might constitute crimes against humanity. One could argue, for instance, that atrocities were committed in furtherance of a policy to align with some cartels against others, either as a means of managing inter-cartel violence or to profit from organized crime. This report, however, does not attempt to make such an argument; it focuses on whether the federal government pursued a policy of indiscriminate and extrajudicial force against Mexico's civilian population in its efforts to combat organized crime.

"In Furtherance of a State Policy"

According to the ICC's Elements of Crimes, the phrase "policy to commit" an attack against a civilian population requires "that the State or organization actively promote or encourage such an attack against a civilian population."[291] However, the policy "need not be explicitly defined": any attack "which is planned, directed or organised—as opposed to spontaneous or isolated acts of violence—will satisfy this criterion."[292] Furthermore, "the Statute does not envisage any requirement of motive or purpose to prove that a policy to commit an attack against the civilian population exists."[293] Finally, a policy need not be clear from the outset, but may crystalize over the course of its implementation, "such that definition of the overall policy is possible only in retrospect, once the acts have been committed and in light of the overall operation or course of conduct pursued."[294] Thus, although "[t]o many ears, the word 'policy' connotes something highly formal, official, and adopted at the highest levels," in reality, "the term does not carry these formalized connotations," as it is "simply synonymous with the requirement of direction, instigation or encouragement from a state or organization."[295]

The ICC has held that even if a policy is not explicitly defined, the policy can still be "surmised from the occurrence of a series of events."[296] An isolated event would not be enough to establish a policy to commit crimes against humanity. Mexico's increase in military resources and the expansion of law enforcement are legal, arguably necessary, measures to counter organized crime's threat to the public. However, these measures were part of a larger strategy. The significant

mobilization of Mexico's armed forces occurred amidst rampant impunity for the illegal acts of those forces. There is substantial evidence that the federal government pursued a policy of indiscriminate and extrajudicial use of public force against any civilian perceived as being connected with "organized crime."

The ICC's jurisprudence establishes criteria for determining whether a state policy exists, namely: (a) "the scale of the acts of violence perpetrated"; (b) the "general historical circumstances and the overall political background against which the criminal acts are set," as well as the "the general content of a political programme, as it appears in the writings and speeches of its authors"; and (c) the "mobilisation of armed forces."[297] Furthermore, "a policy may, in exceptional circumstances, be implemented by a deliberate *failure to take action*, which is consciously aimed at encouraging such attack."[298] This last point would encompass the failure to investigate or pursue criminal proceedings, as has been the case in Mexico. These criteria are supported by the following facts.

Evidence of State Policy: Scale

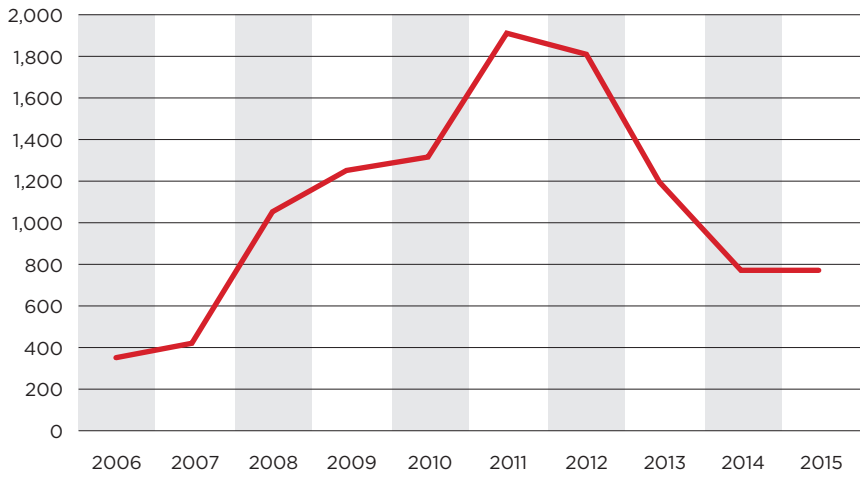
There are strong indications that the federal government has failed to prioritize the collection of crime data, in accordance with policies to deliberately downplay the extent of violent crime in Mexico—especially regarding atrocities committed by state actors.[299] For these reasons, most of the following analysis of the scale of atrocities relies on complaints to the National Human Rights Commission (CNDH), although there are indications that it, too, has understated the extent of killings, disappearances, and torture.[300] Although the CNDH data reflect only a tiny subset of the atrocities committed, they reveal trends relevant to this analysis.

The CNDH's data, augmented by civil society documentation and media reporting, indicates a stark increase in atrocities from 2007. As outlined in chapter two, the overall scale of killings, torture, and enforced disappearance in Mexico following the expanded deployment of federal security forces at the end of 2006 was extensive: intentional killings more than doubled in the space of two years;[301] disappearances escalated sharply; and complaints of torture and ill-treatment to the CNDH more than quadrupled between 2007 and 2012, from 399 to 1,662.[302]

As part of this overall trend, there are clear indications that perpetration of these crimes by state actors jumped from 2007. Indeed, although some complaints to the CNDH pertain to local government officials, there are indications that a large share of the jump is attributable to federal government actors. For example, between 1990 and the end of 2006, 12 percent of the overall recommendations issued by the CNDH were issued to SEDENA, SEMAR, PGR, and the SSPF.[303] By contrast, from January 2007 through 2015, 38 percent of the CNDH's overall recommendations were addressed to these four authorities.[304] Additional indications of a spike in perpetration by federal actors emerge when looking at data for particular crimes.

Figure 4: Complaints of Atrocity Crimes to the National Human Rights Commission

Composite of complaints to the National Human Rights Commission with regard to extrajudicial killing, deprivation of life, violation of the right to life, enforced and involuntary disappearance, torture, and cruel, inhuman or degrading treatment.



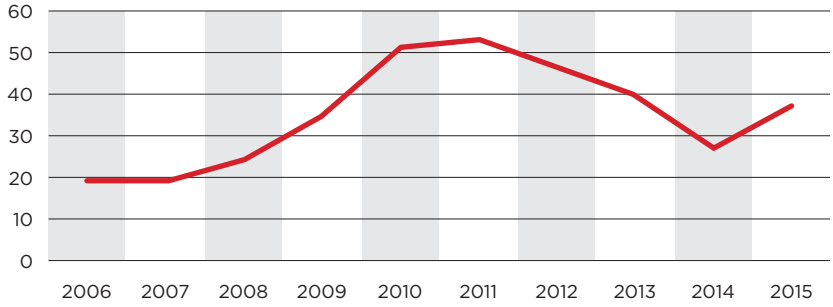
Killings

Complaints to the CNDH regarding extrajudicial killing, deprivation of life, and violation of the right to life increased markedly from 2007 onwards. They began to drop after 2011, although they increased again from 2014 to 2015. In total, there have been 331 such complaints from the beginning of 2007 through the end of 2015.[305]

In response to these complaints, the CNDH has documented and attributed 97 killings to federal government agents, in 58 different incidents that occurred from the beginning of 2007 through the end of 2015.[306] Beyond the CNDH, reports by human rights organizations and the media also suggest that federal agents have committed extrajudicial killings in significant numbers. In a 2011 report, Human Rights Watch (HRW) documented 24 cases in which security forces

Figure 5: Complaints of Killings to the National Human Rights Commission

Complaints to the CNDH of extrajudicial killing, deprivation of life, and violation of the right to life, 2006-2015.



committed extrajudicial killings, a term it used to include "not only deliberate targeted unlawful killings but also deaths resulting from excessive use of force."[307] Specifically, HRW indicated that "[t]hese killings fall into two categories: civilians executed by authorities or killed by torture; and civilians killed at military checkpoints or during shootouts where the use of lethal force against them was not justified."[308] Some recent prominent cases have been captured in the CNDH statistics above, including the June 2014 Tlatlaya massacre of 22 individuals by military forces[309] and the January 2015 killing of seven civilians by Federal Police in Apatzingán.[310] Other incidents are not reflected in the CNDH data, notably the killing of at least 42 civilians by Federal Police on May 22, 2015 in Tanhuato, Michoacán. Initial evidence[311] and media reports suggest that the killings were the result of federal authorities' arbitrary use of force.[312]

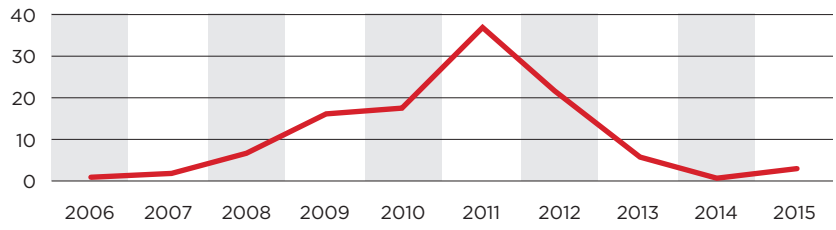
Enforced Disappearances

The CNDH received 493 complaints of enforced disappearance allegedly committed by federal authorities from December 2006 through the end of 2015, with a peak in 2011.[313]

Although data for 2014 reflects no complaints, for a variety of reasons the CNDH data surely underestimate the true scale of enforced disappearances. First, families are often reluctant to report such crimes.[314] Second, there are indications that the CNDH has been reluctant to classify cases as enforced disappearances.[315] Third, other data suggest the true scale of enforced disappearances. For instance, when it conducted its 2013 National Poll on Victimization and Perception of Insecurity (ENVIPE), the Mexican statistics office, INEGI, estimated that, in addition to 105,682 kidnappings in that year, there were also 4,007 "involuntary disappearances,"[316] a category that includes disappearances "by the action of an authority or a criminal group."[317] (It was the first time INEGI included such a question in its annual survey, and, noting the low reliability of these results, the 2014 and 2015 ENVIPE did not provide information on "involuntary disappearances."[318]) A Human Rights Watch report from 2013 further documented 249 disappearances during the administration of President Calderón, including 149 cases in which there was compelling evidence of the involvement of

Figure 6: Complaints of Enforced or Involuntary Disappearance to the National Human Rights Commission

Complaints to the CNDH for enforced or involuntary disappearance



state agents, including the country's federal security forces.[319] The report found more than 20 cases of enforced disappearances perpetrated by members of the Mexican Navy in June and July 2011 alone.[320] Additionally, it found "strong evidence" of 13 enforced disappearances carried out by Federal Police.[321] The Unit Specialized in the Search for Disappeared Persons within the federal Attorney General's Office (PGR) reported in 2015 that it was investigating allegations of the enforced disappearances of two victims in 2011, and of six each in 2013 and 2014.[322] When the Inter-American Commission on Human Rights sent a Group of Independent Experts (*Grupo Interdisciplinario de Expertos y Expertas Independientes, GIEI*) to investigate 43 high-profile student disappearances of September 2014 in Guerrero state, it also found evidence of 28 alleged enforced disappearances in Guerrero between 2009 and 2014; among the alleged perpetrators were various police forces, including Federal Police, SEDENA, PGR, and state prosecutors.[323]

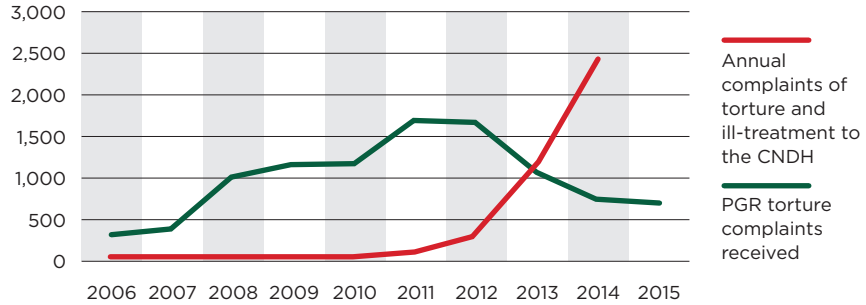
UN human rights bodies have also collected information on cases of enforced disappearance and offered their evaluations on questions of trends and scale. Following its visit to Mexico in March 2011, the UN Working Group on Enforced or Involuntary Disappearances (WGEID) reported that it had "received specific, detailed and reliable information on enforced disappearances carried out by public authorities, criminal groups or individuals with direct or indirect support from public officials."[324] The committee further noted that, "[t]here were indications that enforced disappearances in Mexico are becoming worse."[325] More recently, in 2015 the United Nations Committee on Enforced Disappearance concluded that there was a pattern of "generalized disappearance" in Mexico, and that many disappearances "could be classified as enforced disappearances."[326]

Torture

Although organized crime cartels have engaged in beatings and other forms of violence on a widespread scale, under Mexican law, only a "public servant" can commit the specific offense of torture.[327] As with killings, it is possible to discern a substantial rise in torture based on complaints of torture to the CNDH,[328] and complaints of torture to the PGR.[329] Both show marked increases in complaints

Figure 7: Complaints of Torture and Ill-Treatment

Complaints of Torture and Ill-Treatment to the National Human Rights Commission[330] and Complaints of Torture to the PGR.[331]



after 2006, although with varying patterns. As with other crimes, CNDH data show a clear jump from 2007 to 2008, again a peak in 2011, and a sharp reduction in following years. PGR data indicate a slow rise until 2011, followed by pronounced increases in allegations of torture in 2013 and 2014.

The pattern of complaints to the PGR may say more about that institution's willingness to accept complaints than it does about trends in the actual incidence of torture over this time period.[332] As with other atrocity crimes, assessments of the CNDH data on torture are colored by criticism that the organization tends to categorize complaints of torture as less severe acts.[333] While the total number of complaints for torture from 2007 through 2015 was 187, that number jumps to 9,401 if complaints of cruel, inhuman, or degrading treatment are added.[334]

By way of comparison, from 2001 through 2006, a time period that roughly corresponds with the Fox administration, there were a total of 1,514 complaints of torture and ill-treatment to the CNDH (an average of 252 per year).[335] In the six years from 2007 through 2012 (the approximate tenure of the Calderón administration), that number more than quadrupled, to 7,055 (an average of 1,176 per year).[336] In 2013-2015 (approximately the first half of the Peña Nieto term), there were 2,539 complaints (an average of 846 per year).[337] The UN Special Rapporteur on Torture has taken note of these patterns, and the steep increase in complaints.[338] In his December 2014 report, the Rapporteur concluded that torture and ill-treatment are at such a scale as to be "generalized" in Mexico.[339]

Origins of State Policy: Context

The existence of a state policy to use indiscriminate and extrajudicial force, torture, and enforced disappearances against any civilian perceived as being connected with "organized crime" is supported by the context in which the government adopted its national security strategy. Upon taking office in 2006, President Calderón immediately identified the prevalence of organized crime as a grave threat to be confronted.[340] Government officials at the highest levels expressly acknowledged that the use of federal forces in the fight against organized crime in Mexico would inevitably increase the levels of violence in the country.[341] In August 2010, Calderón reiterated previous comments that the only way to stop organized crime and drug trafficking would be through the use of force, which would "not only entail great economic resources, but unfortunately, will also cost human lives."[342]

Government officials in charge of the policy also described the drug cartels' actions as a serious threat to national security that required a response by the armed forces.[343] The Ministry of Defense argued in 2012 that the practices of organized crime were "considered hostile to the state, the government and society," and that therefore, the armed forces "should intervene with rigor" and "force" to "subdue criminals."[344]

Retired General Carlos Bibiano Villa Castillo, former director of public security in the state of Coahuila, has affirmed that this policy was understood to permit

the extrajudicial and indiscriminate use of force against those perceived as being connected to organized crime. In his words: "Military personnel are trained for combat...we follow [the thugs into the areas of the city dominated by Los Zetas and fought by Los Chapos] and when we reach them, we kill them."[345] In a 2011 interview, he estimated that the security forces killed 200 presumed criminals in the Coahuila campaign, while only six local police suffered injuries. Isabel Arvide was security adviser to the governor of Coahuila at the time, and recruited Bibiano. She expressed a similar understanding of the mission in the state, and across Mexico:

> **State governments' hard line throughout the country was very aggressive; it was to eliminate the criminals. There was a time in this war when commanders and chiefs of military regions were instructed not to hand detainees over to the authorities because, they said, that after handing them over, corrupt prosecutors, judges and police would release them.[346]**

These are not isolated statements. The words of Bibiano and Arvide echo those of General Francisco Gallardo, who stated in a 2011 interview, "In deciding that the Army should take part in public security tasks, they applied a vision of force, of using weapons and power to subdue—or better said—to annihilate/eliminate a criminal rather than detain and submit them to the civilian authorities."[347]

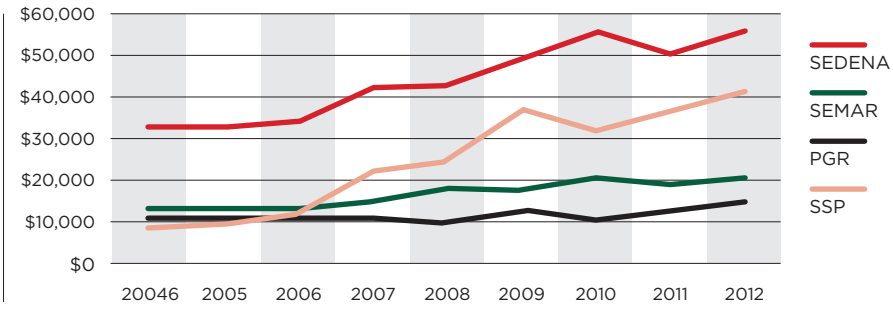
Testimony in a 2014 court case offered an account of how this allegedly worked in one military operation.[348] The case featured testimony from a military commander involved in "Joint Operation Chihuahua" against organized criminal organizations in October and November 2008. The commander described procedures for the detention of suspects, including the notification of senior commanders and members of the Airmobile Group of Special Forces, who took blindfolded detainees in a white van to a "workshop" (*"taller"*), where they were interrogated for up to three days before being presented to civilian prosecutors; the account also includes the description of how military justice officers prepared reports for federal prosecutors.[349] One captain testified that sometimes detained civilians were not presented to any authority, which he said he knew because their belongings were not returned to them. When he asked his commander what to do with the belongings of some detainees taken to the "workshop," he said he received an order to burn them.[350]

Execution of State Policy: Mobilization

The mobilization of Mexico's armed forces has entailed a significant increase in the military's resources and an escalation of the military's role in domestic law enforcement.[351] From the end of 2006, the government rapidly accelerated the annual average number of military troops dedicated to combatting drug trafficking to 45,000, representing a 133 percent increase during Calderón's term of office.[352] At the same time, the government's militarization strategy went well beyond the direct mobilization of the Army and the Navy: as in Coahuila, military or ex-military commanders effectively replaced civilian control of the police in almost half of the country at the state level and, in many cases, at the municipal level too.[353] This

Figure 8: Budget Increases for the Security Sector

Budget for security sector institutions, in millions of pesos.[354]



militarization continued throughout 2012, at which point military personnel headed the ministries of public security in almost half of the federal entities (14 out of 32).[355]

Along with this militarization of public security, the government significantly increased the military's resources, upgrading everything from weapons to ammunition and vehicles to intelligence equipment.[356] As depicted in the chart below, the security-sector budget doubled between 2006 and 2012.[357] The largest budget increase occurred within the Public Security Ministry, which "almost quadrupled its spending," reflecting "the expansion of the Federal Police, which went from 22,000 members in 2007 to 35,000 in 2011."[358] The second largest budget increase occurred within SEDENA, while SEMAR's budget almost doubled.

The Peña Nieto administration has continued this militarized approach, maintaining the allocation of significant resources to federal forces,[359] further expanding the Federal Police—including through creation of a new, heavily armed Gendarmerie[360]—and implementing security strategies that involve the deployment of such forces to areas with high levels of drug-related violence.[361] For example, in late 2014, the Peña Nieto administration launched "Special Security Operation Tierra Caliente," sending 2,000 federal officials of the Army, Federal Police, Navy, PGR, and intelligence services (CISEN) to retake 36 municipalities from organized crime in the states of Guerrero, Michoacán, and Mexico.[362]

The UN Special Rapporteur on Torture noted in his 2015 report that "[t]he strategy of militarized law enforcement is ongoing..., as can be seen from the fact that over 32,000 military personnel are still performing tasks customarily performed by civilian forces."[363] Indeed, in 2016, Secretary of Defense Salvador Cienfuegos argued that the military was the wrong tool for policing in Mexico, but absent police professionalization, remained a necessary one:

> **The Army is not made for the duties that it is carrying out today. None of us in the institution who have command responsibility (*responsabilidad en mandos*) are trained to carry out police tasks; we do not do it, we do not ask for it, we do not feel comfortable with these duties[...] but we are**

also aware that if we do not do it, there is nobody else to do it, and it is an order that we have from the president, supported in the Constitution, and we are complying with that order [...T]hat is what we are doing; we do not like the idea of remaining as police, but while the police are not trained, we will have to continue.[364]

Failures to Act: Policy by Omission

A state policy to use force indiscriminately against civilians perceived as being connected to organized crime may also be demonstrated by a "deliberate failure to take action."[365] The existence of such a policy is supported by two significant examples of inaction by Mexico's federal government: 1) its failure to adequately regulate the use of force; and 2) its failure to investigate and prosecute the commission of atrocity crimes by federal state agents.

Failure to Regulate the Use of Force

Despite recognizing that using force against organized crime would necessarily bring about increased violence, the government adopted no directives to guide the use of force by the Army or Federal Police until April 2012, nearly six years after the launch of its escalated security strategy.[366] While one directive on the use of force by the Navy (Directive 003/09) was adopted in September 2009, it appears to have had limited impact.[367] Notably, in addition to public statements by government officials having foreseen the likelihood of greater violence post-2006, the CNDH also issued a general recommendation in January 2006 (a year before President Calderón took office) on the need to adopt "legal reforms that incorporate the principles of congruence, ... and proportionality," and to incorporate into laws and regulations the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[368] While the issuance of such regulations "should have been the first step" in the implementation of the new security strategy,[369] no such action was taken. Instead, the government recklessly provided increased resources to Mexico's armed forces and Federal Police, and tasked them to fight a broadly defined group of potential perpetrators, without providing them with guidelines on the use of force.

Upon taking office, the Peña Nieto administration promised that it would work with Congress (where the president's party has a majority) to pass a law regulating the use of force, but as of January 2016, no such law has passed.[370] In May 2014, the secretaries of defense and the Navy issued a unified handbook on the use of force for Mexico's armed forces, but it only took effect in June 2015.[371] Although more complete than previous directives on the use of force, the document does not fully adopt the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. Indeed, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated in his 2014 report, that a "comprehensive and authoritative law is required."[372]

Continuing abuses since the handbook's publication further suggest that the current regulatory framework remains insufficient.[375] Researchers from two universities, the Center for Research and Teaching in Economics (*Centro de Investigación y Docencia Económicas, CIDE*) and the National Autonomous University of Mexico (*Universidad Nacional Autónoma de México, UNAM*) conducted two studies on the lethality of force used by Mexico's armed forces to counter organized crime (known as the fatality index—*índice de letalidad*).[376] Both studies concluded that the number of alleged criminals killed is significantly higher than the number injured: between 2012 and 2014 alone, the Navy reported that 296 civilians were killed in confrontations as compared to 14 Marines. The Army has similar numbers: between 2007 and 2014, there was a fatality index of 19 civilians to one soldier. A statistical analysis carried out in 2015 by researchers at Harvard University also concluded that, during the six-year term of President Calderón, soldiers deployed to 16 regions throughout Mexico in the course of this strategy not only failed to reduce civilian homicides but contributed to their rise.[377] These figures suggest that the force used by Mexican authorities was not only excessive, but that its policy has been to kill rather than to detain and prosecute.

Failure to Investigate and Prosecute

Federal officials have operated with near complete impunity in the fight against organized crime, with few to no successful prosecutions for extrajudicial killings, enforced disappearances, or torture. Beyond the failure to regulate

ARBITRARY USE OF FORCE AT ATENCO

On May 3 and 4, 2006, the federal government joined with then-Governor of the State of Mexico Enrique Peña Nieto to order a joint operation by federal, state, and municipal police to disperse a peasant protest of a planned airport at San Salvador Atenco. The joint forces killed two protesters and sexually assaulted 26 women. In total, there were at least 209 victims.[373] The Supreme Court of Justice conducted a constitutional investigation and ruled that the operation at Atenco caused grave violations of human rights. The court concluded that the use of force leading to the violations was "without proper planning, irrational, illegal, unnecessary, disproportionate, [without] professionalism, efficiency, or honesty; the failure to protect the life and integrity of persons revealed a lack of training." The court largely attributed the situation to the lack of a legal framework to regulate the use of force, granting law enforcement an "ample margin for action" that easily led to the arbitrary use of force. The court found that "the legal framework [on the use of force] is precarious, deficient, or even non-existent" in Mexico. It emphasized the importance of having laws on the use of force in place, both to control the use of force and ensure the legitimacy of law enforcement. [374]

the use of force, this is the second form of state inaction that supports the existence of a policy to use force indiscriminately and extrajudicially.

Killings

The existence of investigations into killings, and the availability of information about them, appears to be the scarcest in cases where the deaths occurred in the context of state-organized operations. The Defense Ministry (SEDENA) has provided a range of conflicting claims on military prosecutions for homicide. In 2011, SEDENA told Human Rights Watch that from 2007 until June 2011, military prosecutors had opened 89 homicide investigations into killings of civilians, without a single conviction.[378] In another response to Human Rights Watch in 2011, however, SEDENA stated that two soldiers had been convicted for killings since 2007.[379] In September 2012, however, SEDENA provided information in response to another request, which either contradicts the information it previously provided or signals a significant rise in the number of prosecutions and sentences for military officials accused of killing civilians over the intervening period (June 2011 to September 2012). According to this information, between 2006 and 2012, 105 investigations (*averiguaciones previas*) had been opened, leading to 44 indictments for homicide and 40 trials in military jurisdiction.[380] Left unclear is when the killings occurred, who conducted the investigations for these cases, what the precise charges and sentences were, which branches of the military the accused and convicted came from, and what ranks they held.[381] Finally, according to a document SEDENA made public on the implementation of the 115 recommendations it had received from the CNDH between 2007 and 2013, there have been 29 military investigations for killings perpetrated by members of the military and no convictions.[382] Between 2013 and 2015, military courts did not issue a judgment for killings; following jurisprudence of Mexico's Supreme Court, some of these cases may have been transferred to civilian courts, but just how many remains unclear.[383]

Since 2012, there have been no apparent advances in achieving justice for unlawful killings perpetrated by the military or Federal Police. Despite strong indications that Federal Police committed extrajudicial killings in Apatzingán[384] and Tanhuato,[385] Michoacán, in January and May 2015, as of January 2016, the status of prosecutorial investigations remains unclear. And with regard to the Tlatlaya incident, federal prosecutors joined state-level counterparts in covering up apparent extrajudicial killings. The prosecution of seven low-ranking soldiers only proceeded following domestic and international pressure, and four of them were released in October 2015.[386] As of January 2016, there has been no apparent criminal investigation of senior officers on the basis of an unlawful order to kill.[387]

Enforced Disappearances

Mexico has made confusing claims about justice for enforced disappearances, yet by all indications, there have been at most only a handful of convictions. Although the CNDH and human rights organizations have documented hundreds of cases of

military involvement in enforced disappearances,[388] there has been only one clearly identified case of a soldier being convicted for the enforced disappearance of a civilian; and according to a federal judiciary official, the August 2015 conviction was the first of its kind.[389] By that same report, until that point there had been only six convictions of public officials (all of them police) for enforced disappearance. In August 2014, SEDENA informed the Open Society Justice Initiative that within the military justice system to that point, there had been 43 investigations for enforced disappearances, leading to seven indictments, six arrest warrants, and no judgments, as these cases were referred to civilian courts.[390] The Unit Specialized in the Search for Disappeared Persons within the PGR reported that it opened investigations into the alleged enforced disappearances of 17 victims between September 1, 2014 and June 30, 2015.[391] According to a different set of data from the PGR, from the beginning of 2007 through June 2014, there had been a total of 199 federal investigations for enforced disappearance, leading to 11 indictments. (See Figure 9.)

In a January 2015 report to the UN Committee on Enforced Disappearances, the federal government claimed there had been 313 indictments and 13 convictions for enforced disappearance.[392] Without greater government transparency, it is not clear whether these government claims and responses are internally consistent or accurate.

Torture

There has been almost no accountability for torture committed by federal agents in Mexico. This has held true even as the PGR has recorded a remarkable increase in the number of complaints of torture since 2010, and, beginning the following

Figure 9: Federal Investigations and Indictments for Enforced Disappearance

Information from the Attorney General's Office on federal investigations and indictments for the crime of enforced disappearance.[393]

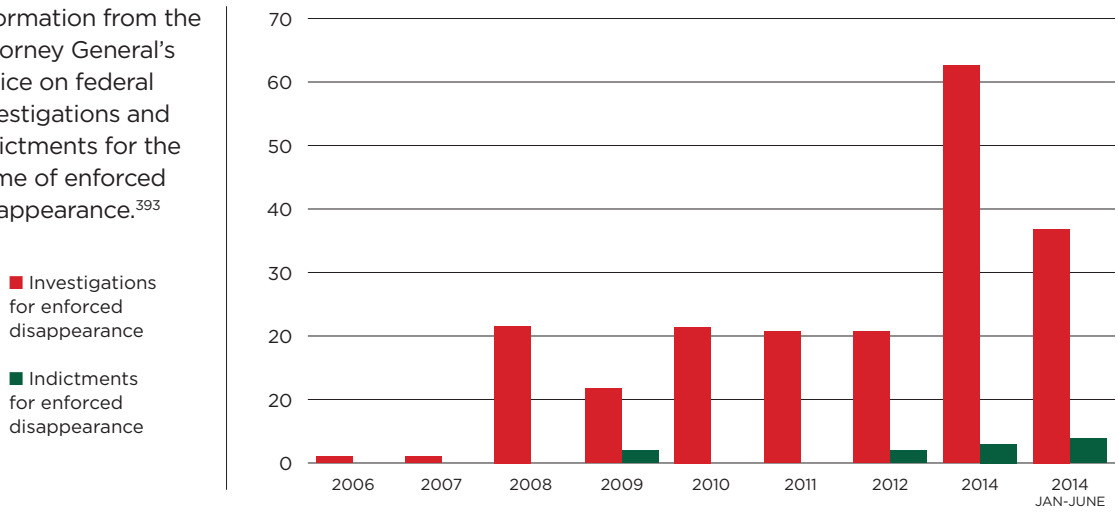
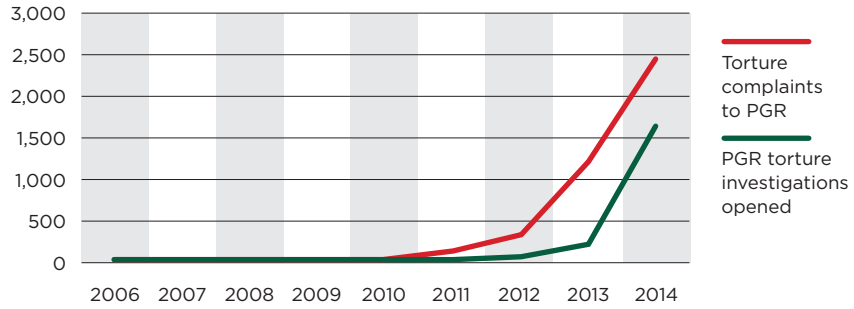


Figure 10: Torture Complaints Received and Investigations Opened

Complaints of torture received by the PGR and investigations opened in response.[395]



year, sharply accelerated the number of torture investigations it opened.[394]

On its face, this represents a significant improvement. According to this data, from the beginning of 2007 through the end of 2012, the PGR opened only 63 investigations into torture, and in 2014 alone it opened 1,622 torture investigations.[396]

However, as detailed in the following chapter, the PGR's new procedures to investigate torture have been deeply flawed. Despite the steep rise in investigations from 2011 through 2014, the annual number of positive findings of torture has remained nearly flat, and never exceeded 22 (in 2014).[397] Unsurprisingly, very few investigations have resulted in prosecution. Between 2006 and the end of 2013, prosecutors filed torture charges in only 12 cases.[398] The PGR informed Amnesty International that it had no data on torture charges in 2014.[399] Similarly, there have been only a few convictions for torture. By April 2015, there had been only six federal convictions for torture perpetrated from the beginning of 2007 to that point.[400] Furthermore, as of 2012, despite numerous and detailed indications of extensive torture committed by military officials, there had never been a conviction for the crime of torture within the military justice system.[401]

Absence of Repercussions

President Calderón was aware of weaknesses in the criminal justice system when he launched his program to combat organized crime. He even used such weaknesses to justify his strategy of using public force to take on drug cartels, noting that the expansion of organized crime was occurring "in a context of grave institutional weakness."[402] In other words, impunity in security and justice institutions meant that these institutions did not represent a credible threat to criminals. While Calderón's administration took some steps to encourage compliance with the rule of law,[403] the administration failed to adopt needed structural reforms in the justice sector that would have addressed these "grave institutional weaknesses." For one, in contrast to the significant budget increases

made to the Ministry of Public Security, SEDENA, and SEMAR, the budget of the PGR saw no significant increase during this time, thereby limiting its ability to effectively investigate and prosecute.[404] The lack of such reforms in the face of overwhelming military force, and in the absence of an adequate regulatory framework, meant that federal agents intent on using unlawful means in their fight against perceived criminals would be very unlikely to face criminal investigations for their actions.[405]

Impunity for federal agents has remained largely unchanged during the Peña Nieto administration. Across both the Calderón and Peña Nieto administrations, as analyzed at length in the following chapter, the reasons for this lack of accountability have their roots in politics. Senior Mexican government officials have denied and downplayed the extent and nature of atrocity crimes in Mexico and through policy have actively promoted or allowed such impunity to flourish. Key among these policies has been strong resistance to accountability for atrocity crimes perpetrated by military personnel. It thus appears that a policy of indiscriminately and extrajudicially using force against civilians in the fight against organized crime continues to be encouraged by an absence of repercussions for those who commit atrocity crimes.

An Attack Directed against Any Civilian Population

"An Attack": Pattern Evidence and "Course of Conduct"

The multiple commissions of murder, torture, and enforced disappearances by federal forces in Mexico after 2006—taken together with the similarities to other incidents that weigh against a finding that they were isolated events—suggest that federal forces engaged in an "attack" within the meaning of Article 7 of the Rome Statute. According to the ICC's Elements of Crimes, the phrase "attack" as used in Article 7(1) of the Rome Statute is "understood to mean a course of conduct involving the multiple commission of" one or more of the enumerated acts listed in the definition of crimes against humanity.[406] The phrase "course of conduct," in turn, "describes a series or overall flow of events as opposed to a mere aggregate of random acts."[407] Hence, while an attack must involve crimes covered by Article 7(1) of the Rome Statute, the commission of such acts is not the only evidence relevant to establishing the existence of an attack.[408] Rather, "since the course of conduct requires a certain 'pattern' of behaviour, evidence relevant to proving the degree of planning, direction or organization by a group or organization is also relevant" to establishing an attack.[409]

The Elements of Crimes also specifies that the acts forming the attack "need not constitute a military attack."[410] Indeed, the ICC has held that "attack" as used in Article 7(1) may "also be defined as a campaign or operation."[411] Thus, for instance, the ICC Pre-Trial Chamber held that there was an "attack" in the Ruto, et al. case arising out of Kenya's post-election violence in 2007, even though it is not alleged that an armed conflict was occurring in Kenya during the relevant time.[412]

Available evidence suggests that federal forces in Mexico not only committed a significant number of crimes encompassed by Article 7(1) of the Rome Statute beginning in late 2006 but also that these acts shared a number of similarities, suggesting that they were part of a "series or overall flow of events as opposed to a mere aggregate of random acts." Thus, numerous examples of murder, enforced disappearance, and torture amount to a "course of conduct" establishing an "attack."

Killings

Jorge Antonio Parral Rabadán was a 38-year-old administrator at Mexico's Highway and Bridge Agency (*Caminos y Puentes Federales, CAPUFE*) who oversaw a bridge to the U.S. in the state of Tamaulipas.[413] One morning in April 2010, he was in his quarters near the bridge when armed gunmen abducted him. Two days later, Mexican Army forces raided a ranch in the neighboring state of Nuevo León on a mission to free kidnapping victims and reported that they had killed three cartel hitmen in a shoot-out. Soldiers buried the unidentified bodies. Almost a year later, when bodies of the alleged hitmen were exhumed and identified, one of them was that of Jorge Parral.

According to a report from the CNDH, ballistics tests showed that Parral—taken to the ranch as a kidnapping victim—had been shot at point-blank range.[414] The bullet came from a weapon issued to a member of the Army who participated in the raid. That soldier has not been charged with any offense related to Parral's killing. It was the dogged persistence of Parral's parents that prodded the government to locate his body at the ranch in Nuevo León. As they continued to press for a criminal investigation, they encountered indifferent and reluctant officials during the administrations of Calderón and Peña Nieto. Parral's parents say that in a meeting with former Attorney General Marisela Morales Ibáñez (April-November 2011), she told the family to "go to Monterrey" to face the kidnappers themselves; military officials have offered them money, which they interpret as an attempt to buy their silence.[415] The actions of federal officials in the Parral case are mirrored in numerous other killings in multiple locations since late 2006, establishing a "course of conduct" with discernable attributes:

- **The killings involve victims in government custody or those who die as a result of the disproportionate or arbitrary use of lethal force.** In 26 cases between December 2006 and September 2012 alone, the CNDH attributed responsibility to the security services for deaths of civilians in their custody.[416] Overall numbers of complaints to the CNDH of extrajudicial killing, violation of the right to life, and deprivation of life also increased sharply after 2006, as did the total number of recommendations made by the CNDH in relation to these crimes.[417]

- **Many killings involve perpetration by the military, on which the government has relied as a central part of its security strategy.** The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, was informed that from 2006 to April 2013, the CNDH attributed violations

of the right to life to SEDENA and SEMAR in 75 percent (39 of 52) of relevant recommendations it had made to that point: a "highly revealing figure that underscores the risk of assigning public security tasks to the military."[418]

- **Security forces and federal civilian authorities have often attempted to cover-up illegal killings, including through the manipulation of crime scenes, and accusing victims of being criminals, often with little or no evidence.** In multiple cases documented by Human Rights Watch in 2010-2011, "security forces provided false accounts of how the killings [occurred] and manipulated, concealed, or destroyed evidence to make victims appear to be criminals or the casualties of fabricated shoot outs."[419] Additionally, in "more than a dozen cases of likely extrajudicial killings," victims' families had received pressure *from members of the military* "to agree to abandon efforts to seek criminal investigations into their loved ones' deaths in exchange for accepting compensation."[420] More recent cases have shown a continuation of these practices.

A non-comprehensive list of additional cases, each demonstrating at least two of these characteristics, includes:

- **June 2008, Chihuahua:** Army soldiers detained a civilian alleged to be a member of the organized crime group Los Aztecas, who had allegedly participated in a kidnapping attempt.[421] The soldiers blindfolded the civilian, who was "persuaded" (*"trabajado"*) to provide information on criminal organizations. A senior military officer instructed a subordinate, "if possible, kill him." According to witnesses, the soldiers' use of force during the interrogation proved lethal. Soldiers burned the suspect's body and scattered the ashes in the countryside. Several soldiers were ultimately charged in the case.

- **November 2009, Tabasco:** Death in custody of Raúl Brindis, following his detention by the military and police.[422] Medical examinations suggested he died of injuries consistent with torture.

- **June 2009, Guerrero:** Soldiers from the 93rd Army Batallion stopped a passenger bus travelling from Tlapa to Mexico City to make a "routine inspection."[423] After finishing the inspection and as the bus drove away, soldiers opened fire on it, killing Bonfilio Rubio Villegas. While the National Human Rights Commission failed to expressly acknowledge the extrajudicial killing perpetrated by the Army, it determined that the military was responsible for depriving two victims of life, and of excessive and arbitrary use of force.

- **February 2010, Guerrero:** Army killing of an unarmed 18-year-old boy, severely beaten together with a 16-year-old boy after both were arbitrarily detained on a roadside.[424] The National Human Rights Commission determined that the 18-year-old died of severe head trauma.[425]

- **March 2010, Nuevo León:** Army killing of factory workers Rocío Romeli Elías Garza and Juan Carlos Peña Chavarria.[426] The Army claimed it killed eight armed criminals who attacked a military convoy, but witnesses told Human Rights Watch that Elías and Peña were caught in the middle, that soldiers shot the unarmed men at close range as they sheltered in a car, and then planted bulletproof vests and guns on them.

- **March 2010, Nuevo León:** Death of José Humberto Márquez Compeán, whose body was found with signs of torture, one day following his photographically documented detention by members of the Navy and municipal police.[427] Drugs were found on his corpse, which the National Human Rights Commission concluded was an effort to portray Márquez's death as connected to the drug trade.[428]

- **April 2010, Tamaulipas:** Army killing of Martín and Bryan Almanza Salazar, ages 9 and 5 and wounding of five other civilians.[429] The Army claimed they were shot in an exchange of gunfire with organized criminals, but survivors said soldiers opened fire for no reason, and the CNDH found evidence of extensive crime-scene manipulation.[430]

- **August 2010, Chihuahua:** Death of Arnulfo Antunez Sandoval, following his detention by Federal Police.[431] His body was found the following day in an abandoned house, surrounded by syringes, but a subsequent forensic examination showed he died not from an overdose of intravenous drugs, but from blunt force to the head.

- **October 2010, Nuevo León:** Army killing of architect Fernando Osorio Álvarez, who was unarmed, near a shoot-out with apparent criminals, in which key witnesses were not interviewed.[432]

- **October 2010, Guerrero:** Army killing of Abraham Sonora Ortega after a supposed "shoot-out" with organized crime attackers, in which there were no military casualties, and soldiers blocked access to the crime scene for six hours, raising suspicions of tampering.[433]

- **September 2011, Nuevo León:** Navy forces broke into the Luján family house, after allegedly receiving an anonymous report of organized crime activity in the region.[434] When Gustavo Luján opened the door, the Navy forces shot him in the forehead. In a press release issued after the attack, the Navy identified Gustavo as "M-3," a member of a criminal group, and asserted that he had been captured in possession of guns and cocaine. The next day, the Navy reported that the actual "M-3" had already been captured and killed in Tamaulipas.

- **May 2015, Michoacán:** 42 civilians and one police officer were killed in Tanhuato, when Federal Police raided an apparent organized crime compound and engaged in a shootout.[435] Witnesses and a journalist provided access to a document from the state investigation saying that police executed

ORDER TO KILL AT TLATLAYA, STATE OF MEXICO: JUNE 2014

EARLY ON JUNE 30, 2014, in a warehouse in Tlatlaya, a 20-yeard old kidnapping victim heard gunfire and cries of "Mexican Army! Surrender!"[436] For the previous nine days, armed men had held her and others, and had repeatedly raped her. According to two of the victims, their abductors quickly surrendered to army forces, hands over their heads. Three surviving women claimed that most of the 22 individuals killed by the Army that day were executed after surrendering, while they begged not to be killed.[437] Ultimately, the CNDH determined that members of the military were responsible for the arbitrary deprivation of life of at least twelve people, three of whom were minors.[438] Documentation indicates that the victims' bodies had been moved from their original positions and locations, and had been arranged with "planted weapons."[439] Army and Navy authorities arrived at the crime scene well before state investigators, while prosecution authorities did not arrive until six hours later. According to the CNDH, evidence strongly suggested that the military altered the crime scene.[440]

Nevertheless, on the day of the incident, Mexico's Defense Ministry issued a press statement claiming that the killings had been in response to an attack.[441] The governor of the State of Mexico, Eruviel Ávila, saluted the Army for "rescu[ing…] victims of kidnapping and killing 22 members of organized crime 'in self defense.'"[442] State and federal prosecutors actively resisted any attempt at investigating strong leads against the Army. This entailed subjecting the surviving victims to further atrocities. When the 20-year-old survivor told state investigators what she had seen, she said they tortured her through severe beatings, plunging her head into a toilet bowl, and threatening to rape her.[443] She was then sent to Mexico City, where investigators in the PGR's organized crime unit (SEIDO) pressed her, in the absence of a lawyer, to sign a statement affirming SEDENA's version of events. She and another survivor were further accused of illegal weapons possession. The two would languish in a prison for five months before finally being released by a federal judge when, after social and media pressure, the PGR withdrew charges against them.[444]

After the story fabricated by the Army with the assistance of state and federal prosecutors unraveled, new evidence emerged, strongly suggesting that the Tlatlaya massacre was not an aberration, but an outgrowth of policy. One year after the incident, in July 2015, Centro Prodh (which represents one of the Tlatlaya victims) announced that it had obtained a copy of standing, written orders for military operations in the area, in two documents dated June 11, 2014.[445] The orders specified that, "actions to reduce violence should be planned and executed in the dark hours, directed at specific targets," although it contained no guidance on how soldiers should differentiate between civilians and "criminals"—a group also referred to in the documents as "delinquent groups" or "members of organized crime." The order further instructs soldiers to "take down" (*"abatir"*) any suspects: "Troops should operate massively at night and reduce activities during the day, in order to 'take down' criminals in the darkness of the night, given that most crimes are committed during those hours."[446]

CONTINUED ON NEXT PAGE

ORDER TO KILL AT TLATLAYA, STATE OF MEXICO: JUNE 2014

Significant discrepancies remain among the CNDH, the PGR, and survivors with regard to the number of victims. To date, only seven soldiers have been charged (four of whom have been released)[447] for the murder of eight civilians; the PGR continues to claim that the rest of the civilians were killed while participating in a "shootout."[448] The ongoing failures of justice in the case suggest, as General Gallardo has stated, that there is, "an open policy to cover up all the atrocities and abuses of authority that the Army has perpetrated against the civilian population."[449]

The ICC Elements of Crimes provide that a murder amounts to a crime against humanity where it is carried out as part of the larger attack against a civilian population, so long as there is knowledge on the part of the perpetrator of the connection to the larger attack. Here, at least 12 people (by the CNDH count) were killed due to the use of arbitrary and irrational force by members of the Mexican military who had been deployed to the region for the purpose of fighting organized crime, suggesting the murders constitute crimes against humanity. Notably, as described in the CNDH recommendation relating to the incident, the operation shared a number of features with those undertaken during the Calderón administration, including: (i) the deployment of the military to fight organized crime;[450] (ii) the use by the military of "arbitrary, irrational" force;[451] (iii) the manipulation of the crime scene by the security forces to make the killings appear to have been legitimate;[452] and (iv) the torture of surviving victims in an effort to ensure corroboration of the military's narrative of events.[453]

The evidence also suggests at least one instance of torture as a crime against humanity. The ICC definition of torture as a crime against humanity requires the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused, carried out as part of a widespread or systematic attack on a civilian population.[454] Here, a victim who had been subjected to repeated and various forms of physical and psychological abuse by members of a state-level prosecutor's office was subsequently pressed by members of the PGR to sign a statement as part of an apparent joint effort to cover up a crime that itself was carried out in connection with the fight against organized crime. The federal attorney general eventually brought charges involving "undue exercise of public service," "abuse of authority," "aggravated homicide," "covering up a crime by failing to impede its perpetration," and "altering the crime scene" against seven low-ranking soldiers and one lieutenant—far fewer than the 44 public servants involved, as identified by the CNDH investigation.[455] Despite the express requests of the victims and their representatives to investigate the chain of command in the case, authorities have refused to do so. In testimony before Congress in April 2015, a prosecutor with the state government said that 28 local officials were under investigation in relation to the cover-up, but did not specify that this was a criminal investigation.[456]

NUEVO LEÓN: 2010

ON THE EVENING OF MARCH 19, 2010, students Javier Francisco Arredondo Verdugo and Jorge Antonio Mercado were just leaving the campus of the Institute of Technology and Higher Studies in Monterrey, Nuevo León. They were confronted by members of the Army, who shot them to death.[457] The military initially sought to justify the killings by claiming that the students were "hitmen" who had opened fire on the soldiers, "pointing to weapons allegedly found on them as evidence."[458] However, following protestations from the victims' friends and family members, the CNDH investigated the matter and concluded that the soldiers had planted the weapons on the bodies of the deceased "with the aim of altering the crime scene to suggest the students were gunmen."[459] Furthermore, subsequent autopsies showed that "both victims suffered physical abuse before dying, and that one student's gunshot wounds were inflicted at point blank range, execution-style."[460] The CNDH ultimately concluded that the shootings resulted from the use of "arbitrary" force by a military unit referred to as "Nectar Urbano 4," which was under the command of the Secretariat of National Defense.[461] The attack took place during the federal-led joint security operation (*operativo conjunto*) "Noreste Nuevo León-Tamaulipas" in Nuevo León, which aimed to counter organized crime and provide public security.[462]

According to the ICC's Elements of Crimes, a murder amounts to a crime against humanity when: (i) a perpetrator kills or causes the death of one or more persons; (ii) the conduct was committed as part of a widespread or systematic attack directed against a civilian population; and (iii) the perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.[463] Although this chapter does not analyze the knowledge requirement, the other two elements appear to be met in this case. First, the two victims died as a result of gunshot wounds. Second, the killings were carried out by members of the military who claimed the victims were "hitmen" and who attempted to support this claim by planting weapons on the students, suggesting that they engaged in extrajudicial use of force against persons suspected of being connected to organized crime. These are characteristics shared with many other unlawful killings by federal forces across a range of years and many different locations, indicating that the killings of Arredondo and Mercado were part of a widespread or systematic attack. The killing of just two victims is sufficient to constitute a crime against humanity, as long as the killings were connected to the larger attack: the use of indiscriminate and extrajudicial force against persons perceived as being connected to organized crime. It is only the attack, and not the individual enumerated acts, that need to be "widespread or systematic."[464]

Enforced Disappearances

In the early morning hours of June 5, 2011, Mexican Navy forces broke into the house of the shopkeeper José Fortino Martínez Martínez in Nuevo Laredo, Tamaulipas, and drove away with him as his distraught family looked on; he has not been seen again.[465] Five other civilians disappeared under similar circumstances that same night. The Navy subsequently issued contradictory statements, eventually acknowledging the operation and the contact with the six disappeared, but hinting that they worked for the Zetas cartel, and that organized crime was also responsible for their vanishing. Federal prosecutors showed little interest in the cases, and refused to accompany Nuevo Laredo family members to a Navy base where they suspected their missing loved ones were being held.[466]

Several similar cases involving the Navy—including a taxi driver detained at a Navy checkpoint, and another taxi driver forcibly dragged from his house by masked men in Navy uniforms in the middle of the night—followed that same month in neighboring Nuevo León and Coahuila, "suggesting all of these disappearances may have been part of a regional operation."[467]

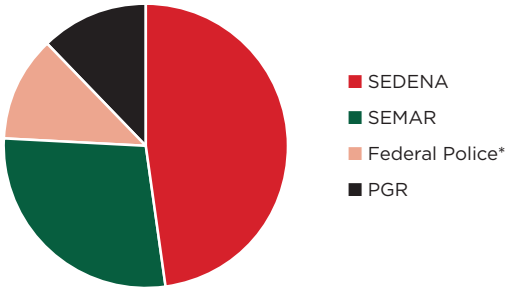
Indeed, the disappearances of Martínez and some 20 others, allegedly at the hands of the Navy, in Tamaulipas, Nuevo León, and Coahuila in June and July 2011, share characteristics with other disappearances beyond those months and that region of the country. This suggests that they occurred within a "course of conduct" by federal security forces. Common characteristics of enforced disappearances have been:

- **Federal forces engaged in the mission to combat organized crime are the accused perpetrators.** Over half of the 418 complaints to the CNDH of enforced disappearance from December 2006 through the end of 2014 allegedly involved the Army (SEDENA); almost a third, the Navy (SEMAR); while the Federal Police and the PGR were each allegedly involved in 14 percent of the incidents (see Figure 11).[468] The Unit Specialized in the Search for Disappeared Persons within the federal Attorney General's Office reported that of 17 enforced disappearance cases under investigation in 2015, the alleged perpetrators were members of the Federal Police in 41 percent of the cases, and of the Army in 35 percent of the cases.[469]

Figure 11: Institutions Implicated in Enforced Disappearance

Distribution of complaints to the CNDH on enforced or involuntary disappearance from December 6, 2006 through December 2014.

*Taking account of institutional changes over the period, "federal police" include Federal Preventative Police, Federal Police, and officers of the National Commission of Security.



- **The disappearances demonstrate a similarity of tactics.** As Human Rights Watch observed in 2011, "[t]he cases follow a pattern: victims are arbitrarily detained by soldiers or police, their detentions never officially registered, and they are not handed over to prosecutors. In the immediate aftermath of such detentions, victims' relatives routinely seek information from security forces and justice officials, who deny having the victims in their custody[…]"[470] More recent cases show that use of these tactics continues.

A partial list of cases showing these characteristics includes:

- **November 2008, Chihuahua:** Members of the Army and Federal Police, on patrol in Ciudad Juárez, detained two siblings from a home in response to what they say was an anonymous call about supposedly armed suspects engaged in extortion and selling drugs.[471] An inspection revealed no guns or drugs, but the siblings were nevertheless detained and to date their whereabouts remain unknown. According to a written account from Army members, the two were blindfolded and transferred from a patrol to a civilian white car, and then to an unknown destination. Testimony from members of the Army suggests that one victim may have been killed after being tortured in military facilities. The forces involved were participating in Joint Security Operation "Chihuahua" to counter organized crime.

- **March 2009, Chihuahua:** Army members deployed in a "joint security operation" entered a home in Ojinaga without a warrant, supposedly to search for weapons and narcotics, and removed a man.[472] They held the victim in military facilities for a month, where he said he was tortured. When the victim's family visited the facilities to ask about him, the military denied that he was being held. The unit ultimately did turn the victim over to federal prosecutors, but claimed he had been arrested that same day; drugs were in the victim's car, which the victim disavowed while the Army pointed to them as justification for the arrest.

- **April 2009, Coahuila:** Co-workers Uribe Hernández and Alvarado Oliveros went out one evening and have not been seen since.[473] That night, witnesses in a residential area of Torreón heard gunshots and saw Army forces near Oliveros's bullet-riddled pick-up truck, removing one inert body from the vehicle, along with another man who was moving, at gunpoint. Federal prosecutors were reluctant to open an investigation. Although the Army admitted to being active in the neighborhood that night, and despite witness testimony of Army involvement, as of early 2013, federal prosecutors had not interviewed any military officials in the case.

- **December 2009, Chihuahua:** Army members detained siblings Nitza Paola Alvarado Espinoza, and José Ángel Alvarado Herrera, as they were driving, and later that same evening, soldiers broke into the house of their 18-year-old cousin, Irene Rocío Alvarado Reyes, detaining her.[474] The three have not

been seen since. Local prosecutors told the family that they were being held by the Army. An investigation by the CNDH determined that the Army had disappeared them.[475]

- **February 2010, Guerrero:** Masked men, driving a car accompanied by two Army Hummer vehicles, abducted Roberto González Mosso from the auto shop where he worked; he has not been seen again.[476] Military officials in the area denied any knowledge of the abduction, and investigations have yielded no results.

- **March 2010, Guerrero:** Six civilian men were abducted from a nightclub in Iguala and have not been seen again; eyewitness accounts and security camera video strongly suggest that the perpetrators were members of the Mexican Army.[477] Army officials at two nearby bases told family members they did not have the men, but acknowledged to the CNDH that soldiers had been near the club that night. As the families have agitated for justice, they have faced threats, harassment, and physical attack.

- **November 2010, Nuevo León:** Jehú Abraham Sepulveda Garza was arrested by local transit police for allegedly driving without his license and his family has not seen him since.[478] Transit police handed him to investigative judicial police, who say they handed him to the Navy on suspicion that he had ties to organized crime. The Navy acknowledged that Sepulveda came to its local base, but denied keeping him in custody.

- **March 2011, Nuevo León:** Eight armed men in Federal Police uniforms broke down the door of an apartment in Monterrey and, when the person they were looking for was not present, instead removed 17-year-old Yudith Yesenia Rueda García and her boyfriend, 17-year-old Roberto Iván Hernández García.[479] Rueda's grandmother watched as the men drove away with the teens in a convoy of vehicles, including three with Federal Police insignia. When relatives of the teens went to the Federal Police station, officials denied any knowledge of their detention.

- **May 2012, Nuevo León:** A second lieutenant in the Army detained a victim in the municipality of Los Herreras, and the individual was never seen again.[480] The case resulted in the first-ever conviction of a member of the Mexican military on charges of enforced disappearance.

- **August 2013, Nuevo León:** Members of the Navy stopped Armando del Bosque Villareal's car and dragged him into a Navy vehicle, in front of multiple witnesses, including del Bosque's father.[481] For weeks, Navy officials offered the father denials and conflicting information. Armando del Bosque's corpse was found on October 3, 2013. In March 2016, Amnesty International reported that five members of the Navy were being prosecuted for enforced disappearance in relation to the case.[482]

- **February 2016, Veracruz:** According to a witness account, members of the Army's 80th Battalion detained auto mechanic Victor García as he drove along a rural road.[483] When family members went to the battalion's base to ask about him, the military denied the detention and filed a complaint for "harassment and threats" against protestors outside the base. Four days later, Victor García's corpse was discovered near his burned-out vehicle. His body showed extensive signs of torture: his legs were skinned from the ankle to the knee.

JALISCO: 2010

AS A GROUP OF MEN AT A HOUSE in Jalisco were preparing to go work in the countryside one morning in October 2010, Army forces broke in without a warrant, and after an hour, drove away in Ministry of Defense vehicles with six of the house's occupants.[484] The men were never presented to any authority and have never been seen again. The military claimed it was responding to reports of "illegal activities" at the house, and delivered guns, cars, and ammunition to federal organized crime prosecutors. An investigation by the CNDH found no evidence to support the contention that the men had engaged in illegal activities. Rather, the CNDH concluded that the Army was responsible for the enforced disappearance of the six victims. Family members of the disappeared told the CNDH they had received threats from the military.[485]

Article 7(2)(i) of the Rome Statute defines the crime of "enforced disappearance of persons" as "the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time."[486] The conduct must also be connected to a widespread or systematic attack against a civilian population.[487] Here, the victims were detained by members of the Army, by its own admission and as corroborated by witnesses.[488] As the CNDH also concluded in reaching its determination of enforced disappearance, the Army has refused to provide information on the whereabouts of the victims to their families, and the perpetrators have withheld information on the circumstances of detention and fate of the victims. The victims disappeared over five years ago, thus constituting a "prolonged period." Finally, the military's attempt to portray the men as criminals by delivering guns, cars, and ammunition to federal organized crime prosecutors suggests that they committed the illegal acts in connection with the security policy to fight organized crime. Based on the evidence, it appears that the Jalisco disappearances share similarities with many others perpetrated by federal forces in multiple locations over a period of years, and therefore amount to enforced disappearances as a crime against humanity.

Torture

On his way home from work in February 2010 in Ciudad Juárez, Chihuahua, Israel Arzate Meléndez was detained by Army soldiers and men in street clothes, and taken to a military base.[489] He was held there for nearly two days while interrogators beat him, administered electric shocks, asphyxiated him with a plastic bag, and threatened to kill him. Throughout, he heard the sounds of victims being tortured in surrounding rooms. His torturers demanded that he confess to participating in the massacre of 15 students in the city just days earlier—a case that had stirred national outrage.[490] After the interrogators threatened to rape and kill his wife, he signed papers put before him, while still wearing a blindfold, and was coached on what to say in his videotaped confession, surrounded by soldiers and men in plainclothes, including a representative of the state prosecutor's office. Arzate was taken to the Army base twice more from detention and subjected to renewed torture.

A CNDH investigation concluded that Arzate had indeed been tortured by military officials, with a medical and psychological exam providing evidence.[491] Despite the finding, and even though Chihuahua was an early adopter of the new adversarial justice system in Mexico, a court nevertheless accepted his confession and ignored the evidence of his torture. A number of Mexican and international human rights organizations took up Arzate's case, and diplomatic pressure on Mexico mounted.[492] In September 2012 he was removed from detention and placed under house arrest. Finally, in November 2013, Mexico's Supreme Court of Justice ruled that his confession under torture was invalid and ordered his immediate release from house arrest.[493] Despite findings from the CNDH and the Supreme Court of Justice that the Army had tortured Azrate, as of March 2016, there was no indication that any of the perpetrators had been held accountable.

Although the judicial finding of torture is rare, the Arzate case otherwise demonstrates numerous hallmarks of torture by federal authorities in Mexico, establishing a "course of conduct." As the UN Special Rapporteur on Torture has found, there are "observed disturbing similarities" in the testimonies of torture victims in Mexico.[494] These "disturbing similarities" include:

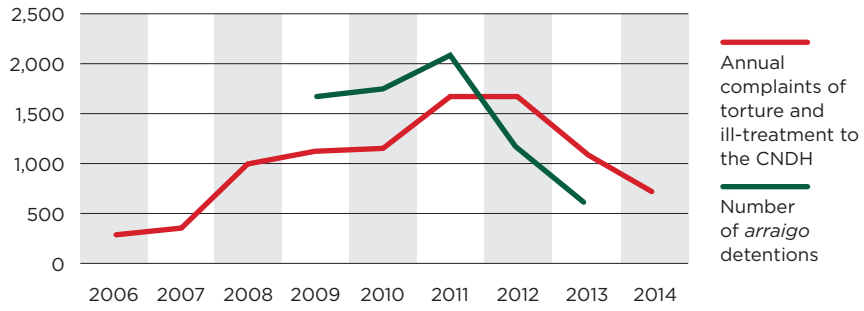
- **Torturers are federal authorities involved in the security strategy against organized crime.** There is a connection between the security strategy to combat organized crime, introduced in late 2006, and the incidence of torture and ill-treatment by federal authorities tasked with implementing that strategy.[495] In 2009, for example, the majority of cases of torture referenced in 30 CNDH recommendations involved an express admission by the authority responsible that their actions were committed in the context of the "permanent fight against drug trafficking," the enforcement of the Federal Law Regulating Firearms and Explosives (*Ley Federal de Armas de Fuego y Explosivos*), or in furtherance of a coordinated operation to counter drug trafficking.[496] The CNDH documented torture in 56 percent of its recommendations to the Mexican military in 2008 (20 of 36), 52 percent of the cases from 2009 (16 of 31), and 42 percent in 2010 (10 of 24).[497] Of

all torture complaints to the CNDH from 2006 through 2014, Army or Navy officials were alleged perpetrators in 71 percent of the cases.[498]

- **Victims are often detained under similar circumstances.** As the UN Special Rapporteur on Torture observed, "Generally speaking, people report having been detained by individuals dressed as civilians, sometimes hooded, who drive unmarked cars, do not have an arrest warrant and do not give the reasons for the arrest. When people are arrested at home, such individuals generally enter the home without a warrant and property is damaged and stolen. During their arrest, people are hit, insulted and threatened. They are blindfolded and driven to unknown locations, including military bases, where the torture continues [...]."[499] Documented cases of torture typically followed a so-called *"flagrancia"* arrest, a practice that allows authorities to detain individuals "caught in the act" without a warrant for a period of days before being brought before a judge; the practice is "particularly pronounced among the military."[500] A general recommendation from the CNDH in 2011 concluded that security services in Mexico routinely conduct illegal searches, falsify flagrancia circumstances for arrests by planting drugs, weapons, and other contraband on the victims, and coerce them into confessing.[501] The Mexican Army alone detained 31,251 people in "counternarcotics operations" between December 2006 and April 2011, and all 31,251 of these individuals "were allegedly detained in *flagrancia*."[502] From 2011 through 2013, the annual percentage of all arrests for federal offenses made without an arrest warrant—made possible through the *flagrancia* provision—ranged from 88-93 percent.[503]
- **Authorities frequently delay notifying anyone of the victim's whereabouts.** As the UN Special Rapporteur on Torture observed, "Occasionally, days go by without anyone being informed of the detainee's whereabouts or without the detainee being brought before the ministerial police or judicial authority."[504] The same *flagrancia* provision that allows for detentions without warrant, allows for greater delay in bringing detainees before a judge.[505]
- **Many victims say they have been tortured throughout pretrial detention and its prolonged form in Mexico: *arraigo*.** The UN Committee Against Torture and UN Special Rapporteur on Torture have both remarked on the high incidence of torture during pretrial and *arraigo* detention.[506] Statistics suggest a strong correlation between the annual number of *arraigo* detentions and the number of complaints of torture and ill-treatment made to the CNDH each year, with both peaking in 2011 (see Figure 12).[507]

Figure 12: Correlation between *Arraigo* and Complaints of Torture and Ill-Treatment

Annual complaints of torture and ill-treatment to the CNDH,[508] and data on *arraigo* from Mexico's report to the UN Committee on Enforced Disappearances.[509]



ARRAIGO

GLOBALLY, torture most commonly occurs in the immediate aftermath of detention, and is frequently used to extract confessions from the detained person.[510] Along with the dramatic mobilization of Mexico's armed forces for domestic law enforcement post-2006, constitutional amendments authorized the use of extraordinary measures in the fight against organized crime. Among these, in 2008, the government expressly enshrined in the Constitution provisions for so-called *arraigo* detentions in organized crime cases, which had previously only been provided for by statute. [511] *Arraigo* involves the sequestering of suspects for up to 40 days without criminal charges and without access to a lawyer. The period can be extended up to 80 days with judicial approval. In 2014, the Supreme Court of Justice prohibited the use of *arraigo* at state level, although it remained available for federal cases.[512] Despite the apparent decline in complaints of torture and ill-treatment corresponding to reduced use of *arraigo*, Mexico has persistently rejected appeals to abolish the practice altogether.[513] The government has claimed that *arraigo* remains an important tool in the fight against organized crime,[514] even as there are indications that the practice has led to few criminal convictions.[515]

- **Victims are accused of affiliation with organized crime and forced to confess.** The UN Special Rapporteur on Torture observed, "Most victims are detained for alleged links with organized crime."[516] In the majority of cases, the use of torture has been aimed at making the victims sign confessions that later were used as the main evidence in criminal charges filed against them.[517] For example, of the 30 cases of torture referenced by the CNDH in its 2009 recommendations to the Mexican Army, 22 involved claims by the victims of being pressured to confess to drug trafficking, possession of weapons, and/or a connection with organized armed groups or drug cartels.[518]

- **Torturers use many of the same methods across many different cases.** These include beatings, asphyxiation with plastic bags, simulated drowning, electric shocks, sexual torture, and death threats or mock executions.[519] Some victims are wrapped in thin mattresses before the beatings, possibly to reduce bruises.[520]

A non-exhaustive list of cases exhibiting many of these characteristics includes:

- **March 2009, Baja California:** The Army detained and tortured 25 municipal police while they held them in *arraigo* detention at a military base in Tijuana.[521] Over 41 days, the men were wrapped in tape, beaten, asphyxiated with plastic bags, shocked in their feet and genitals, and denied food for long periods, while a military doctor monitored the torture. In 2011, the CNDH found that the Army had perpetrated arbitrary detention and torture. The men were later cleared of organized crime charges.[522] As of September 2014, the PGR had not opened an investigation into the case.

- **June 2009, Baja California:** The Army arrested four men and accused them of kidnapping, then held them in *arraigo* detention at a military base in Tijuana for 41 days.[523] The men claim they were asphyxiated with plastic bags, subjected to beatings, mock executions, and sleep deprivation until they signed confessions and implicated each other. The military paraded the men before the media with a collection of arms, and they were federally indicted on kidnapping and firearms charges. In September 2015, the UN Committee Against Torture concluded that Mexico had failed in various obligations, including to investigate the alleged torture.[524]

- **August 2009, Tabasco:** In a joint operation, state police and Army forces arrested seventeen municipal police officers who were tortured at length by asphyxiation with a plastic bag, waterboarding, having their fingernails pulled out, mock executions, and electric shocks.[525] Medical examinations of the victims, by the state prosecutor's office, prison authorities, and an independent doctor all documented missing fingernails, hematomas, hemorrhaging, and other injuries consistent with the victims' accounts. The victims say they were forced to sign confessions and incriminate each other, leading to their prosecution on charges of organized crime. An appeals court subsequently ordered the release of 12 of the victims, agreeing that their confessions had been coerced through torture.

- **August 2010, Chihuahua:** Federal Police detained five men in Ciudad Juárez.[526] At a regional command center and later at Federal Police headquarters in Mexico City, they beat, threatened, asphyxiated them with plastic bags, waterboarded them, and subjected at least one of the men to sexual violence, until the five signed statements in front of a federal prosecutor, in which they confessed to and implicated each other in a car bombing in Ciudad Juárez the previous month. A 2011 CNDH investigation concluded the five were victims of arbitrary detention and torture.[527] The PGR

dropped charges against one in March 2014 after agreeing with the finding of torture, but the others remained in pretrial detention on charges related to organized crime.

- **February 2011, Baja California:** Soldiers arrested a woman after she dropped off her children at school and took her to a military base in Tijuana, where she saw a federal prosecutor.[528] Over the following week, in *arraigo* detention at the base, she said soldiers raped her three times, subjected her to electric shocks and asphyxiation, cut her wrist, threatened to cut off her hand, and threatened her children and partner. She was forced to sign a statement confessing to involvement in drug trafficking and accusing other detainees of involvement. A federal judge dismissed charges against her for lack of evidence, and shortly thereafter soldiers, some masked, repeatedly banged on the door of her house and yelled for her until she filed a complaint with the PGR. In October 2012, the CNDH concluded that she had been subjected to torture.[529]

- **August 2012, Veracruz:** Navy forces broke into a woman's house, tied her up and blindfolded her.[530] In the back of a pickup truck at a nearby Navy base, they sexually assaulted, beat, shocked, and kicked her, then left her in scorching sunlight. At a PGR office, in the presence of a Navy soldier, she was forced to sign a statement without reading it. Then the PGR presented her to the media as a one of several detainees caught with arms and drugs in a stolen vehicle. A CNDH medical examination found evidence of injuries consistent with torture. As of September 2014, she had been released on bail, but the PGR continued to prosecute her on organized crime charges. There was still no investigation of torture, although a federal judge had requested one in 2012.

- **May 2013, Mexico City:** Federal Police detained student activist Enrique Guerrero Aviña after shooting at his car.[531] They tortured him through methods including beatings, asphyxiation with a plastic bag, and sexual abuse, while demanding that he make incriminating statements about members of social movements. Taken to the PGR, a prosecutor in the organized crime division, SEIDO, threatened to charge him with a kidnapping in Oaxaca if he did not cooperate. Guerrero refused. He has been charged with organized crime and kidnapping and is being held in a maximum-security prison.

- **February 2014, Mexico City:** Federal Police broke into the house of Tailyn Wang, a pregnant mother of three, detaining her without a warrant.[532] At police facilities, officers severely beat and sexually assaulted her. She lost her fetus in the offices of the PGR, where her complaints of torture were ignored. Four days after being transferred to a prison in Nayarit state, she was informed that she was accused of being part of a gang of kidnappers, and charged with organized crime.

OJINAGA, CHIHUAHUA: 2008

A journalistic investigation into the operation of the Army's Third Specialized Infantry Platoon, which was implicated in enforced disappearances, uncovered the case of a man arbitrarily detained by members of the platoon on suspicion of drug trafficking and then tortured to death.[533] The Army detained the victim during a street patrol on June 22, 2008, identifying him as a "drug trafficker."[534] Soldiers took the victim to the home of one of the platoon members, where the wife of a soldier identified the victim as the person who attempted to kidnap her son.[535] A sergeant was then ordered to "work with the detainee" until he "confessed" details about the alleged kidnapping.[536] According to a witness account from a member of the platoon who was at the scene, the platoon's major told members to kill the victim if possible.[537] Another witness, also a member of the platoon who was at the scene, stated that he heard the victim screaming, and that a sergeant said that they had messed up and gone too far with the victim, who had died.[538] The members of the platoon then burned the victim's remains and scattered his ashes in a rural area.[539]

The CNDH documented another torture case by members of the same platoon. The investigation showed that its members arbitrarily abducted a woman from her home in December 2008.[540] They took her to military facilities and held her incommunicado for seven days.[541] During that period, the victim was "subjected to severe physical and psychological abuse, consisting of: kicks, punches, being whipped with a belt in the abdomen and legs, being hung by handcuffs and multiple threats."[542] The blows "were of such magnitude that they even caused vaginal bleeding."[543] A member of the platoon anally raped the victim.[544] The military later explained that its actions were "part of the enforcement of the Federal Law of Firearms and Explosives and in the enforcement of the permanent campaign against drug trafficking."[545]

According to the Rome Statute, "'[t]orture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions."[546] Evaluating the severity of the pain and suffering inflicted on the victim includes an assessment of both objective factors (including the "nature, purpose and consistency of the acts committed") and subjective criteria (such as "the physical or mental condition of the victim, the effect of the treatment and, in some cases, factors such as the victim's age, sex, state of health and position of inferiority").[547] In the event that a victim "has been mistreated over a prolonged period of time, or that he or she has been subjected to repeated or various forms of mistreatment, the severity of the acts should be assessed as a whole to the extent that it can be shown that this lasting period or the repetition of acts are inter-related, follow a pattern or are directed towards the same [...] goal."[548] As with all enumerated acts under Article 7 of the Rome Statute, the conduct must be connected to a widespread or systematic attack against a civilian population.[549]

CONTINUED ON NEXT PAGE

OJINAGA, CHIHUAHUA: 2008

Here, both cases appear to amount to torture as a crime against humanity. Members of the platoon detained the first victim and proceeded to "work" on him until he died. While the details of the soldiers' conduct is not clear, the fact that the victim was heard screaming and ultimately died from his wounds evidences "severe pain or suffering." That the torture was carried out pursuant to the larger attack against the civilian population described elsewhere is supported by the fact that, prior to detaining him, the Army had labeled the victim a "drug trafficker." In the second case, the victim was held in military facilities for seven days and subjected to repeated and various forms of psychological and physical abuse, including rape, which the ICC has recognized as an act of torture.[550] In this case, the military expressly acknowledged that its actions were "part of" the "permanent campaign against drug trafficking."[551]

"Directed against Any Civilian Population"

The second prong of the "attack" element under Article 7 of the Rome Statute requires that it be "directed against any civilian population."[552] This requirement, in part, excludes from the scope of crimes against humanity attacks that are directed against "armed forces and other legitimate combatants."[553] In addition, the definition of crimes against humanity requires an attack against a civilian "population" to ensure that it is "not merely against randomly selected individuals."[554] This means that the civilian population must be the "primary object of the attack," but it is not required that the "*entire civilian population* of the geographical area in question was being targeted."[555] Instead, "'population' is intended to imply crimes of a collective nature and thus *excludes single or isolated acts* which, although possibly constituting crimes under national penal legislation, do not rise to the level of crimes against humanity."[556]

Under Mexico's security strategy launched in 2006, federal forces have murdered, disappeared, and tortured a population of civilians suspected of organized crime. This population can be understood to have three sub-populations: actual members of criminal cartels; a large number of individuals wrongly suspected of being members of criminal cartels (so-called "false positives"); and, especially in cases of killings, innocent bystanders killed as a result of the unlawfully reckless use of force (so-called "collateral damage"). Individual cases cannot always be precisely attributed to one of these groups due to a lack of full information about them or because they have characteristics of more than one category.

CARRIZALILLO, GUERRERO: OCTOBER 2014

Federal Police and Gendarmerie division forces moved into the community of Carrizalillo, in the state of Guerrero, as a helicopter flew low overhead.[557] The village sits an hour-and-a-half's drive south of Iguala, where less than a month earlier, on September 26, 2014, students from the Raul Isidro Burgos Rural Teachers' College of Ayotzinapa and bystanders had come under police attack, killing six. Now, on the mid-afternoon of October 21, 2014, about 60 Federal Police had come to this small gold mining town that has often been preyed upon by organized crime.[558]

According to the municipal commissioner of Carrizalillo, Lucas Celso Salgado, the police broke into 30 houses, beating men and women, children and the elderly. One victim, with bruises on his face, told a reporter that an officer put a plastic bag over his head while threatening a woman with sexual violence. While one federal officer allegedly assaulted another woman with a gun, colleagues dragged her daughters, ages two and seven, from the house. Amidst the attack, police demanded to know the location of "the pit." As police left that afternoon, they took with them two women and three workers of the Goldcorp mining company. According to Salgado, the police had beaten and tortured about 70 people.[559]

That same evening, 50 residents of Carrizalillo went to lodge a complaint with a regional office of the state human rights commission. From there, they went to the local headquarters of the Federal Police to demand the release of the missing persons. Salgado subsequently learned that five individuals, including a minor, were being held by SEIDO, where they were under investigation for involvement in organized crime. The Open Society Justice Initiative has also learned that, in relation to these events, the CNDH has opened two investigations into alleged abuses perpetrated by the Federal Police, including arbitrary detention, inhuman treatment, trespassing, and arbitrary use of force.[560] With regard to the attack on Carizalillo, the Federal Police have reported having "no information on the case."[561]

Here, again, there appears to be evidence of torture as a crime against humanity. This case involves evidence of beatings and assaults, as well as threats at gunpoint and at least one instance in which a bag was placed over the head of victim. While more detail may be necessary to establish that these acts involved "severe pain or suffering," "[p]ermanent injury is not a requirement for torture; evidence of the suffering need not even be visible after the commission of the crime."[562] Assuming at least certain of the soldiers' actions involved the infliction of severe pain or suffering, the elements of crimes against humanity appear to be met, as the soldiers had forcibly entered the victims' homes, placing the victims "under the control" of the soldiers. Furthermore, the actions appear to be tied to the larger attack against the civilian population, as the soldiers used similar methods of abuse and were demanding information about persons disappeared by a criminal organization, suggesting that the perpetrators believed the victims were in some way tied to that organization.

Cartel Members

While the violence in Mexico is often referred to in terms of a "war," the government itself has expressly denied that members of drug cartels have acted as combatants in a non-international armed conflict.[563] When appearing before UN treaty bodies, Mexico has stated that an armed conflict does not exist in the country and that the strategy to counter organized crime "concern[s] measures sought to fight a fully identified phenomenon, organised crime, which is fundamentally illicit."[564] Drug cartels may certainly be "targeted" by the government for investigation and prosecution, and in narrow circumstances, government actors may legally use lethal force against them—for example in self-defense. However, the criminal activity of cartel members does not strip them of their civilian status. For example, after apparent members of criminal organizations surrendered to Mexican soldiers at Tlatlaya, in the State of Mexico in June 2014, or to Federal Police in Tanhuato, Michoacán in May 2015, there was no legal justification for their summary execution.[565] The suspicion on the part of federal officials that a person is connected to organized crime does not legitimize the use of extrajudicial killing, torture, or enforced disappearance.

"False Positives"

The government has frequently made casual assumptions that civilians are members of organized crime. (See text box: "Government's Unfounded Accusations of Criminality.") Among those summarily executed by Army forces at Tlatlaya were not only apparent criminals but also a 15-year-old girl who was among their kidnapping victims.[566] The Army reported all of those killed as being members of organized crime. Two other kidnapping victims held at the site were subsequently tortured by state authorities in an attempt to force them to support the Army's version of events, and then prosecuted for organized crime by the organized crime unit, SEIDO, of the federal Attorney General's Office as part of the same cover-up attempt.[567]

Beyond the Tlatlaya case, there is extensive documentation of numerous "false positives" (*falsos positivos*): ordinary citizens who are killed, disappeared, or tortured by federal government agents, either because they were targeted as suspected cartel members on the basis of little or no evidence, or because they were framed as such after their victimization in order to justify the crimes committed. Indeed, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions was alerted in 2013 to the concern that security forces may believe that people involved in drug-related activities are disposable, and that "the problem solves itself" if a member of one cartel kills a member of another cartel.[568] The presumption appears to be that those killed or disappeared are involved in crime, and thus less worthy of protection.

With regard to killings, these include the case of Jorge Antonio Parral Rabadán, the federal bridge administrator kidnapped in Tamaulipas and shot point-blank by a soldier when the Army raided the abductors' hideout, and whose body the

Army buried as that of a cartel hitman. They include the shooting of two students in Monterrey, Nuevo León in March 2010, in which the CNDH concluded that the military "planted guns on the students and destroyed crime scene evidence to falsely accuse the victims of belonging to a criminal gang."[569] They include the death of a man that same month in Nuevo León, last seen the day prior in Navy and municipal police custody, whose tortured corpse was found covered in drugs, which the CNDH concluded had been planted. There were nearly identical circumstances in an August 2010 case in Chihuahua, where the body of Arnulfo Antunez Sandoval was discovered surrounded by syringes, following his detention the day before by Federal Police; forensic examination showed death by blunt trauma to the head. More recently, there have been apparent false positives in January 2015 in Apatzingán, Michoacán, where Federal Police on a mission to retake control in parts of the state from organized crime shot 16 civilians and left them to die on a road (resulting in seven deaths), but blamed the deaths on a shootout between rural security forces.

With regard to enforced disappearances, false positives are harder to document because in most cases the authorities never acknowledge the detention, and therefore make no claim about the victims' alleged ties to organized crime. In many cases, however, families reporting disappearances to the authorities have been told that their missing loved ones were probably members of organized crime, suggesting they may have deserved to disappear.[570] Specific cases indicative of false positives include the March 2009 Army detention in Chihuahua of a man held incommunicado for a month, then turned over to prosecutors together with a car containing drugs. They include the November 2010 disappearance of a man in Nuevo León, first detained by transit police for driving without a license and last seen in Navy custody, where police suggest he was being checked for ties to organized crime.

With regard to torture, there are strong indications of false positives in addition to the 2014 case of the Tlatlaya massacre witnesses. They include the detention and torture of Israel Arzate Meléndez by the Army in Chihuahua, beginning in February 2010: a man on his way home from work tortured to confess to being a member of a cartel involved in a massacre. They include the woman arrested and tortured by the Army in Baja California in February 2011, then prosecuted by the PGR on the basis of a confession ultimately dismissed by a federal judge. And they include the student activist detained by Federal Police in Mexico City in May 2013, whom they beat, sexually assaulted, and asphyxiated; federal prosecutors charged him with organized crime and kidnapping after he refused to make incriminating statements about members of social movements.

GOVERNMENT'S UNFOUNDED ACCUSATIONS OF CRIMINALITY

At New York's Guggenheim Museum in September 2011, to promote a tourism video in which he featured, President Felipe Calderón found himself confronted by questions about a grisly scene that same day in the resort city of Veracruz.[571] On the eve of a national conference of federal and state prosecutors and judicial officers, gunmen had dumped 35 severely mutilated, semi-naked corpses beneath a highway underpass, less than a mile from the meeting location.[572] Calderón assured the audience that, "the problem of violence is mostly limited to the battle between one band and another. [...] It is tied to narcotics trafficking."[573] Back in Veracruz, Governor Javier Duarte de Ochoa echoed this assertion that the dead were criminals.[574] Yet months later, the head of the organized crime division of the PGR quietly admitted that the victims—who had been attacked by organized crime elements—were not themselves "of organized crime," and that most of them had had no criminal record. They were not Zetas, as had first been claimed, but included housewives, students, and a decorated police officer.[575] There is no allegation in this case that federal forces were perpetrators of the atrocities, but Calderón's remarks exemplify the casualness with which federal government actors—from the top down—have been willing to accuse regular citizens of being members of organized crime.[576] Because criminals are not sympathetic victims, this has served as a means of easing pressure to properly investigate and prosecute the crimes.[577] It also suggests that if government authorities so easily assume that victimized citizens are "criminals" when reacting to a crime, they may just as baselessly assume that regular citizens are "criminals" when planning to use force against criminal cartels.

Events in Chihuahua in 2010 bear this out. Following the massacre of 15 students at a party in Ciudad Juárez on January 31, 2010, President Calderón responded by saying that the victims had been members of a gang (*"pandilleros"*).[578] Ten days later, his interior minister conceded that the victims were athletes and studious teenagers, and apologized for the president's remarks.[579] As that apology was being made, the Mexican Army detained Israel Arzate and tortured him to confess to the student massacre.[580] In Mexico, the easy labelling of civilians as criminals has led to many such "false positives."

"Collateral Damage"

The federal government has suggested that civilian deaths are unavoidable outcomes of the necessary "war against organized crime." Three years into the Calderón administration, the secretary of national defense, Guillermo Galvan, told a gathering of senators that the government's security strategy would continue "despite the deaths of civilians, children, students, and young adults," who were, he said, "unfortunate collateral damage."[581] In March 2016, Defense Secretary Salvador Cienfuegos said that it had been a mistake to conduct military confrontations with

criminals during the day, when people are in the streets, "resulting in many injured innocents." He went on to suggest that the problem of "collateral damage" had been reduced, but provided no evidence for the claim.[582]

The Army has stated that 54 bystanders (*"personas ajenas a los hechos"*) have been killed in "armed attacks on the Army" from 2007 through July 2012.[583] There is reason to believe that federal forces themselves have recklessly used force—without proper laws regulating it, and without accountability for abuses—leading to unlawful killings of many additional innocent bystanders. For example, when soldiers opened fire on a car in Tamaulipas in April 2010, for no reason, according to witnesses, they killed children ages five and nine, and injured five other passengers; the CNDH determined that the Army extensively manipulated the crime scene afterwards.[584] In 2015, the UN Committee on the Rights of the Child expressed serious concern that the fight against organized crime had contributed to "the killing of numerous children, including in cases of extrajudicial killings [...]."[585] Similarly, in 2014, the Special Rapporteur on extrajudicial, summary or arbitrary executions received information in support of a "direct link" between "the deployment of the army in law enforcement contexts" and a "dramatic increase in numbers of femicides [...]"[586]

The evidence explored above—the 133 percent increase in the use of military in drug-related operations, and the deployment of military forces to urban areas known to be major trafficking hubs—suggests that the acts of violence committed by federal forces were undertaken pursuant to a policy involving the indiscriminate and extrajudicial use of force, and other illegal acts, against civilians perceived as being connected with organized crime. This finding is supported by statistics showing the dramatic increase in complaints to the CNDH that accompanied the implementation of the federal government's security strategy. Thus, the perpetrators "did not act randomly and in a disconnected manner," but rather "carried out the attack against [a] specific subset of the civilian population,"[587] namely those perceived to be connected with organized crime, as evidenced by the fact that it is federal forces deployed for the purpose of combatting organized crime that are committing the abuses.[588]

Widespread or Systematic Nature of the Attack

Crimes against humanity require that the attack be "widespread or systematic" in nature. Only the attack, and not the enumerated acts that form part of the attack, needs to be widespread or systematic.[589] And the requirement is disjunctive, meaning that the attack only needs to be widespread or systematic.[590]

The term "widespread" refers to "the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims."[591] Thus, "the element refers to both the large-scale nature of the attack and the number of resultant victims."[592] The assessment is "neither exclusively quantitative nor geographical, but must be carried out on the basis of the individual facts," meaning "a widespread attack may

be the cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude."[593] Furthermore, there is no requirement that an attack span an entire state or territory to be considered "widespread."[594]

The term "systematic" refers to the "organised nature of the acts of violence and the improbability of their random occurrence."[595] So the systematic nature, much like the existence of a state policy, is often "expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis."[596] The ICC has noted that the International Criminal Tribunal for Rwanda (ICTR)[597] defines "systematic" as "(i) being thoroughly organised, (ii) following a regular pattern, (iii) on the basis of a common policy, and (iv) involving substantial public or private resources," while the International Criminal Tribunal for the former Yugoslavia (ICTY) has "determined that the element requires (i) a political objective or plan, (ii) large-scale or continuous commission of crimes which are linked, (iii) use of significant public or private resources, and (iv) the implication of high-level political and/or military authorities."[598]

Although the ICC has recently sought to clarify the distinction between the terms "widespread" and the "multiple commission of acts,"[599] as well as "systematic" and "policy,"[600] much of the same evidence that is relevant to establishing the "multiple commission of acts" is relevant to establishing the widespread nature of an attack, whereas establishing the systematic nature relies on much of the same evidence used to establish the existence of an *implicit* policy to commit an attack. As the ICC Pre-Trial Chamber presiding over the *Gbagbo* case recognized:

> **The definition of "attack" under [A]rticle 7(2)(a) of the Statute requires a course of conduct involving the commission of multiple acts pursuant to or in furtherance of a State or organisational policy. Therefore, this definition already involves—although to a lesser extent—quantitative and qualitative aspects that may also be relevant for the establishment of the "widespread" or "systematic" nature of the attack under [A]rticle 7(1) of the Statute.**[601]

It follows that with regard to Mexico, any analysis of "widespread" or "systematic" necessarily relies on much of the same evidence reviewed above. The multiple cases of murder, torture, and enforced disappearance described, as well as the steep increase in complaints to the CNDH, strongly suggest that the "attack" on civilians has been widespread in nature. The cases involve not only a large number of victims, but acts that have been carried out over the course of a number of years throughout Mexico,[602] during a period in which federal forces have engaged in "joint operations" (*operativos conjuntos*) in states comprising at least 47 percent of Mexico's territory.[603] The United Nations Committee on Enforced Disappearance determined in February 2015 that "the information received by the Committee illustrates a context of generalized disappearances in a vast majority of the *Mexican territory*, many of which could be classified as enforced disappearances."[604]

The acts of violence carried out by federal forces share a number of similarities, suggesting that they were part of a "series or overall flow of events as opposed

to a mere aggregate of random acts." Indeed, the same factors that demonstrate an implicit policy to use indiscriminate and extrajudicial force against civilians perceived as being connected with organized crime also contribute to a finding that the attack was systematic. To recap, these are: the vast scale of the acts of violence perpetrated; statements by government and military leaders describing the policy and acknowledging that it would involve significant violence; the mobilization of the armed forces and substantial resources to combat organized crime, as broadly defined; the absence of a general regulatory framework governing the exceptional use of force until 2012, as well as the continuing absence of a law on the use of force; and the near complete impunity with which federal agents have committed illegal acts of violence against alleged members of organized crime, including victims who are falsely accused and innocent "collateral" victims of indiscriminate force.

CRIMES AGAINST HUMANITY BY NON-STATE ACTORS

GIVEN THEIR HIGHLY ORGANIZED NATURE, it appears that the Zetas cartel in Mexico meets the definition of "an organization" under Article 7 of the Rome Statute. It also appears the Zetas have carried out a widespread and systematic attack directed against a civilian population pursuant to an organizational policy. This section considers the argument with specific regard to the Zetas, arguably Mexico's most militaristic cartel, but it could be applicable to other groups too.[605] The following analysis considers the actions of the Zetas between 2008 and 2011, when the group was at the peak of its power.[606]

In Furtherance of an Organizational Policy

Organization

While ICC jurisprudence supports the proposition that paramilitary groups[607] and rebel movements[608] satisfy the requirement under Article 7 of the Rome Statute that crimes against humanity be carried out by a state "or organization," there is some debate over whether such non-state-like organizations as criminal syndicates would satisfy this requirement. The prevailing view regarding the requirements of "an organization" for purposes of a crimes-against-humanity analysis is that adopted by a majority of the ICC Pre-Trial Chamber presiding over the initial stages of the Kenya situation. Specifically, the majority held that, in determining whether a given group qualifies as an organization under the statute, a chamber may take into account a number of considerations, including:

> **(i) whether the group is under a responsible command, or has an established hierarchy; (ii) whether the group possesses, in fact, the means to carry out a widespread or systematic attack against a civilian population; (iii) whether the group exercises control over part of the**

> **territory of a State; (iv) whether the group has criminal activities against the civilian population as a primary purpose; [and] (v) whether the group articulates, explicitly or implicitly, an intention to attack a civilian population…**[609]

Under this view, the "formal nature of a group and the level of its organization should not be the defining criterion"; rather, "a distinction should be drawn on whether a group has the capability to perform acts which infringe on basic human values," which could include "'purely private criminal organizations."[610]

Applying these factors, the Zetas would meet the definition of "an organization."[611]

Responsible Command or Established Hierarchy

The language "under a responsible command" by the ICC Pre-Trial Chamber derives from Article 1(1) of the Additional Protocol II to the Geneva Conventions.[612] The existence of a responsible command implies some degree of organization of the group, "but this does not necessarily mean that there is a hierarchical system of military organization similar to that of regular armed forces."[613] Rather, "[i]t means an organization capable, on the one hand, of planning and carrying out sustained and concerted military operations, and on the other, of imposing discipline in the name of a *de facto* authority."[614]

Although a relatively hierarchical structure is not necessarily required, numerous reports about the Zetas demonstrate that the group has in fact had such structure, particularly during the period under review here.[615] The organization began in 1997 when 31 members of the Mexican military special operations force, known as GAFES (*Grupo Aeromóvil de Fuerzas Especiales*), deserted the military to act as the enforcement arm of the Gulf Cartel.[616] The group initially structured its chain of command based on that of the Mexican army, with ranks including first commanders and second commanders, just as in the military.[617] Under the command of Arturo Guzman Decenas, a.k.a. Z-1, the Zetas set up camps in which to train young recruits, aged 15 to 18-years-old, as well as ex-federal, state, and local police officers, ingraining in their new recruits the military style of command and discipline.[618] The Zetas also adopted a complex division of labor. *Los Halcones* (Hawks) keep watch over distribution zones; *Las Ventanas* (Windows) are bike-riding teenagers who whistle to warn of the presence of police and other suspicious individuals near small stores that sell drugs; *Los Manosos* (Cunning Ones) are arms specialists; *Las Leopardos* (Leopards) are prostitutes who extract information from their clients to be used by the Zetas; and *Dirección* (Command) are approximately 20 communications experts who intercept phone calls, follow and identify suspicious automobiles, and coordinate kidnappings and executions.[619]

After the death of Z-1 and the arrest and extradition of Osiel Cárdenas Guillén, the head of the Gulf Cartel, the Zetas seized the opportunity to take power and split from the Gulf Cartel in 2010.[620] Following their split, the Zetas retained their strict military structure, which included commanders, local chiefs, and operating squads.[621] Commanders would be dispatched to various locations and receive their

instructions from central command.[622] As one source explains, "leaders benefited from a level of independence held in check by respect for command and by the fierce enforcement of tax payments to [new leader, Heriberto Lazcano], and his long-time second-in-command, Miguel Trevino."[623] Yet even as the Zetas expanded and tax payments eased, respect for the rigid military structure remained a core tenet among the Zetas.[624] Such practices as "[r]ecovering the bodies of fallen comrades, caring for their families, the dogged pursuit of arrested plaza bosses by their rank-and-file, and several prison breaks all demonstrate a level of *esprit de corps* more recognizable in a military unit than a criminal organization."[625]

The Zetas have long been better equipped and better trained than rival cartels, providing the group with an ability to plan and carry out sustained and concerted military operations.[626] There are indications that the Zetas have organized sophisticated and well-equipped military-like training camps.[627] Such training and equipment has enabled the Zetas to engage in firefights with law enforcement, other gangs, and even the military,[628] and to employ sophisticated tactics in the course of such confrontations. For example, analyses of the groups' shootouts consistently show tight shot groupings, indicating a high level of skill and proficiency in their use of weapons.[629] As one analysis of the group's operations explains:

> **Los Zetas brought ambushes, defensive positions, and small-unit tactics—all long-employed by military forces—to Mexico's criminal syndicates. They remain one of the few criminal groups in the Americas willing to deliberately take head-on a military checkpoint or patrol. When Los Zetas arrived, they catalyzed an evolution of tactical knowledge and strategic intelligence gathering that over the past 10 years has become the norm.[630]**

Finally, with regard to the Zetas' ability to impose discipline on its members within an established hierarchy, information suggests that compliance with authority stems from a combination of respect for the group's rigid military hierarchy and fear of its leaders' ruthlessness. For instance, it has been reported that, following the death of Z-3, Miguel Trevino Morales maintained cohesion and respect in the organization through sheer brutality.[631] Brutal and public beheadings and murders of alleged "snitches" keep internal dissent in check.[632]

Means to Implement an Attack

In its analysis of "organization," the ICC Pre-Trial Chamber cited an article in the *European Journal of International Law*,[633] which examined whether acts of terrorism could be prosecuted as crimes against humanity and, in particular, whether purely private organizations could meet the organizational threshold under Article 7 of the Rome Statute.[634] The author stressed that a key factor in determining organizational policy should be whether the organization is able to put into practice a course of conduct involving the multiple commission of serious violent acts undermining the protection of basic human values.[635]

Several features explored above, which allow the Zetas to carry out sustained and concerted military operations, also make it clear that the group possesses the

means necessary to carry out a widespread or systematic attack against a civilian population. In particular, the group has long been well equipped and trained, and its members have adopted sophisticated operational tactics. Additionally, the Zetas have the finances necessary to carry out large operations. They are known, for instance, to have siphoned large quantities of oil from PEMEX (*Petroleos Mexicanos*) to fund their enterprises.[636] Mexico's gangs have stolen more than $1 billion worth of oil from Mexico's pipelines over the past two years, and much of this clandestine oil business has been linked to the Zetas, who now dominate criminal enterprises in the oil rich states of Veracruz and Tamaulipas.[637]

In at least some areas, the Zetas' ability to attack the civilian population appears to be assisted by the group's successful co-optation of local law enforcement agents into its ranks. A memorandum recently declassified by the PGR acknowledges "a robust and routine pattern of narco-police collaboration in San Fernando," an area dominated by the Zetas.[638] According to the memorandum, information gained from captured Zetas revealed that local police "acted as lookouts for the group, helped with 'the interception of persons,' and turned a blind eye to their illegal activities."[639]

Of course, the strongest evidence of the Zetas' ability to carry out widespread or systematic violence against a civilian population between 2008 and 2011 lies in clear indications that they did carry out such attacks, as discussed below.

Territorial Control

While the ICC has not expounded in great detail on this factor, the ICTY has recognized the relevance of territorial control by non-state actors when determining whether they can commit crimes against humanity. In one case, for instance, the ICTY noted that, "the law in relation to crimes against humanity has developed to take into account forces which, although not those of the legitimate government, have de facto control over, or are able to move freely within, defined territory."[640]

In applying this factor, it is important to stress that the main objective of the Zetas is territorial control for purposes of criminal profit.[641] As one analysis explains:

> **[T]he Zetas have never looked at themselves as a drug trafficking operation. They have always been a military group whose primary goal is to control territory. In essence, the Zetas understood something the other groups did not: they did not need to run criminal activities in order to be profitable; they simply needed to control the territory in which these criminal activities were taking place.[642]**

During the 2008-2011 period, the Zetas became, geographically, the largest organized crime group in Mexico.[643] While primarily based in the border region of Nuevo Laredo and Coahuila, the group developed hundreds of offshoots throughout the country.[644] It deployed lookouts at arrival destinations such as airports, bus stations, and main roads.[645] In addition to conducting criminal activities along the border, the Zetas expanded operations throughout the Gulf of

Mexico, in the southern states of Tabasco, Yucatán, Quintana Roo, and Chiapas, and in the Pacific Coast states of Guerrero, Oaxaca, and Michoacán, as well as in Mexico City.[646] Furthermore, the Zetas made prominent use of urban blockades, or narcobloqueos, in both Monterrey and Reynosa, periodically cutting off the military's access to areas controlled by the cartel.[647] According to one set of commentators, these blockades were a "show of force" specifically intended to demonstrate the Zetas' power in a particular territory."[648]

Primary Purpose: Criminal Activities against the Civilian Population

As discussed above, the primary goal of the Zetas is to use its military expertise to gain control of territory where Mexico's criminal activities take place, then profit from those criminal activities. However, unlike traditional cartels, the Zetas' model relies on forceful expansion of its territory,[649] which often requires taking control of territory through the use of force and retaining control of that territory by spreading intimidation through murder, bombings, and torture.[650] According to one source:

> **They did this with [a] combination of brute strength and training but most importantly, a singularly focused model. Their soldiers had one job: take over the territory and extract rent from the other criminal actors. They did not have to establish the infrastructure. They simply had to stick to their goal, then extort petty drug dealers, human traffickers, human smugglers, thieves and contraband traders.[651]**

The Zetas demand cooperation, and this style of control calls for extreme violence against the civilian population. Indeed, "random killings… have become the gang's trademark—a demonstration that no one is beyond their reach, that they can kidnap, torture and kill anyone they choose."[652] For instance, in March and April 2011, the Zetas entered the town of Allende, Coahuila, apparently unimpeded by the military, herded together civilians, demolished their homes, set fire to businesses, and kidnapped approximately 300 individuals who have not been heard from since.[653] Another example is the August 2011 attack on a Monterrey, Nuevo León casino, which the Zetas carried out when the owner failed to pay extortion money.[654] Zetas gunmen burst through the casino, indiscriminately shot at casino patrons, then, using gasoline, set fire to the entranceway, killing 52 people.[655]

Intention to Attack Civilians

In relation to the final factor in its "organization" analysis, the ICC Pre-Trial Chamber cited an academic who has argued that crimes against humanity may be committed by certain criminal organizations so long as the organization is acting pursuant to a policy to attack civilians, whether "express or implied":[656]

> **Although civilians are often caught in the crossfire, the Hells Angels, whose primary purpose is [to] profit from drug trafficking, prostitution, and extortion, do not normally direct their violence at a civilian population. The individuals concerned may be guilty of murder or some other crime, but probably not of a crime against humanity. Narco-terrorists and**

> **rebels, on the other hand, who often resort to violence against a civilian population in order to terrorize the population and extort concessions from a government would in all probability be guilty of a crime against humanity if all the other conditions are met.[657]**

The Zetas have clearly conveyed an intention to direct attacks against the civilian population if the group is not given the control it desires. The group has expressed this intention through the commission of, among other things, "heinous acts [against political figures] intended to instill fear, promote corruption, and undermine democratic governance by undercutting confidence in government."[658] Significantly, the areas where Zetas operate—including the Pacific Coast states of Guerrero, Oaxaca, and Michoacán—have seen the highest number of drug related homicides, especially between 2009 and 2011.[659]

The Zetas have also explicitly threatened government authorities, often hanging banners, known as narcomantas, usually where they have dumped bodies.[660] For instance, one banner from December 2011, attributed to Miguel "Z-40" Trevino Morales, read: "The special forces of Los Zetas challenge the government of Mexico."[661] The banner went on to say: "Mexico lives and will continue under the regime of Los Zetas. Let it be clear that we are in control here and although the federal government controls other cartels, they cannot take our plazas… Look at what happened in Sinaloa and Guadalajara."[662] The last sentence is a reference to the mass killings and body dumps attributed to the Zetas in Culiacan, Sinaloa and Guadalajara, Jalisco discovered on November 23, 2011.

Policy

That the Zetas were acting pursuant to a policy to commit an attack against the civilian population is evident from the group's very business model. The primary aim of the Zetas is to control the zones where criminal activity takes place in order to receive a cut of the profits.[663] As one analysis put it:

> **The Zetas are not just violent because their leaders have a penchant for aggression—they follow an economic model that *relies on controlling territory in a violent way*. Within that territory, they extract rents from other criminal actors and move only a limited number of illegal goods via some of their own networks…. Without that territory, they have no rent… The Zetas are, in essence, parasites. *Their model depends on their ability to be more powerful and violent than their counterparts*, so they can extract this rent.[664]**

The Zetas are unique among criminal organizations in Mexico because they do not buy their alliances so much as they terrorize those who stand in their way.[665] They regularly torture victims, string up bodies for public display, and conduct mass executions.[666] In sum, the Zetas' very survival as an organization necessitates that the group direct attacks against civilian communities in territories it is trying to control in order to force out rival gangs and government authorities and ensure compliance with the group's authority.[667]

An Attack Directed against Any Civilian Population

As with state actors, "an attack" by non-state actors requires a "course of conduct," which is understood to mean "a series or overall flow of events as opposed to a mere aggregate of random acts."[668] A course of conduct requires a certain pattern of behavior, indicating a degree of planning, direction, or organization by the group carrying out the attack.[669]

Because the Zetas' model depends on the sustained commission of violent acts aimed at terrorizing the population in areas that it wants to control, the group must drive out rival organizations and government authorities and ensure strict authority over all activity in the relevant areas. One particular aspect of this approach has involved the kidnapping of migrant workers for the purpose of recruiting them into the cartel, and torturing and killing those who refuse. This practice began following the split of the Zetas from the Gulf Cartel, as the Zetas bolstered recruiting efforts in order to control more territory.[670]

Of course, the Zetas' perpetration of violence against the civilian population is not limited to attacks on migrants who refuse to join the organization. Indeed, as discussed above, rather than building up alliances, the Zetas prefer to take military-style control of territory, keeping it through sheer force and relying on intimidation through mass murder and torture.[671] Evidence indicates that the Zetas plan and carry out their attacks in such a way so as to maximally intimidate their enemies.[672] As summarized by Professor George Grayson, a specialist on Mexican drug gangs, the "Zetas are determined to gain the reputation of being the most sadistic, cruel and beastly organization that ever existed."[673] Their approach demonstrates that the Zetas have a specific agenda in mind, namely terrorizing the civilian population in areas that they want to control, which distinguishes their attacks from random drug-related violence.

Widespread or Systematic Nature of the Attack

To prove the widespread nature of an attack, prosecutors must present evidence that "the attack was massive, frequent, carried out collectively with considerable seriousness and directed against a large number of civilian victims."[674] Between 2008 and 2011, the Zetas were responsible for the deaths of hundreds of civilians in the pursuit of control of criminal activity in a given territory, quantitatively exceeding the number of victims in potential situations under consideration by the ICC.[675] Notable examples, discussed above, include the 2010 and 2011 attacks on migrants in San Fernando, as well as the 2011 attacks on the town of Allende and on the casino in Monterrey. Similarly, the Zetas' sustained commission of acts of violence for the purpose of controlling territory and extracting "rent" on all criminal activity carried out in the affected regions of Mexico supports the notion that the group's attack against the civilian population has been systematic in nature.

SAN FERNANDO MASSACRES: 2010-2011

In August 2010, several dozen migrants primarily from Central America were kidnapped by the Zetas as they travelled through San Fernando in the eastern state of Tamaulipas.[676] A convoy of Zetas surrounded the migrants' vehicles, forced them out at gunpoint, and transported them to an abandoned warehouse at a nearby ranch.[677] There, the 58 men and 14 women were taken off the trucks and placed against the walls in the store room.[678] The migrants were first questioned about their origins and what they did for a living.[679] The hostages all denied they were working for the Gulf Cartel.[680] The Zetas then told the migrants that they would begin working for the group as hitmen; when they refused, the Zetas forced the hostages onto the floor and began shooting them. Shortly thereafter, Mexican military forces began to survey the area by helicopter and by ground, and a shootout ensued.[681] The shootings lasted all day, and the Mexican military was forced to retreat to the municipality of Matamoros in order to avoid a possible ambush.[682] The next day, the military arrived at the ranch and discovered 72 bodies, all handcuffed and blindfolded.[683]

Similarly, in March 2011, armed criminals stopped several public buses carrying migrants through Tamaulipas and abducted passengers.[684] Shortly thereafter, Mexican authorities investigating the migrant bus hijackings began to discover mass graves in various locations, including San Fernando.[685] By June 2011, authorities discovered a total of over 40 mass graves and the official body count was placed at 193.[686] Reports from investigative journalists and survivor accounts suggest that the migrants were kidnapped and told they would be forced to join the Zetas, and then were tortured and executed if they refused.[687] Mexican and U.S. authorities who were involved in the investigations of the mass graves identified the act of kidnapping and conscripting migrants as a new modus *operandi* that has become common for drug cartels.[688]

As with the examples of murders carried out by federal forces using extrajudicial force in the fight against organized crime, these cases of murders by the Zetas appear to readily satisfy the elements of murder as a crime against humanity, as there were killings carried out in connection with a larger attack against a civilian population.

CONCLUSION

THE FOREGOING ANALYSIS STRONGLY SUGGESTS that actions taken by Mexican federal agents against alleged members of organized crime amount to crimes against humanity as defined by Article 7 of the Rome Statute. Applying the factors used by the ICC, there is substantial evidence that the Mexican government initiated a policy to use indiscriminate and extrajudicial force as part of the government's security strategy to counter organized crime. Specifically, the federal government pursued an implicit policy that involved the indiscriminate and extrajudicial use of public force against any civilian perceived as being connected with "organized crime," while ensuring near complete impunity for those federal officials who carried out such violence. This occurred with the knowledge that such force would entail significant violence and in the absence of a regulatory framework to prevent abuses. The motive behind this policy—the pursuit of public order and national security in the face of rampant crime—is entirely appropriate, but the question of motive is irrelevant.[689] Instead, the relevant inquiry is whether there was deliberate pursuit of a policy to combat organized crime "by any means," one that involved the multiple commission of acts against a civilian population that included murder, torture, and enforced disappearance.

Furthermore, there is compelling evidence that, amongst non-state actors, the Zetas cartel has pursued an "organizational policy" of intimidation and terror, and also bears responsibility for the commission of such crimes over the past decade.

By failing to investigate and prosecute these crimes, Mexico has not only breached its international treaty obligations to investigate and prosecute them,[690] but effectively furthered the use of indiscriminate and extrajudicial force against any person perceived as being connected to organized crime, as well as acts of torture and enforced disappearances against such persons. The next chapter examines the political and institutional causes of this failure in detail.

IV. POLITICAL OBSTACLES TO CRIMINAL ACCOUNTABILITY

INTRODUCTION

MEXICAN NAVY FORCES REPORTED AN ARREST: RAÚL NÚÑEZ SALGADO HAD CONFESSED TO BEING IN CHARGE OF FINANCES FOR THE CRIMINAL ORGANIZATION GUERREROS UNIDOS, AND TO PAYING BRIBES TO THE MUNICIPAL POLICE OF IGUALA, IN THE STATE OF GUERRERO. THE DETENTION OF NÚÑEZ IN THE RESORT OF ACAPULCO ON OCTOBER 14, 2014 APPEARED TO BE ONE PART OF A MASSIVE INVESTIGATION LAUNCHED LESS THAN A MONTH FOLLOWING ATTACKS ON STUDENTS FROM THE RAUL ISIDRO BURGOS RURAL TEACHERS' COLLEGE OF AYOTZINAPA. SIX STUDENTS AND BYSTANDERS HAD BEEN SHOT DEAD AND 43 STUDENTS HAD DISAPPEARED DURING THE ATTACKS IN IGUALA ON THE NIGHT OF SEPTEMBER 26-27. MEXICO WAS IN AN UPROAR, THE INTERNATIONAL COMMUNITY WAS WATCHING, AND PRESIDENT ENRIQUE PEÑA NIETO PROMISED THAT THERE WOULD BE JUSTICE.[691] NOW FEDERAL FORCES WERE ROUNDING UP SUSPECTS.

Federal prosecutors were building a case against the Guerreros Unidos cartel and corrupt municipal officials for carrying out the attack. In this light, the Navy's detention of Núñez seemed to be just one modest manifestation of a swift, effective investigation into perhaps the most watched criminal case in Mexican history. Instead, it has become emblematic of something much different: a federal investigation that has been criminal and inept. In turn, the Ayotzinapa investigation as a whole has come to exemplify the political obstruction that prevents Mexico from achieving genuine criminal accountability for atrocity crimes.

Government records related to the Núñez detention suggest that torture was committed by members of the Mexican Navy. The Navy acknowledged that while in its custody, Núñez sustained injuries,[692] but claimed they were not of a serious

nature, and that they resulted from the detainee's repeated attempts to escape, associated "falls" and from the detainee "hitting himself against a Navy vehicle."[693] A "certificate of physical integrity" (*dictamen de integridad física*) completed by a medical official of the federal Attorney General's Office (PGR) indicates a far more sinister version of events.[694] According to the medical officer, Núñez sustained over 30 different injuries, which were so extensive they required the intervention of medical specialists.

As of September 2015, 131 individuals had been detained in relation to the Ayotzinapa case,[695] and there are allegations that federal military and police forces tortured and abused at least 40 of them.[696] Media reports and documents eventually released by the PGR indicate that federal officers tortured witnesses, including Núñez, in the course of interrogations that took place before they gave their statements.[697]

In that same month, residents of the village of Carazalillo claimed that Federal Police forces swooped in by helicopter, beating and torturing some 70 individuals while demanding information on the Ayotzinapa case.[698] Officers of the Federal Ministerial Police (PFM), supported by the Navy, allegedly detained the brothers Miguel Ángel and Osvaldo Ríos Sánchez in Cuernavaca, Morelos on October 8, ordering them to confess to involvement in the Ayotzinapa crimes by threatening to throw them from a helicopter, forcing them to dig their own grave, and subjecting them to beatings, suffocation, and electric shocks.[699] According to government documents, four further individuals detained in two separate incidents by Federal Police and the Navy on October 27 all sustained injuries because, according to nearly identical police and Navy reports, they were drunk and fell.[700] Depositions and media interviews with family members indicated that federal security forces beat, suffocated, and administered electrical shocks to two of these individuals along with two other men arrested in connection to the case, who say they were simply construction workers arrested and forced to tell a story.[701]

By mid-January 2015, that story was almost ready to tell. The head of criminal investigations in the Attorney General's Office (PGR), Tomas Zeron de Lucio, stated at a press conference that, "All lines of investigation that have arisen during the inquiry have been exhausted."[702] It was then-Attorney General Jesús Murillo Karam himself who, two weeks later, relayed the full account to the nation. His January 27 press conference on the findings of the Ayotzinapa investigation featured video of the four men conducting a "reenactment" of the crimes to which they had confessed.[703] According to Murillo Karam, the initial attack came at the order of Iguala Mayor José Luis Abarca. Then corrupt municipal police handed the 43 captured students to members of the Guerrero Unidos cartel. Its members took the students to an informal garbage dump on the outskirts of the nearby town of Cocula, and executed all of the students who had survived to that point.[704] Murillo Karam concluded, "After an exhaustive, deep, and serious" investigation, the "historical truth" is that the 43 students were "abducted, killed, burned and their remains were thrown in a river."[705] The fire had reached such a temperature that, apart from a bone fragment used by Austrian forensic experts to identify one

victim, Alexander Mora, no usable DNA evidence could be obtained.[706]

But families of the 43 students refused to believe this official story and International human rights organizations echoed their doubt.[707] This doubt fed public protests and international pressure. Already in November 2014, the federal government had assented to seeking technical assistance in the investigation from the Inter-American Commission of Human Rights (IACHR).[708] Its Interdisciplinary Group of Independent Experts (*Grupo Interdisciplinario de Expertos y Expertas Independientes*, GIEI), which took up work in March 2015, would vindicate the skepticism about the PGR's account and shine new light on failures of the federal investigation.

When the five independent experts[709] issued their report on September 6, 2015, it included a direct, forensics-based refutation of the attorney general's story.[710] The GIEI concluded that the bodies of the students were not burned at the Cocula dump, as there was no evidence of a fire large enough for 43 cremations, or the availability of the enormous amounts of fuel such a fire would require.[711] (A separate group of respected international forensic experts came to the same conclusion in February 2016.)[712] Further, the experts identified such fundamental failings of the criminal investigation as the mishandling of evidence, including clothes found at the scene, the destruction of videotape from a camera that may have captured the main incident, and a failure to consider alternative motives. The experts concluded that state and Federal Police, as well as Army units, were in the area and aware of the attack on the students but had failed to intervene.

The government eased Attorney General Murillo Karam into another ministry just a month after his proclamation of the "historical truth" about Ayotzinapa.[713] His replacement, Arely Gómez,[714] has continued to face public pressure to implement the GIEI's recommendations.[715]

The GIEI's findings raised disturbing questions about the Ayotzinapa case. Where did federal prosecutors obtain the remains of one and possibly two student victims if a fire sufficient to burn the bodies at the Cocula dump was indeed impossible? Who ordered the torture of multiple individuals who confessed to the same apparent fabrication? Why has the government kept these individuals in detention if the narrative to which they were forced to confess has fallen apart? Above all, what really happened to the disappeared students, and who was responsible?

No less alarming, the experts' findings raised questions about the federal government's commitment to providing justice for any atrocity crimes. How could it be that the response to one of the singular crises in Mexico's modern history, with the entire world watching, could go so wrong? What kind of a justice system could allow an investigation into such devastating crimes to degenerate into false conclusions resting on the apparent commission of yet more atrocity crimes?

This chapter explores these systemic questions. It ultimately traces Mexico's broader failure to investigate and prosecute atrocity crimes to successive governments' absence of political will to do so. Federal government leaders have sought to deny or minimize the extent of the crisis, including by obscuring

information on atrocity crimes and justice. They have widely encouraged or allowed police and prosecutors to obtain confessions through torture and other abuse, and that practice has warped the investigative process. They have protected the military from accountability and militarized the police, who are prone to committing atrocities and unskilled in investigating them. Government initiatives nominally intended to increase the autonomy of federal prosecutors have been undercut by insistence on maintaining forensic services that are open to politicization and witness protection that is susceptible to abuse. Such reforms as the Victims' Law, launched with great fanfare as a marker of dedication to addressing the crisis, have too often been neglected and left as empty promises. Officials have exploited ambiguous federal-state lines of responsibility and bureaucratic confusion in federal justice agencies as excuses for inaction. The resulting institutional muddle provides further openings for corruption and criminality, including infiltration by organized crime.

Serious technical shortcomings in areas including investigations, prosecutions, the judiciary, and defense further fuel this pattern of impunity. Ultimately, however, these capacity problems are secondary. When politics prevent justice institutions from fulfilling their mandates, dissecting the technical manifestations of the underlying problem can be a distraction. The focus here is on the fundamentally political causes of impunity in Mexico.

POLITICAL SOURCES OF IMPUNITY

GOVERNMENTS ELSEWHERE IN LATIN AMERICA, including Argentina and Chile, have shown what commitment to criminal accountability for atrocity crimes looks like. A committed government acknowledges the extent and nature of atrocity crimes rather than routinely trying to obscure, downplay, or deny evidence of them. Following this recognition, the government commits to a clear break with past practices in policing and prosecution rooted in legacies of repression and torture. These are the most basic of political precursors to professional investigations, opening pathways to effective and balanced justice. They are currently absent in Mexico, where, except when there has been extensive popular and diplomatic pressure, the federal government has rarely been willing to acknowledge the crisis.

Rhetorical Foundations of Impunity

Since 2006, the successive Calderón and Peña Nieto governments have sought to deflect, downplay, and deny the crisis of atrocity crime in Mexico. General policies of denial and diminishment of the problem have been especially pronounced in two areas: with regard to allegations of atrocity crimes committed by state actors, and with regard to suggestions that under international criminal law, atrocity crimes in the country might amount to crimes against humanity.

Denying and Minimizing Atrocities

During both presidencies, government leaders have sought to downplay the general extent of violence and atrocity crime in Mexico. President Calderón routinely emphasized that overall homicide rates in Mexico were lower than in many other Latin American countries, even as killings skyrocketed in those parts of Mexico most affected by cartel violence and the deployment of federal forces.[716] Similarly, upon taking office, President Peña Nieto, eager to attract foreign investment, touted improved security and a reduction in the rate of killing, even as his contention rested on suspect or incorrect data,[717] and the rate of violence in Mexico remained extraordinarily high.[718]

On at least two occasions, the government misrepresented information on accountability for atrocity crimes to UN treaty bodies. In 2013, the Mexican government provided false information to the UN Committee Against Torture (CAT) that greatly exaggerated claims of criminal accountability for torture.[719] Then, even as official statistics showed a steady rise in disappearances throughout the first two years of President Peña Nieto's term,[720] the government reported inaccurate statistics to the UN Committee on Enforced Disappearances.[721] These statistics greatly exaggerated the investigation of disappearances, while omitting data on the incidence of disappearance from a majority of the country.[722]

To the extent that government leaders have acknowledged at all that state actors have been responsible for torture, killing, disappearance, and other atrocity crimes, it has almost always been in the face of revelations in the media and resulting domestic and international pressure.[723] They have routinely remained silent on occasions when it would be appropriate to acknowledge the responsibility of state actors for at least some atrocity crimes.[724] In those instances, government leaders have insisted that the crimes were isolated incidents, and certainly divorced from state policy. Mexico has made this argument in filings before UN and Inter-American human rights bodies,[725] and Presidents Calderón[726] and Peña Nieto[727] have made this argument personally. And finally, as discussed in the previous chapter, both administrations have been quick to blame cartels for atrocities when there are indications that the acts in question were instead committed by state actors; this has allowed the government to evade legal obligations to disclose information about grave human rights violations.[728]

By refusing to acknowledge that atrocities are (or may be) associated with state agents, the government also evades its legal obligation to make public information on grave human rights violations and crimes against humanity, including atrocity crimes perpetrated by state agents.[729] For example, even though the involvement of state actors (at a minimum, municipal police) in the September 2014 Ayotzinapa killings and disappearances should qualify them as grave human rights violations, the PGR categorized the crimes as "kidnappings." On this basis, in 2014, the government refused public disclosure of information about the investigation.[730]

Especially in cases where there are indications of involvement by state actors, such cavalier attribution of crimes to the cartels feeds perceptions among victim organizations and the broader public that the government is not interested in accurately collecting and organizing data on atrocity crimes.

DENYING ATROCITIES IN MODERN MEXICO

A policeman handed Brenda Rangel the telephone. Querétaro Governor José Eduardo Calzada Rovirosa spoke from the other end: "This is no way to ask for an appointment with me."[731] Brenda protested that she'd been seeking an appointment with him ever since her brother, Héctor Rangel, disappeared in April 2009, in transit from Querétaro to Coahuila, after being detained by municipal police at a checkpoint in Coahuila and abducted in apparent collusion with organized crime.[732] On this day, July 27, 2014, the governor was due to provide his fifth annual government report to the state congress, and families of the disappeared blocking traffic in this small state's capital did not conform to his portrayal of the state as a prosperous model for modern Mexico.[733]

Calzada Rovirosa, from the same PRI party as President Peña Nieto, had focused his governorship on economic and industrial growth in Querétaro; his top priority was attracting investment to the small state, from which many middle class Mexicans commute to Mexico City.[734] As Brenda Rangel and others have discovered, any attempts to draw attention to atrocity crimes committed by cartels or state actors in Querétaro have encountered a policy of total denial.[735]

The state prosecutor's office has alternately claimed that there were 330 missing persons as of 2010; that such information cannot be provided because cases are open; that as of 2012 there were 48 unsolved cases of missing women; that the 48 cases are old, from the period 2006-2011;[736] and that disappearances are not really a problem in Querétaro after all.[737] More recently, the state prosecutor's office acknowledged that it does not have even one open investigation for enforced or involuntary disappearance and justified this by saying that reported cases "do not comply with legal requirements" to classify them as disappearances.[738] Amidst indications of extensive torture by police and prosecutors in the state, authorities opened 71 investigations from 2006-2014, but issued only one indictment.[739]

The policy of denial emanating from the governor and his cabinet officials has had grave consequences on prospects for justice in the state, where there are few checks on executive authority beyond the state congress.[740] It is reflected in the legal framework, where the definition of torture is not compatible with international treaties to which Mexico is a party.[741] Opposition legislators in the state congress were able to pass a progressive law on disappearances in April 2014, but only after Governor Calzada's veto of the first attempt to pass the law drew national media attention.[742] But most of all, the policy of denial is reflected in the actions of police and prosecutors.

Brenda Rangel's search for her brother, and for justice, brought her into contact with many other victims.[743] Their experiences with authorities are similar: when families try to report disappearances to the police, they are told to wait 72 hours; police actively discourage the lodging of complaints, telling victimized families that by doing so, they could endanger themselves. Police also tell them that bringing public attention to the case could endanger the disappeared. Prosecutors may also refuse to open a criminal investigation

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DENYING ATROCITIES IN MODERN MEXICO

and only issue a report of facts (*actas circunstanciadas*), which does not trigger a formal investigation.

Brenda's insistence on publicizing her brother's case resulted in police slashing the tires of her car, and on another occasion, storming her house with guns drawn.[744] Similarly, when the University of Querétaro organized a campaign to bring attention to the disappearance of student Jesús Almaraz Esquivel, municipal officers confiscated banners bearing his name and image, saying that they could cause public panic.[745] In Querétaro, there can be little hope for accountability for atrocity crimes so long as authorities refuse to acknowledge the problem.

Blaming Victims

The Calderón and Peña Nieto governments have not only sought to blame criminal cartels for atrocity crimes that appear to have been perpetrated by state actors. They have also sought to paint the victims of disappearance, killing, and torture as themselves criminal, even in the absence of evidence and when there are direct indications to the contrary. This is a key element of the crimes against humanity analysis because it points to a government policy to attack a civilian population (perceived members of organized crime) or tolerate such attacks.[746] Further, because there is less public sympathy for suspected criminals, this kind of rhetoric also serves as a means of easing public pressure on government to provide justice for atrocity crimes.

Criticizing the Messengers

When pressed with uncomfortable facts and statistics on atrocity crimes, a common government response has been to criticize the motivations and methodologies of those who try to draw attention to their extent and nature. Targets have included civil society organizations, independent experts, UN officials and bodies, and even the International Criminal Court.

Across the administrations of Felipe Calderón and Enrique Peña Nieto, officials have harshly criticized human rights organizations. For example, in 2010, then-Interior Minister Fernando Gómez Mont said that human rights organizations served as the "useful idiots" of criminals.[747] In December 2014, the Minister of the Navy asserted that human rights organizations were manipulating the parents of the 43 disappeared Ayotzinapa students.[748] When Amnesty International released a report on disappearances in Mexico in 2015,[749] a senior official in the Interior Ministry stated that it was "shoddy, and aimed to confuse and misinform."[750]

Government officials have also attacked independent experts. When, during the Calderón administration, an official from Guerrero's Human Rights Commission gave testimony about a case before the Inter-American Court of Human Rights, a Ministry of Foreign Affairs official upbraided him for "testifying against his own country."[751] When renowned Argentine forensic experts publicly voiced specific criticisms of the federal investigation into the missing 43 Ayotzinapa students,[752] the government cast doubt on the forensic group's scientific expertise and demanded that it stop undermining the government's official conclusions.[753]

Similarly, when UN Special Rapporteur for Torture Juan Mendez reported in March 2015 that torture in Mexico was "widespread,"[754] the Ministry of Foreign Affairs launched an extraordinary and unprecedented personal attack on Mendez. Mexico's representative in Geneva asserted that the findings did "not correspond to reality."[755] Deputy Minister for Multilateral Affairs and Human Rights Juan Manuel Gómez Robledo called Mendez "unprofessional and unethical"; noting that "'widespread' is a very serious term," he vowed that Mendez would not be allowed to return to Mexico.[756] Minister of Foreign Affairs José Antonio Meade endorsed this statement.[757]

The Calderón and Peña Nieto governments' vehement reactions to suggestions that enforced disappearances and torture are "widespread"—one requirement of understanding them to be crimes against humanity—can be understood as a rejection of any suggestion that the situation in Mexico warrants preliminary examination by the Office of the Prosecutor (OTP) of the International Criminal Court. In 2011, a communication to the OTP signed by 23,000 individuals urged the opening of an investigation into President Calderón, members of his cabinet, and one cartel leader.[758] Mexico's Office of the Presidency, seemingly without consultation with the Ministry of Foreign Affairs or the PGR, immediately issued a statement threatening the authors of the complaint with legal action for defamation.[759]

Government concern about potential action by the ICC increased following the high-profile Tlatlaya extrajudicial killings of July 2014, the Ayotzinapa student disappearances of September 2014, and a new civil society complaint to the OTP in September 2014 that focused mainly on torture by federal and state security forces in Baja California.[760] At the December 2014 meeting of the ICC's governing body, the Assembly of States Parties (ASP) to the Rome Statute, Mexico launched an attack on the notion that the ICC and the ASP itself should have anything to do with promoting national trials for crimes under the statute.[761] According to one report, representatives of the PGR, Foreign Ministry, and Interior Ministry met with representatives of the OTP in The Hague in early 2015, as part of an overall strategy to dissuade ICC Prosecutor Fatou Bensouda from taking action.[762]

Making and Breaking Promises

There is a pattern across the Calderón and Peña Nieto administrations: only when powerful institutions or public attention create overwhelming pressure does the government promise to take action in response to a particular atrocity. Indeed, it was only when the families of the disappeared refused to leave his office without

specific assurances that President Peña Nieto agreed to invite the Inter-American Commission Group of Experts to review the federal investigation of the Ayotzinapa case,[763] and committed the government to a raft of relevant reforms.[764]

However, a troubling pattern with such promises has become evident: as soon as attention on atrocities and pressure for justice has faded, the government has often failed to follow through on its promises of justice and reform. For example, at least 40 percent of the CNDH accepted recommendations have not been fully complied with and, in the majority of cases, human rights abuses remain unpunished.[765] When Human Rights Watch documented numerous cases in a November 2011 report (*Neither Rights nor Security*), including 149 cases of apparent enforced disappearance, President Calderón pledged to investigate the abuses.[766] But by the end of his term in December 2012, that had not happened.[767] When diverse victim groups and non-governmental organizations joined together to form the biggest victim movement in decades, the Movimiento por la Paz con Justicia y Dignidad, President Calderón pledged to approve a law on victims.[768] It was not in place by the end of his term,[769] and since being approved early in Peña Nieto's presidency, has faced multiple obstacles to meaningful implementation.[770]

Policies of Impunity

As politicians have denied and minimized the level of atrocity crimes, the policies and structures that prevent robust and fair judicial scrutiny have endured. This is seen in the failure to collect and consistently make public data and statistics on atrocity crimes, and in a range of indications that the government has not prioritized criminal investigation and prosecution of such crimes.

Concealing Information about Atrocity Crimes

Until the GIEI report of September 2015 exposed the pervasive mishandling of the federal Ayotzinapa investigation, the PGR initially stated that it would deny public access to the case file until 2026.[771] The PGR provided formal justification for the refusal to disclose information, even while acknowledging the provision in Mexico's federal law on transparency and access to information that prevents authorities from withholding information involving grave violations of human rights and crimes against humanity.[772] It stated that the case was being investigated as a case of kidnapping and organized crime, and thus not subject to transparency requirements. To the extent federal prosecutors were considering a case of enforced disappearance, it was only against municipal police.[773] Further, the PGR asserted that "the Ayotzinapa case is not a crime against humanity."[774]

The PGR's attempt to conceal information in this case fits a broader pattern of failing to disclose information in high-profile atrocity crimes, especially those in which there are allegations against state actors. Following the extrajudicial killing of 22 civilians by Mexican Army soldiers in Tlatlaya, State of Mexico, in June 2014—a crime and a human rights violation[775]—the PGR likewise declared that it would withhold information on the investigation for 12 years.[776] In earlier cases—related

to the remains of 72 migrants discovered in Tamaulipas in August 2010, the bodies of a 193 migrants found in approximately 50 mass graves between April and June 2011 in Tamaulipas, and 49 torsos discovered along a highway in Nuevo León in May 2012—the PGR also denied access to information on the basis that these were subject to ongoing investigation, and refused to classify the case as one of grave human rights violations, which, as a matter of law, would have prevented the institution from withholding information on the case. A challenge to this policy of opacity has reached the Supreme Court of Justice, where as of February 2016, it still awaits resolution.[777]

The Calderón and Peña Nieto governments have also failed to ensure that proper data on the extent of atrocity crimes and justice for atrocity crimes in Mexico are collected, systematized, and shared across federal entities and with the public. As examined at length in chapter two, poor data has led to varying assessments of the scale and nature of killings, disappearances, and torture, and confusion over the adequacy of the criminal justice response to atrocity crimes.

Accurately tracking crime data in a complex federal state is inherently difficult, but the persistent crime data problems in Mexico must be understood against the backdrop of government rhetoric: denying and minimizing the extent of atrocities, blaming the victims, and criticizing the messengers. Taken together, the rhetoric and the failure to improve data collection suggest a political motive. Indeed, it appears that Mexico's leaders have a greater interest in obscuring the crisis of atrocity than in ending it.

With regard to killings, for example, the federal government has no central database of clandestine mass graves, even as new graves are discovered and families of the disappeared are left to conduct their own searches.[778] According to the National Plan on Disappearances, the government should develop such a database, but according to a source within the PGR, prosecutors lack sufficient information to produce it.[779]

There are indications that poor government data on disappearances have served political ends. A senior official in the Specialized Unit for the Search of the Disappeared (*Unidad Especializada de Búsqueda de Personas Desaparecidas*) within the PGR told the Open Society Justice Initiative that the Interior Ministry's February 2013 announcement of a Calderón-era database containing the names of 26,121 people[780] had been irresponsible because the ministry did not itself know the number.[781] But this did not prevent Interior Minister Osorio Chong from providing a new, much lower figure of 8,000 disappeared to a Senate committee in May 2014.[782] This generated headlines about a 70 percent decline in disappearances.[783] It also generated questions and a new figure from Chong one month later: 16,000 disappeared.[784] Two months later, a PGR official stated that this figure was actually 22,322.[785]

Mexico's political leaders still have not prioritized the collection of complete, coherent, and differentiated data on disappearances. This violates Mexico's

obligations under the Convention on Enforced Disappearances.[786] And taken together with the government's vehement insistence that disappearances are not "widespread" in Mexico, it suggests that the failure may even be intentional.

Similarly, the political impediments to accurate data on torture are imposing.[787] There is no national registry of data on torture; the federal government and states have no common definition of torture and ill treatment (although this may change in 2016);[788] the government has never appointed an attorney general who has prioritized ending torture; and the crimes are vastly underreported because the same agencies—including the PGR—that have committed or tolerated torture and ill-treatment are tasked with investigating it. As with disappearances, the government's failures may be related to its ongoing insistence that torture and ill treatment are not "widespread."

The government's manifold failures to effectively document and track the level of atrocity crimes committed in Mexico, or the extent to which they are being investigated, prosecuted, and tried, has far-reaching implications. Most obviously, it allows politicians to make statements about atrocity crime on the basis of missing, incomplete, or manipulated data, giving a veneer of empirical legitimacy to policies of denial.[789] Conscientious police and prosecutors, lacking access to accurate data, cannot prevent or solve crimes as effectively. The lack of government transparency makes it difficult for defense attorneys, including those representing clients who have been tortured, to get needed information.[790] Policymakers have a diminished ability to determine where problems lie, making it more difficult to craft and implement considered reforms. And finally, when the government will not or cannot keep track of atrocity crimes, it alienates victim families and further corrodes public trust in the state's will and ability to fulfill one of its most basic duties.

Criminal Investigations Not Prioritized

Another manifestation of the lack of political commitment to justice for atrocity crimes has been the failure to prioritize effective criminal investigations. What does that failure look like in practice? Investigations are allowed to rely on confessions coerced through torture and abuse, ruining investigations and jeopardizing the possibility that those really responsible for committing atrocities will be successfully prosecuted. There is scant judicial scrutiny for crimes allegedly committed by the military. Federal police forces are highly militarized, and overwhelmingly mandated to react to crime and suppress dissent rather than prevent or investigate crime. Prosecutions are politicized and the PGR has been poorly structured to investigate atrocity crimes. And there has been a reluctance to prioritize needed reforms to Mexico's legal framework.

Torture: An Accepted Malignancy

Government Acceptance

Torture and ill-treatment in Mexico are "generalized," with one of the main aims being "to extract confessions or information."[791] A 2012 survey of federal detainees conducted by CIDE found that 57.2 percent said they had been beaten, and 34.6 percent claimed they had been forced to sign or alter a confession.[792] Of 7,253 complaints of torture and ill-treatment made to the CNDH between 2006 and 2012, over 28 percent (2,060) were complaints against the PGR itself.[793] The National Human Rights Commission reported receiving 9,401 complaints of torture and ill-treatment from the beginning of 2007 through the end of 2014,[794] the Federal District Human Rights Commission received 386 complaints of torture between February 2011 and February 2014, and civil society organizations reported more than 500 documented cases between 2006 and 2014.[795]

It is clear that the federal government has failed to properly investigate and prosecute torture. For example, more than four years after the CNDH called for an investigation into federal officers for crimes, including torture, against Ayotzinapa students in a December 2011 incident, there still has not been one.[796] Beyond individual cases,[797] the broader statistics on justice for torture examined in this report show that impunity for torture and related crimes at the federal level has been nearly absolute.[798]

In summary, the evidence strongly suggests that a number of federal officials at the most senior levels condone, or at least tolerate, torture, ill treatment, and related crimes. They deny it happens or minimize its frequency. And they order investigations only in the rarest of circumstances, usually after scrutiny of specific cases by international bodies, and more recently, rulings by the country's Supreme Court of Justice.

Under these conditions, it can be no surprise that some police and prosecutors continue to extract confessions through torture and related crimes. This, in turn, leads other police and prosecutors to tolerate the practice, while many judges and defense attorneys turn a blind eye.[799]

Insidious Effects

The acceptance of torture by policymakers and justice sector practitioners—an acceptance shared by certain segments of the Mexican public[800]—has grave implications for Mexico's ability to conduct proper criminal proceedings for killings, disappearances, and other forms of atrocity crime. Torture is notorious for producing unreliable information, and creates greater incentives for the corruption of investigators and prosecutors. Its ability to win cases for prosecutors has reduced the likelihood of their openness to reform and capacity building. Across a range of other situations, it is well established that the use of torture is highly unreliable as a means of obtaining accurate information from the victim.[801] When detainees are beaten, sexually assaulted, electrically shocked, waterboarded, humiliated, terrorized with threats to family members, or subjected to a range of

other physical and psychological abuse, they will tell interrogators anything they want to hear. That may or may not include elements of the truth. These dynamics have also been apparent in Mexico.[802] Every time that torture and related crimes produce unreliable information, their use decreases the chances of a successful investigation. And every time an innocent person is convicted on the basis of coerced confessions or witness testimony obtained through torture, the real perpetrator of the crime gets away with it. Torture is central to impunity in Mexico.

Holding the real perpetrators to account has not always been the intent of security forces and prosecutors in Mexico. Some have used torture as a form of extrajudicial punishment or repression. Some have used it to aid in the cover-up by other government agencies, including the military.[803] For example, a kidnapping victim who witnessed apparent extrajudicial killings by soldiers at Tlatlaya, in the State of Mexico,f was forced to sign a falsified statement exonerating the soldiers. State investigators tortured the 20-year-old survivor ("[T]hey told me they could make even the mute talk.")[804] before handing her to federal prosecutors, where she suffered further abuse.[805]

To the extent police, the military, and prosecutors have a free hand to force detainees to tell them anything they want to hear, the opening for corruption is widened. Authorities may produce dubious "results" for families of the disappeared and killed, or victims of other crimes who are told to pay if they want investigations.[806] Or they may accept payments from those with political, economic, or personal motives to manufacture evidence against specific persons.

Government acceptance of torture in criminal investigations also undermines the state's ability to investigate and prosecute crimes, including other atrocity crimes, in another far-reaching way. Even if they are not acting for corrupt purposes, prosecutors and police can routinely obtain convictions on the basis of coerced confessions in order to demonstrate effectiveness. An understandable desire for success in investigating rampant kidnappings leads some victim organizations to reject criticism of the authorities for engaging in torture.[807] Human Rights Watch has documented several cases "strongly suggesting that prosecutors copied and pasted false confessions from one criminal defendant to another."[808] According to Ana Laura Magaloni Kerpel, director of the Division of Legal Studies at CIDE, Mexican prosecutors win 87% of their cases "with terrible work."[809] As long as such shortcuts are encouraged or permitted to succeed, what incentive do police and prosecutors have to adopt difficult reforms, learn difficult professional skills, and expend resources on other forms of evidence collection?

Resisting Accountability for the Military

In many ways, the June 2014 Tlatlaya extrajudicial killings and cover-up, discussed in the previous chapter, illustrate how the Mexican military operates in a climate of near total impunity in Mexico, even amidst indications that Army and Navy forces have been among the prime perpetrators of killings, disappearances, and torture committed by state actors.[810] Until recently, the military justice system asserted

broad control over any allegations of crime against Army and Navy personnel, and could do this based on generous interpretations of the Code of Military Justice.[811] Military prosecutors have rarely taken up charges related to atrocities, and when they have, have often reclassified them as much lesser offenses.[812] Victims and witnesses to such crimes have faced retaliation.[813] The military has sought to prevent scrutiny by keeping proceedings related to killings, disappearances, torture, and other atrocity crimes removed from the public eye.[814]

Tlatlaya also points to fragile new opportunities for making military operations in Mexico subject to the rule of law. The only reason the reluctant PGR was able to bring charges against soldiers at all is because two months before the massacre, Mexico's Congress made a landmark decision to give the civilian justice system jurisdiction over crimes against civilians committed by military personnel.[815] But this partial reform only happened after many years of advocacy, litigation, court orders from the Inter-American Court of Human Rights, and pressure from Mexico's Supreme Court of Justice. Prior to 2014, in deference to Mexico's military, the Fox, Calderón, and Peña Nieto governments consistently fought the shift.

In fact, the Military Code of Justice still does not fully reflect international standards.[816] It does nothing to ensure the impartiality and independence of military investigations. Under international law, the state is obliged to ensure prompt, independent, and impartial investigation of victims of human rights violations, whether civilian or military. Thus it must ensure compliance with international standards in investigations into the 446 killings of military personnel that the government has officially acknowledged.[817]

Despite hard-won progress in ending unlawful use of military jurisdiction, strong resistance remains—as the Tlatlaya case shows. In practice, the military, abetted by senior civilian officials in the justice sector, has continued to oppose the principle that military personnel accused of human rights violations should be subject to the civilian justice system. Even after the Supreme Court's 2012 ruling that provisions of the Military Code of Justice were unconstitutional and incompatible with international standards,[818] the PGR still referred cases involving human rights abuses by the military to the military justice system.[819] The Interior Ministry (SEGOB) has also obstructed the reform. When Daniel Ramos Alfaro disappeared in the state of Michoacán in 2013, allegedly with the participation of the Army, SEGOB's human rights unit (General Directorate of Strategies for Human Rights, *Dirección General de Estrategias para la Atención de Derechos Humanos*) filed a written request with military prosecutors to open an investigation into the case.[820] When the NGO Comisión Mexicana took the case in February 2014 and asked the military tribunal to send the case to the civilian system, the head of the SEGOB unit told the families of the disappeared that Comisión Mexicana was giving them bad advice. When the NGO reviewed the military investigation file, there was almost no information in it. Further, although Mexico has told international bodies that military prosecutors and judges have been referring cases to civil jurisdiction of their own volition, the state has failed to provide public or reliable information on these cases, or even how many of them there are.[821]

ACHIEVING ARRESTS IN A CASE OF RAPE AND TORTURE BY THE MILITARY

In 2002, four military men raped and tortured two indigenous women in Guerrero. The women, Inés Fernández Ortega and Valentina Rosendo Cantú, reported the crimes, but achieving arrests first required intervention from the Inter-American Court for Human Rights (IACtHR) and Mexico's Supreme Court. The IACtHR ruled in 2010 that the Mexican government had violated the women's human rights, that the government must arrest and prosecute the perpetrators in a reasonable period of time, that the victims must receive reparation, that the case must be transferred from the military to the civilian justice system, and that the Military Code of Justice must be reformed to shift jurisdiction to civilian courts in cases of alleged human rights violations committed by military personnel.[823] In 2011 the case moved to civilian prosecutors.[824] The Special Prosecutor for Violence against Women and Human Trafficking (FEVIMTRA) within the PGR issued indictments in December 2013. The four alleged perpetrators were arrested in January 2014. Two years later, there had been no further apparent developments in the case, and it remained to be seen whether the arrests would represent a new direction for Mexico, or were simply the result of extraordinary attention focused on a particular case. Achieving arrests in this case took extraordinary dedication and tireless advocacy by the two survivors themselves, as well as advocacy by national and international civil society organizations and United Nations bodies.[825]

The Tlatlaya massacre showed that even when the PGR becomes involved, prosecutors have been reluctant to scrutinize the military's version of events. This has also been evident in the Ayotzinapa disappearances. Despite suggestions of possible military involvement, pressure from victim families, and an explicit request from the GIEI to directly interview soldiers who may have been present at the crime scenes, as of February 2016, that request had been denied. Defense Secretary Salvador Cienfuegos stated that his troops were "only accountable to Mexican authorities," adding "I would lose face if I subjected my men to this… my prestige comes first."[822]

Militarized Policing

The Federal Police, along with military personnel, who engaged in extensive abuse of detainees in the course of investigating the disappearance of the 43 Ayotzinapa students, not only committed serious crimes,[826] but demonstrated investigative incompetence. The incident is just one of many similar episodes that illustrate a major obstacle to Mexico's ability to credibly investigate and prosecute crime, including atrocity crime. That obstacle is fundamentally political: despite formal reforms, Mexico's leaders have militarized the police for purposes of repression and reaction to crime, which has left police agencies poorly suited to preventing or investigating crime.

Over decades of undemocratic, one-party rule in Mexico, law enforcement was designed to enforce political and social control amid generally low crime rates.[827] But well before the end of

PRI domination, the system started becoming more militarized.[828] By the end of President Zedillo's term in 2000, 28 of 31 states had appointed military officers to command positions within their police forces.[829] The militarization continued under Mexico's first non-PRI administration. President Vicente Fox (2000-2006) named a military general as his attorney general and moved thousands of military personnel into special units of the Federal Preventative Police (PFP), which in 2009 became the Federal Police (PF).[830] As of March 2011, military personnel were in charge of 14 state ministries of public security and were the chiefs of police in six states; military personnel also commanded many municipal forces.[831]

Even as President Calderón deployed the military domestically to fight organized crime upon taking office in 2006, he also continued to increase the military's role in policing. He did this with substantial encouragement from the United States government, including vastly increased U.S. assistance provided through the Merida Initiative. In its first years, the program provided the PFP/PF with armored vehicles, Blackhawk helicopters, and other military equipment meant to aid drug interdiction efforts.[832]

Across the tenures of both Presidents Calderón and Peña Nieto, the size of the federal police force has grown, from around 11,000 PFP officers in 2006[833] to over 30,000 PF officers by 2014.[834] According to a June 2007 estimate of all police forces in Mexico, over 91 percent were "preventative" and only 8.5 percent had an investigative mandate. There were only 5,900 police investigators at the federal level.[835] When, at the outset of the Calderón administration, a large Federal Police force with scant investigative capacity deployed across the country together with tens of thousands of military forces, the federal government suddenly could detain far more suspected criminals than it could hope to investigate.[836]

Calderón

A series of changes promoted by the Calderón administration and passed by Congress diminished the core investigative capacity of the PGR and shifted power and resources to the Federal Police, which remained overwhelmingly a reactive force. These changes reduced the number of investigators working for the PGR and transferred resources to the PF.[837] And the PF, although formally answerable to the PGR on investigative matters, answered not to the attorney general, but to the secretary of public security.[838] This was one more way that political decisions on police structures deemphasized investigations in favor of militarization.

Until almost the very end of Calderón's administration, there were no regulations on the police use of force.[839] Especially in the absence of independent oversight,[840] this further underscored that the main role of the federal police was to intimidate, suppress, and punish, rather than support the investigation and prosecution of crime. Directly or indirectly, the large-scale deployment of militarized police without the means to conduct proper investigations encouraged corruption, collusion with organized crime, and large-scale human rights violations.[841]

Peña Nieto

President Peña Nieto came into office in December 2012 after serving as governor in the State of Mexico, where, in one notorious case, he presided over the deployment of police to brutally suppress dissent.[842] Although he has made substantial changes to policing structures, he has continued to place emphasis on militarized policing over crime investigation.

According to a police reform expert, these changes fit a longstanding pattern among incoming presidents in Mexico:

> **There is a tendency among political leaders coming into office to repudiate the past administration, restructure the police, and introduce new programs. However, change is not the same as reform. […] While a new name, new uniforms, and new logos are meant to symbolize a break from the past, there is often insufficient substance to such reforms. Moreover, political, human, and financial capital is spent adjusting to the new structure rather than tackling the real challenges of police reform.[843]**

Peña Nieto abolished the Public Security Ministry (SSP) that had been created during the Fox administration, returning ultimate central authority for domestic security to SEGOB, where it had been during previous PRI-led governments. Specifically, his administration created the National Commission for Security (*Comisión Nacional de Seguridad*, CNS) within SEGOB, and provided its head with the rank of under-secretary, while the Federal Police remained a decentralized administrative agency (*órgano administrativo desconcentrado*)[844]

Peña Nieto had campaigned on a promise to increase the number of Federal Police from 36,000 to 50,000, and create an additional, reactive, militarized policing unit of 40,000-50,000—the Gendarmerie.[845] Once in office, his proposal faced intense criticism from human rights organizations and security experts for further militarizing domestic security.[846] By August 2013, his national security commissioner announced that the Gendarmerie would be scaled down to 5,000 officers, and made into a division of the Federal Police.[847] Part of this force would work with communities, while another part would be reactive. Although not intended as an investigative force, the Gendarmerie was deployed following the September 2014 disappearance of 43 Ayotzinapa students in Guerrero, and allegedly engaged in abuses in the village of Carazalillo as a part of that investigation.[848] In this case, the deployment of militarized forces to conduct investigations—a task they are unfit for—reaped regrettable results.[849]

Politicized Prosecutions

When Attorney General Jesús Murillo Karam held his widely anticipated press conference on November 7, 2014 to relay the preliminary results of the federal investigation into the Ayotzinapa disappearances, the story he told placed former Iguala Mayor José Luis Abarca at the center. It was Abarca, Murillo said, who had ordered municipal police to attack and abduct the students in order to prevent

them from disrupting a political meeting his wife was holding in town.[850] Yet, when the PGR announced just a few weeks later that Abarca had been formally charged, it was on counts of kidnapping, not enforced disappearance.[851]

The federal investigation into the Ayotzinapa disappearances displayed many of the hallmarks of political manipulation that have characterized the PGR's handling of atrocity crimes. In the context of a political narrative that downplays atrocities committed by state agents, the disappearances have been investigated as "kidnappings" and not enforced disappearances, although even by the government's account state agents were involved.[852] Militarized federal police rely on torture to coerce confessions and witness testimony.[853] While the government cited forensic evidence, independent forensic experts cast grave doubt on the findings that, together with the forced confessions, formed the basis for almost the entire government narrative of events.[854] And many of the leads ignored by the PGR related to involvement by the Army: at best, its failure to intervene on behalf of the students, and at worst, its active participation in the attack on them.[855] In a January 2015 press conference, the attorney general dismissed any suggestion of following leads related to the Army: "There is nobody who accuses them of anything."[856]

This echoed his explanation for the PGR's refusal to investigate the apparent cover-up of the Tlatlaya massacre carried out by members of the Army and federal and state prosecutors six months prior. At that time, belying any pretense of prosecutorial independence, Attorney General Murillo Karam said he was obligated to assume the "good faith" of other state institutions.[857]

By contrast, the Inter-American Group of Experts (GIEI) tasked with looking into the Ayotzinapa case provided insight into what an independent investigation should entail. From the outset, it treated Ayotzinapa as a case of enforced disappearance.[858] In its report, the GIEI recommended that investigators should continue to search for the students, open new lines of investigation, investigate authorities who obstructed the initial investigation, and investigate security officials present during the attacks regarding their possible role in the attacks and their failure to intervene.[859]

Murillo Karam resigned as attorney general in February 2015, but the political constraints on the office are unlikely to have vanished. Officials attempting to conduct genuine investigations and prosecutions of torture, killings, disappearances, and other atrocity crimes must do so within a system where prosecutions have often reflected political objectives and internal structures are prone to political manipulation.

Prosecutions Reflecting Politics

Through the terms of President Calderón and President Peña Nieto (through December 2015), the PGR advanced no major prosecutions at odds with the political interests or against the political allies of the executive. Under President Calderón's "Operation Cleanup" (*Operación Limpieza*), a number of senior army generals, Federal Police, and PGR officials were arrested and prosecuted for alleged collusion

with organized crime organizations, yet nearly all of these cases (13 out of 14) fell apart almost immediately after President Peña Nieto came into office.[860] Some of those arrested had been critics of Calderón's security strategy.[861] That led some observers to conclude that Calderón "used justice for political purposes."[862]

A lack of federal prosecutions against government allies and the government's consistent downplaying of the extent of atrocity crimes form the backdrop for the PGR's failure to prosecute many well-documented allegations of killing, disappearance, and torture by state actors. With the government vehemently denying the findings of UN bodies that disappearances and torture are "widespread," it is currently difficult to imagine federal prosecutors looking for or considering any evidence that atrocities fit patterns, or might even amount to crimes against humanity.

For prosecutors who are unethical or intimidated, there are multiple options for sidelining cases. Especially in the absence of strong internal oversight mechanisms,[863] they may simply fail to prosecute. The low rates at which the PGR and its state counterparts open investigations into reported killings, disappearances, and torture suggest that non-prosecution is commonplace.[864] Prosecutors may reclassify offenses to alter their attribution and minimize their character and severity: charging enforced disappearances as kidnappings, or other offenses that less explicitly acknowledge perpetration by state actors,[865] or routinely reclassifying torture as less serious crimes, as both the UN Committee Against Torture and the UN Special Rapporteur on Torture have noted.[866] Prosecutors can also scuttle cases through other acts of omission, such as using administrative pretexts to send files into labyrinths of inefficiency, making studied use of federal bureaucratic confusion and the complexities of the federal state.[867] Human Rights Watch has documented the involvement of the PGR, military, and state prosecutors in numerous such undertakings in relation to disappearance cases.[868]

Prosecutors have also discouraged victims from filing complaints, telling family members of the disappeared that filing a complaint could endanger them or their missing loved ones.[869] The PGR has used similar tactics in relation to torture cases. In 2009, the UN Subcommittee on the Prevention of Torture expressed concern that those seeking to lodge complaints of torture were being warned by the PGR that they could be charged for making false statements if their complaints were not verified by psychological and medical tests.[870] Amnesty International and the NGO Collective against Torture and Impunity have documented cases in which the PGR has discouraged those trying to file torture complaints by warning them of invasive and humiliating examinations, or indeed re-victimized them by making them strip for examination in public.[871]

Finally, some federal prosecutors have tampered with or fabricated evidence. Human Rights Watch has also documented many such cases in relation to disappearances.[872] To understand how it remains so readily possible for evidence to be manipulated to suit political purposes, it is necessary to look deeper into the mechanisms within the PGR that are most susceptible to abuse.

Prosecution Structures Susceptible to Political Influence

Currently, Mexico's president directly appoints the attorney general, subject to ratification by the Senate, for an undetermined period of time, although it is widely assumed that each incoming president will appoint their own prosecutor. (This is supposed to change when the PGR transitions to a Fiscalía in 2018, although it appears that a new appointment mechanism for attorney general—with a greater role for the Senate—will not be used until 2027.)[873] Although this arrangement is by no means unique, it is one obvious conduit for political control of prosecutions. High turnover of the office has heightened these concerns; from the beginning of Calderón's term through January 2016, there have been five different attorneys general, thus extending a historical pattern.[874] In relation to atrocity crimes, the UN Special Rapporteur on Extrajudicial Killings has expressed concern that prosecution offices' lack of independence from the executive at federal and state levels has presented an obstacle to justice for killings, especially by state actors.[875] Similarly, the UN Special Rapporteur on the independence of judges and lawyers noted during her 2010 visit to Mexico that "the fact that the country's prosecution services are not independent of the executive branch of government [...] can erode the credibility of the authority responsible for investigating crimes objectively and undermine confidence in its ability to do so."[876] The IACHR has also underscored the importance of Mexico developing independent and autonomous institutions for the investigation and prosecution of crimes, including atrocity crimes.[877]

The formal placement of the PGR within the executive helps to explain why prosecutions have been politicized, and in part how this happens. The executive also indicates priorities and maintains influence on the bureaucracy through its funding decisions, as is normal practice in other countries. While not inherently untoward, these decisions further help explain government intentions. Prosecutors are aware that certain lines of inquiry will not please their bosses, from the president through the attorney general, in many cases down to all but the most conscientious direct supervisors. In turn, federal prosecutors wanting to tamper with or fabricate evidence need look no further than dependent organs of the PGR itself.

Politicized Forensics and Expert Services

The failures, flaws, and openings for manipulation identified by the Inter-American Group of Experts (GIEI) and the Argentine Forensic Anthropology Team (EEAF) in the PGR's handling of forensics in the September 2014 Ayotzinapa case are not new. The PGR's forensic technicians and medical experts have long had a reputation for manipulating findings to prevent accountability for state agents in response to threats and intimidation from implicated colleagues. A 2002 survey of all PGR forensic experts found that "23 percent of them feared reprisals from law enforcement agents when their forensic evaluation reported the existence of physical injuries consistent with torture or ill treatment, and 18 percent of them reported being coerced by law enforcement agents or superiors to change the results of their forensic reports."[878] In 2009, PGR medical staff told a delegation from the UN Subcommittee on the Prevention of Torture, "that they frequently

had to change the medical reports on express orders from staff of the Attorney General's Office."[879] In 2012, the UN Committee Against Torture expressed concern about reports of military presence at medical examinations.[880]

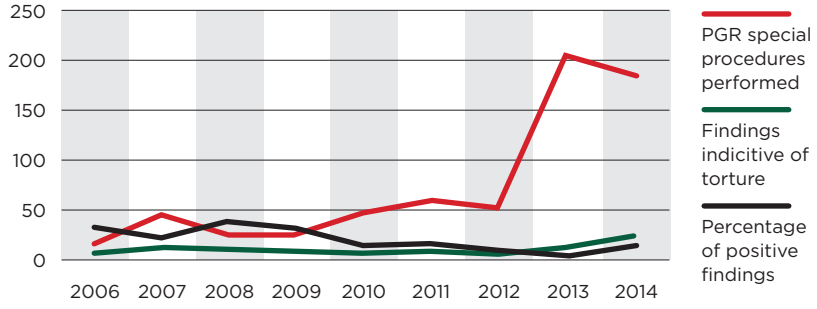
In 2003, the PGR issued guidelines on a modified medical examination based on the Istanbul Protocol to evaluate claims of torture and ill-treatment, Agreement No. A/057/2003.[881] As of January 2015, the PGR had 159 medical experts and 62 psychological experts trained to perform the examination.[882] While from 2006 through 2014, the number of such examinations climbed from 16 to 185 per year (which still pales in comparison to the number of torture complaints received by the PGR and the CNDH), the percentage of cases in which the PGR found evidence of torture dropped. While 2013 was the year the PGR opened the greatest number of torture investigations, it was also the year that the percentage of positive findings reached its nadir of 4.4 percent (down from a high of 37.5 percent in 2008); this meant that the absolute number of positive findings remained nearly flat, with a slight increase to 22 in 2014 (see Figure 13).[883]

According to one senior PGR official, forensic experts within the office have been trained to disprove torture allegations, and after the Conference of Attorneys General approved a measure to adopt the PGR's modified Istanbul Protocol for use nationwide that same year, they discussed its use in confirming the non-occurrence of torture.[884] This continues longstanding practice at the federal level. Contravening the express language of the Istanbul Protocol that negative findings do not disprove torture,[885] a 2006 PGR report touted the 2003 guidelines as a means to dismiss allegations of torture against officers.[886] Indeed, prosecutors still cite negative Istanbul Protocols (which are narrowly interpreted and often incorrectly performed) as reasons not to pursue other lines of inquiry[887]—again defying the express language of the Protocol itself.[888]

The PGR's Agreement A/057/2003 acknowledged a need for greater independence by creating a Committee for the Monitoring and Evaluation of the Medical/Psychological Specialized Medical Examination for Possible Cases of Torture and/or Mistreatment (*Comité de Monitoreo y Evaluación del Dictamen*

Figure 13: More Special Procedures, Few Positive Findings

PGR data on Special Procedures and Positive Findings of Torture, 2006-2014.



Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato) and an advisory group (*Grupo Consultivo*). The committee was to be in charge of overseeing the efficient application of the medical examination. In addition to PGR officials, the committee was supposed to include a member of the PGR's "Citizenship Participation Council" and an outside member of the Mexican Council of Legal and Forensic Medicine.[889] However, after its creation, the committee met only ten times, and has not convened since 2010. Further, an advisory board to the committee has met only nine times, and not at all from the beginning of 2011 through August 2012.[890] In January 2014, the PGR told Amnesty International "that the committee met once a year, but did not review cases or procedures and had not published findings or reported on its activities in recent years."[891] There were no indications of outside experts engaging in the work of the committee or the advisory group.[892]

The PGR issued further guidance on the investigation of torture in November 2013,[893] followed by a notable increase in torture investigations, but little sign of increased indictments or convictions.[894] New regulations and protocols introduced in August and October 2015 replaced these procedures and introduced new guidelines on the offices responsible for torture cases. But it was far from clear that the PGR's recent willingness to open torture investigations, or the new procedural and institutional guidelines, would represent real advances.[895]

Real change would require an end to investigative over-reliance on a narrow interpretation of the medical procedures outlined in the Istanbul Protocol, to the near exclusion of other important sources of evidence. It would require a willingness to accept the findings of independent medical and psychological experts as valid for the investigation.[896] And it would require making forensic services independent of the prosecution, so that the forensic officers responsible for findings on torture cases are no longer prone to threats, intimidation, and inducements. Unless these measures are realized, it is difficult to imagine that the number of investigations, indictments, and convictions for torture will be anywhere near commensurate to the extent of the crime.

No Independent Witness Protection

When judges dismissed President Calderón's "Operation Cleanup" cases against senior security and justice sector officials accused of complicity with organized crime following revelations that protected witnesses had provided false evidence, it was indicative of larger problems.[897] The string of scandals involving organized crime and public corruption cases includes one witness, "the Smurf" (*"El Pitufo"*), who provided testimony in at least 43 PGR cases before being dismissed from the program for lying. Among the cases that eventually fell apart was a highly publicized takedown of senior government officials in Michoacán.[898] Witness protection in Mexico has not only been abused, but dangerously unsuccessful. By December 2009, reports indicated that at least six protected witnesses had been killed over the previous 12 years.[899] The most prominent of these were related to a 2009 investigation into prominent Sinaloa Cartel figure Ismael Zambada (*"El*

Mayo"), who was reputed to have close ties to government officials. Two protected witnesses in the case against him died or were killed within days of each other.[900]

Passage of a new federal law on witness protection in 2012 and the creation of a Center for Witness Protection that by law is technically and operationally autonomous offer greater structure for witness protection.[901] But while the witness protection function remains under PGR administration, it lacks safeguards and remains prone to manipulation and corruption.

Mexico committed to effectively protect witnesses long before attempting to codify protection mechanisms in laws and regulations, or develop a witness protection program.[902] The first law to create a need for the witness protection program was the Organized Crime Law (*Ley Federal Contra La Delincuencia Organizada*), passed in November 1996.[903] This law places a duty upon the federal government to protect collaborating witnesses (*testigos colaboradores*), or individuals involved in criminal activity who cooperate with prosecutors in exchange for leniency.[904] The constitutional reforms of 2008 included a provision requiring authorities to protect "[…]victims, offenders, witnesses and all subjects involved in the [judicial] process."[905] In 2010, a kidnapping law (*Ley General para Prevenir y Sancionar los Delitos en Materia de Secuestro*), obligated federal and state governments to create a program for the protection of witnesses and victims who are involved in proceedings related to kidnappings.[906] The Victims' Law (*Ley General de Víctimas*) of January 2013 broadened this obligation of federal and state governments to create witness protection programs available to witnesses of any crime.[907]

From its beginnings in 1996, witness protection has been subordinated to the PGR, and specifically the division for organized crime, now called SEIDO.[908] With its early foundations limited to organized crime cases, witnesses to atrocity crimes without this link remained unprotected.[909] Indeed, there are indications that very few witnesses have been offered protection.[910] Further, the attorney general, SEIDO prosecutors, and other federal officers who administered protection did so with little transparency about their criteria or methods, and without judicial oversight.[911]

Even after the law formally expanded the reach of witness protection beyond organized crime cases, the lack of accountability and reliability had grave consequences for victims of atrocity crime. Without operationally independent, accountable protection mechanisms, families of the disappeared who have sought to report the underlying crime have been prone to re-victimization. Instead of appropriately considering them for protection and taking routine steps to shield their identities, corrupt prosecutors and police have been able to hide behind their unaccountable discretion, reporting the families to the perpetrators. This has exposed them to threats of kidnapping, disappearance, and death.[912]

Before the Calderón administration ended, the PGR's responsibility for witness protection was cemented by the passage of a new federal law.[913] The law touched on many of the areas of established international standards and best practice that the previous framework had left unaddressed.[914] In addition to foreseeing protection for

witnesses related to organized crime cases, it expanded eligibility to include witnesses to grave crimes who are endangered through their participation in proceedings.[915]

It established a witness protection center (*Centro Federal de Protección a Personas*) responsible for all facets of protection. These include accepting petitions for acceptance into the protection program and deciding on admission according to set criteria.[916] Among these is an assessment of risk, a connection between risk and the proceedings at hand, possible ulterior motives, determination that protective measures are best suited to provide security, obligations of the witness to third parties, and potential risks to the program or center. The evaluation also includes a psychological assessment.[917] In accordance with international standards, a witness's inclusion in the program must be voluntary, and can be terminated if the witness violates obligations under the program.[918] Importantly, the law also provides that beyond determinations by the center's director, judges also may order inclusion of witnesses in the program.[919]

The director and members of the Federal Ministerial Police integrated into the center are responsible for the implementation of protective measures, which include assistance and security.[920] Assistance includes the provision, as needed, of psychological, medical, and sanitary care, legal assistance to understand their rights in the program, administrative assistance, and economic support.[921] Security measures include "vigilance" (which is not defined), protection during transport, identity protection, in-court protective measures, and undefined other measures to guarantee protection.[922] The center may also relocate witnesses to foreign countries.[923] In addition to the 2012 law on witness protection, passage in March 2014 of a uniform National Criminal Procedure Code (*Código Nacional de Procedimientos Penales*) obligates federal and state prosecutors to grant precautionary measures to victims who come under threat during proceedings.[924]

By codifying criteria for protection, available measures, and mechanisms, the new legal framework represents an advance in witness protection over the previous regulatory void, but serious weaknesses remain. There is a lack of clarity about the applicability of the framework where circumstances create intersections with other laws that foresee protection mechanisms, including the Law on Protection of Human Rights Defenders and Journalists, and the Victims' Law.

The most fundamental flaws, however, relate to the program's continued susceptibility to political manipulation, conflicts of interest, and corruption, as well as safeguards for the professionalism of officials responsible for protecting witnesses and victims. The center's director and staff have extensive discretion with regard to the admission of applicants, the determination of which protective measures to apply, and the termination of protective measures. Despite the welcome inclusion of the possibility for judges to order protective measures, a lack of proper judicial oversight remains problematic.[925] The law does not indicate who has access to confidential, operational information, including information on specific protected witnesses, or such things as vehicle descriptions and license plates of vehicles used in witness protection, the locations of safe houses, or the

identities of protection agents.[926] The law requires implementation of "selection procedures to ensure the suitability of staff and their training,"[927] but contains no provisions to establish minimum qualifications for officers involved in witness protection, and no provisions on mandatory training. There are no provisions for vetting staff applicants for past human rights abuses, corruption, or other crime. The law criminalizes the leaking of operational information related to protected witnesses, but has no provision for other types of abuse, including the disregarding of criteria for the admission or rejection of persons into the program; willful failure to provide protection in practice; or the leaking of information about those who apply for protection but are rejected.[928]

These serious vulnerabilities in the law are all the more concerning given that under the 2012 law, the center will continue act under PGR supervision and rely for implementation on members of the same police force responsible for conducting criminal investigations.[929] In many countries, witness protection measures and programs are overseen by the police or the attorney general. This is inherently problematic, especially in adversarial systems where prosecutors have an incentive to encourage favorable witness testimony in order to achieve convictions, and have a conflict of interest with regard to defense witnesses in need of protection. Within such arrangements, however, it is still possible to have successful protection programs, so long as the protection function is clearly walled off from the investigative function; mechanisms are in place to clearly regulate the confidentiality of information; and the police involved are organizationally autonomous from the rest of the force.[930] None of these factors are sufficiently guaranteed under Mexico's current legislation.

The continued placement of witness protection within the prosecutor's office is of heightened concern in Mexico, where there have been extensive accusations against officials of the PGR and Federal Police related to torture, disappearance, and extrajudicial killing. How can officials from these same institutions be left responsible for protecting witnesses to crimes committed by their colleagues, or in some cases, perhaps, themselves? Maintaining this institutional arrangement casts grave doubt on Mexico's ability to deliver genuine and fair justice for atrocity crimes.

Symbolic Initiatives without Substance

Institutional reform in the justice sector as a whole has often mirrored Mexico's approach to police and security reform. The Federal Preventative Police became the Federal Police; the Federal Investigative Agency gave way to Federal Ministerial Police, which was folded into a Criminal Investigation Agency; and the Public Security Ministry was abolished, and its functions returned to SEGOB and its new National Commission for Security. This costly reshuffling and rebranding of institutions has failed to adequately address core problems. Similarly, the broader justice sector has experienced a barrage of new initiatives and bureaucracies relevant to the provision of justice for atrocity crimes in response to public and international pressure. But policymakers too often have failed to clarify how these relate to existing structures, and failed to support and implement them once attention to the proximate crisis has faded.

Unit Specialized in the Search for Disappeared Persons

As media attention to disappearances in Mexico continued in early 2013,[931] Interior Minister Osorio Chong first announced that the new government of Enrique Peña Nieto would create a dedicated unit within the PGR for the search of the disappeared.[932] Three months later, after family members of the disappeared and civil society activists staged a hunger strike for nine days outside the Mexico City headquarters of the PGR, the attorney general and interior minister announced that a special unit for the search of the disappeared would be created within the PGR's Deputy Prosecution Unit for Human Rights.[933] The attorney general formally created the Unit Specialized in the Search of Disappeared Persons (*Unidad Especializada en Búsqueda de Personas Desaparecidas*) by administrative decree shortly thereafter,[934] and it received its first funding at the beginning of 2014.

Until its replacement in October 2015,[935] the unit had a formal mandate to investigate crimes, receive disappearance complaints (*denuncias*), forensically identify victims, cooperate in the implementation of laws and regulations on locating disappeared persons; create protocols, request information from other authorities relevant to locating disappeared persons, and coordinate with other units and offices of the PGR that are investigating disappearances. The government never clarified which of these elements the unit prioritized, leaving many unanswered questions.[936] Did its mandate include disappearances from the Dirty War, and the intervening period? Was it in charge of the search, locating, and identification of the disappeared? Was it in charge of criminal investigations into disappearances, and did those include cases linked to organized crime?

The unit's relationship to other units within the PGR that had overlapping jurisdiction created one set of uncertainties. SEIDO has authority over organized crime cases, creating overlap in disappearances committed by organized crime. The Deputy Prosecutor's Office of Regional Control, Criminal Proceedings, and Amparo Proceedings (*Subprocuraduría De Control Regional, Procedimientos Penales y Amparo*), has jurisdiction over federal crimes perpetrated outside the capital, which created another large area of potential overlap. And the Deputy Prosecutor for Crimes Committed by State Agents (*Subprocuraduría Especializada en Investigación de Delitos Federales*) has potential jurisdiction over enforced disappearances.

For victims and observers, it remained entirely unclear how the unit's work related to mechanisms on disappearance created within the Ministry of Interior. The National Plan for the Search of Non-Located Persons (*Plan Nacional de Búsqueda de Personas No Localizadas*) and an agreement between the International Committee of the Red Cross (ICRC) and the Interior Ministry (SEGOB), in 2013 created four working groups on disappearances.[937] Beyond these working groups, it also became apparent that SEGOB itself was conducting investigations into disappearances, and according to a senior PGR official, trying to take over the whole portfolio.[938] Indeed, during the first periodic review of Mexico before the UN Committee on Enforced Disappearances in February 2015, the state delegation stated

that "the Ministry of the Interior had units that specialized in finding [disappeared and missing persons]."[939]

While the unit's role in the bureaucracy remained murky, in February 2015, the government reported to the UN Committee on Enforced Disappearances on its results to date. It had 435 open cases. There were 169 reported disappearances (*actas circunstanciadas*), and 452 criminal investigations (58 of these for enforced disappearance). The government reported that in total, the unit had been searching for 621 "missing" persons, and so far located 103, of whom 72 were alive and 30 dead.[940] As of September 2014, four or five located persons had been identified as victims of enforced disappearance, and active investigations in 12 other cases indicated military involvement.[941]

The unit's work did little to assuage the disappointment, anger, and desperation of family members. The scale of the effort was meager in a context where the government admitted that there were over 26,000 disappearances and closer scrutiny suggested numbers far higher.[942] A lack of transparency about its work, including any information on the persons allegedly found alive, and the circumstances in which they were found, sowed distrust; this distrust was compounded by the unit's reported callousness toward victims, which led to revictimization.[943] Victims made submissions to the UN Committee on Enforced Disappearance and the Special Rapporteur on Torture denouncing ill-treatment from senior officers of the unit. Officers had "questioned the actual existence" of their disappeared relatives and described to families the circumstances under which disappeared persons were allegedly killed.[944] UN Special Rapporteur on Torture Juan Méndez asserted that this kind of treatment of relatives of the disappeared by Mexican authorities may in itself have amounted to ill-treatment.[945]

Even if it had conducted its work with more sensitivity and professionalism, the unit would still have struggled with resources inadequate to the task handling thousands of cases. One year after its creation, the unit had only 24 staff, none of whom were based outside of its headquarters.[946] As of February 2015, the unit had a staff of 170,[947] but even maintaining such limited human resources was in doubt. When he submitted his 2015 budget to Congress in September 2014, President Peña Nieto recommended slashing the unit's budget by 63 percent.[948] In October 2015, the unit was replaced by yet another new mechanism.[949]

National Plan for the Search of Non-Located Persons

In July 2014, the Interior Ministry and the PGR presented to civil society organizations "progress in the National Plan for the Search of Non-Located Persons."[950] Specifically, officials referred to three mechanisms for locating the disappeared: a mechanism for the urgent search, a sole registry of mass graves, and a national network of prosecutors' offices for the search of non-localized persons.

SEGOB officials announced the creation of four disappearance working groups with the PGR and the ICRC: (i) legislative harmonization, (ii) implementation of information technologies, (iii) forensic capacities, and (iv) management of information with victims.

They also presented the Unit Specialized in the Search of Disappeared Persons and the ICRC's ante mortem-post mortem software as part of the National Plan.

Upon further inquiry, the Open Society Justice Initiative has found no evidence that the National Plan as such even exists. Perhaps not surprisingly, the government has obfuscated about this. When faced with a request for information on the National Plan, the Interior Ministry referred the query to the PGR, while the PGR referred the query to the Interior Ministry.[951] When, upon appeal, the Federal Institute for Access to Information and Data Protection (*Instituto Federal de Acceso a la Información y Protección de Datos*) ordered SEGOB to provide all available information on the plan,[952] in early 2015 the Justice Initiative obtained the minutes of meetings of the

FEVIMTRA

The government's institutional response to the trafficking and targeted killings of women has been mixed, and in some ways fits the pattern of symbolic reform. Through the end of the Calderón presidency, a unit of the Federal Police took the lead in anti-human-trafficking efforts, while a division of the PGR, (FEVIM), dealt with crimes involving violence against women. The government merged the two functions under PGR authority in 2008 by creating the Special Prosecution for Violent Crimes Against Women and Human Trafficking (*Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas*—FEVIMTRA).[953]

The government held up the creation of FEVIMTRA as evidence of its commitment to ending violence against women, including femicide and trafficking.[954] The unit has indicted four military men charged with the rape of indigenous women Inés Fernández Ortega and Valentina Rosendo Cantú in 2013 and 2014.[955]

But civil society advocates have criticized the effectiveness of FEVIMTRA, pointing to just one conviction achieved in its first three years of operation, and an underspending of its budget by 63 percent.[956] The unit's mandate is restricted in many ways due to the state's lack of an adequate and coordinated system for determining jurisdiction when it comes to the investigation of gender crimes.[957] An example is the 2006 Atenco case, in which federal forces and those of the State of Mexico (under then-Governor Enrique Peña Nieto) used excessive force against protesters, and perpetrated rape and other forms of sexual violence against women.[958] The UN Committee on the Elimination of Discrimination against Women (CEDAW) explicitly called on Mexico to "ensure that [FEVIMTRA] is given jurisdiction over the case of crimes in San Salvador Atenco so as to ensure the prosecution and punishment of perpetrators," but Mexico rejected the recommendation.[959] Although 700 Federal Police were deployed during the attack against protesters in Atenco and despite a recommendation from the National Human Rights Commission to investigate their participation in human rights abuses,[960] the government claimed that it was a matter of state jurisdiction. FEVIMTRA referred the case to prosecutors in the State of Mexico, where it has languished.[961]

working groups, as well as other documents showing no substantial progress in the implementation of public policies on disappearances.[962]

In 2015, the government announced new measures to address disappearances, which —depending on implementation—held some promise of developing into elements of a truly national plan.[963] Such a plan would be transparent in its mandate, its access points for victims, its internal processes, and its progress. It would establish clear lines of authority among relevant institutions, have staffing and resources commensurate to the dimensions of the problem, and be respectful and supportive of victims. But as of March 2016, Mexico's national plan still exists in name only.

PROVÍCTIMA

In response to victims organizing under the banner of the Movement for Peace with Justice and Dignity, the Calderón administration created the Social Prosecution for Attention to Victims of Crimes (*Procuraduría Social de Atención a las Víctimas de Delitos*, PROVÍCTIMA) in September 2011.[964] The decentralized agency was tasked with assisting victims and families by providing them with medical, psychological, and other forms of assistance. PROVÍCTIMA had a Deputy Prosecution Unit for Disappeared or Non-Located Persons (*Subprocuraduría de Personas Desaparecidas o No Localizadas*) in charge of coordinating actions with authorities searching for the disappeared.[965]

But PROVÍCTIMA's mandate was limited. It had no authority to request information from police or prosecutors, investigate disappearances by itself, or to become a participant in the criminal process (*coadyuvante*). Furthermore, the government established it without a dedicated budget, and it eventually had to draw funds from already existing victims' offices sitting within other agencies.[966] Perhaps most problematic, PROVÍCTIMA was largely staffed by members of the military and security services, in addition to the Attorney General's Office[967]—all institutions that have been heavily implicated in the commission of atrocity crimes.

Although by the end of July 2013, 19,545 victims had sought assistance through PROVÍCTIMA,[968] many of them were critical of the agency's performance. It appears to have greatly exaggerated claims of finding missing persons and misled victims about benefits. Of 30 families interviewed by Human Rights Watch in 2012 who said they had sought assistance from the agency, all said that PROVÍCTIMA had refused to deliver on promised support. Further, in some cases, psychological care took the form to telling families to simply accept that their missing relatives were dead.[969] In May 2012, one civil society leader presciently observed, "PROVÍCTIMA was stillborn, in the heat of media attention, and having no foundation, it is destined to end."[970] Indeed, on January 8, 2014 PROVÍCTIMA would be officially dissolved, with its human and financial resources distributed to two new institutions created under incoming President Peña Nieto. Staff of the Deputy Prosecution Unit for Disappeared or Non-Located Persons went to the PGR's Specialized Unit for the Search of Disappeared Persons, while other

PROVÍCTIMA staff transferred to the Executive Commission of Attention to Victims, created by a new Victims' Law.[971]

Victims' Law

Victims' frustration with PROVÍCTIMA's limited mandate had already extracted government promises of a new law on victims prior to President Calderón's departure, but procedural disputes between the Calderón administration and Congress delayed its final approval until President Peña Nieto allowed the law to come into force in January 2013.[972]

Victim organizations and international human rights officials welcomed the new law.[973] Since its passage, the Peña Nieto government has repeatedly touted its existence as a sign of progress for human rights in Mexico, including attention to atrocity crimes.[974] The federal government has reported on the law in the context of its response to enforced disappearances,[975] and has informed the Truth Commission of Guerrero that the Victims' Law can be used to provide reparations to victims of human rights during the Dirty War.[976]

The law is indeed much more ambitious than PROVÍCTIMA. It obligates Mexico's states to ensure access to truth, justice and reparations, including the creation of a national victims' registry, legal representation for those who wish to pursue criminal prosecution, and the establishment of a compensation mechanism. The Victims' Law further required all 32 federal entities to adopt local victims' laws, create victims' registries, and establish legal assistance units and reparation funds by May 2013. It also required relevant provisions of the Victims' Law, such as victim representation in court, to be incorporated into the new national criminal procedure code that was signed into law in March 2014. To implement the law, it created an Executive Committee for Attention to Victims (CEAV).

At federal and state level, however, the pace of implementation of the Victims' Law quickly frustrated victim constituencies and advocates. Regulations to the law were due by August 2013, but were not published until November 2014,[977] and did not take into consideration contributions from relevant civil society organizations.[978] CEAV was due to issue a "Comprehensive Program for the Attention of Victims" (*Modelo Integral de Atención a Víctimas*) in January 2014,[979] but only published it in June 2015.[980] It wasn't until February 2015 that CEAV published rules for registration (*Lineamientos para la transmisión de información al Registro Nacional de Víctimas*).[981] The deadline for the appointment of two outstanding CEAV commissioners was in November 2014, by which time the law required the executive to submit to the Senate a shortlist of six candidates.[982] As of March 2016, this had still not been done.[983]

One commissioner attributed CEAV's slow start to a lack of funding resulting from inattention by the Ministry of Finance.[984] Meager appropriations may be one cause, but when another commissioner resigned in January 2015, he blamed a lack of internal regulation for arbitrary spending decisions. As a result, commissioners receive high pay and undertake expensive trips, leaving scant resources available for provision of assistance.[985]

Very few people have become eligible for assistance. CEAV has limited the number of victims it assists in two main ways. First, at a plenary session in August 2014, CEAV decided to refuse to register victims in states that have not yet established victims' laws, commissions, and registries of their own, though federal registration in such cases is possible under the law.[986] This effectively punishes victims for living in states where their local authorities are also failing them,[987] as is the case in most states. By January 2016 only ten states had created a local victims commission completely aligned with the federal commission, but not one of them had a budget sufficient for full implementation of the general law.[988]

Second, it is not clear to what extent CEAV has focused on registering victims of state perpetrators in the National Registry of Victims,[989] although the law requires CEAV to register victims of human rights violations as well as victims of crime.[990] The law provides expansive definitions of the terms "victim" and "human rights violation," making narrow interpretations untenable.[991] When pressed on the issue in relation to enforced disappearances in February 2015, CEAV Commissioner Julio Hernández Barros explained that indeed some victims of human rights abuses were receiving assistance "in accordance with the principle of good faith," and that "the objective was not to establish whether or not a person had been subjected to enforced disappearance but rather to provide victims with support and protection."[992] Indeed while "good faith" is a principle for some assistance that can be provided under the Victims' Law,[993] Hernández admitted that it would not suffice to obtain monetary assistance, for which one would have to be registered.[994]

De-emphasizing the victims of human rights violations also aligns with the Peña Nieto government's rhetoric of denying and downplaying the incidence of atrocity crime, especially when committed by state agents.[995] And it has not been the only indication of CEAV actions echoing government policy, which can perhaps be seen most starkly in the area of enforced disappearances. The Victims' Law requires a CEAV committee on disappearance (*Comité de personas desaparecidas, no localizadas, ausentes o extraviadas*) to oversee compliance with the rights of disappearance victims.[996] But as of January 2015, it had not issued documents, drafts, or regulations on the issue, nor carried out any action to ensure compliance with relevant legal provisions on disappearance victims,[997] and only became active on disappearances later that year. The head of CEAV's disappearances committee attended the first review of the UN Committee on Enforced Disappearance to Mexico in Geneva in February 2015 not as representatives of an autonomous body, but as part of the Mexican government delegation.[998] In March 2015, when the committee did issue a draft law on disappeared persons,[999] it did so without consulting victims and despite victims' express request to refrain from creating a parallel process for drafting legislation.[1000]

Reflecting a divergence of views within the commission, CEAV's committee on torture has shown impressive initiative, developing a range of substantive documents, including a draft general law on torture, a comparative chart on torture legislation in all states, a chart on the rights of torture victims, and policy

documents on reparations.[1001] But unless torture victims can register with CEAV in accordance with international standards, the utility of these efforts will be limited. Further, even though the first-ever case in which CEAV paid out reparations was in a 2011 case involving torture by Navy officials,[1002] CEAV provided the reparations for non-torture-related violations, apparently contorting itself to avoid any recognition of torture.[1003] By acting at all only after a formal judicial finding, which is not required under the Victims' Law, and seemingly setting aside the principle of "good faith" with regard to serious allegations of torture, CEAV's action fit neatly with the government's insistence that torture in Mexico is not "widespread."

CEAV's politicization is not only discernable from its reluctance to serve the victims of atrocity crimes. Some officials who joined CEAV out of a genuine desire to make it an important vehicle for addressing the needs of victims—including the victims of human rights abuse and atrocity crime—have decried political influence and left. Commissioner Carlos Ríos Espinosa actively pushed for the registration of victims of internal displacement; fought the CEAV decision to refuse registration of victims from states failing to pass and implement their own victims' laws; and fought the formulation of criteria that prevented the registration of victims of human rights abuses.[1004] Ríos resigned from CEAV in January 2015, calling for a complete overhaul of a body that had been a "disservice to users," including through a lack of guarantees for its independence and the "arbitrariness and inconsistency of its decisions."[1005] Two months later, CEAV General Director Silvano Cantú also resigned. Cantú, one of the principal authors of the Victims' Law, said CEAV was failing to act as designed due to its "illusory autonomy" in the face of "government constraints and political interference"; CEAV was "politically correct" with the government, while viewing victims as "a political enemy."[1006]

Exploiting Systemic Complexity

Mexico is a large, federal state with a mobile population, and in the midst of a sweeping transition to the adversarial system and adoption of a new criminal procedure code. When pressed on why institutions have not performed better in delivering justice for atrocity crimes, authorities have been quick to point to the nature of the federal system.[1007] Yet there are indications that authorities have exploited this to mask an underlying reluctance to investigate and prosecute.

Federal-State Complexity

Mexico's states and the Federal District have broad authority to pursue criminal prosecutions, but opportunities for federal intervention increased with the sweeping justice sector reform of 2008. Federal courts may now try some non-federal offences, including those against national security, human rights or freedom of expression, which, by virtue of the way they were committed or their social significance, are deemed too important for local courts.[1008]

By general rule, authorities of the 32 federal entities have jurisdiction over killings. However, federal prosecutors have jurisdiction over killings perpetrated by federal

ZAPOTENGO DISAPPEARANCES

Ten men from the municipalities of Zapotengo and Pochutla, in the southern state of Oaxaca, had plans to start an eco-tourism business and needed cheap vehicles.[1009] Through an acquaintance they made contact with a seller at the other end of the country. In July 2010, the ten took a bus north to Matamoros, Tamaulipas, and shortly after arrival, a few contacted their wives. None have been heard from since.

Several of the wives went to Matamoros themselves within a week and gathered some information in the face of intimidation from organized crime and prosecutors who attempted to persuade them to go back to Oaxaca. Investigative measures by the state have dragged out for years, with Oaxaca prosecutors pointing to the responsibility of Tamaulipas prosecutors and Tamaulipas prosecutors not opening an investigation until two years after the disappearance because they said Oaxaca prosecutors had jurisdiction.

Federal actions have been equally confused. The first involvement came in March 2011, eight months after the disappearances, when the PGR indicated that the disappeared men were being detained in Morelos state; although relevant PGR documents exist, the regional office insisted a year after the disappearances that the men had never been detained or subjected to *arraigo*. On the same day in July 2011, the PGR's unit on organized crime, SEIDO, informed the family of one disappeared man of a supposed positive DNA match with a corpse found in a San Fernando mass grave and told the relatives to take the remains. Distrustful of the authorities by that point, they refused the offer without an additional test. The results were still pending as of January 2016, almost five years later.

public officers, or in which the victim is an on-duty federal public officer.[1010] Killings of civilians or local public officers by members of organized crime do not fall under federal jurisdiction, unless federal authorities actively assert jurisdiction by citing a connection to organized crime or a federal case.[1011] The expansive list of crimes included in the law on organized crime does not include homicide.[1012] This additional question mark hanging over the ability of federal prosecutors to assert jurisdiction over many killings means that successful prosecutions depend to a great extent on the will and ability of local prosecutors.[1013]

With regard to disappearances, hurdles to investigating arise in part because the federal government has one definition of the crime, while some states lack definitions or have different ones.[1014] If state or federal authorities are reluctant or negligent in establishing pertinent facts, that can make it harder for authorities to assert jurisdiction over an investigation, and purse an indictment. There are no clear protocols for transferring cases, or conducting joint federal-state investigations, leaving victims frustrated. In Coahuila, for example, while authorities claim that they have good communication with the federal government,[1015] victims say that

federal and state authorities are routinely unaware of the other's investigation; among other consequences, families have had to endure multiple DNA tests.[1016] In Guerrero, the belated launch of a federal investigation into the Ayotzinapa killings and disappearances of September 2014 allowed contradictory investigations and conclusions, and left unclear whether or how much evidence gathered by state prosecutors was used in the federal investigation; communications about the case relied on informal communications, including via WhatsApp, and opportunities for formal federal-state collaboration were not explored.[1017]

Even where the federal government has a clear basis to immediately assert jurisdiction over atrocity crimes, it has often failed to do so. This was the case not only with the Ayotzinapa disappearance investigation, but many others. For example, with regard to a disappearance case in Coahuila in 2009, which according to witnesses was perpetrated by the Army, the PGR refused to assert jurisdiction while also denying that the Army participated, without explaining its position.[1018] The May 2015 killing of 42 people at Tanhuato, Michoacán involved Federal Police, alleged human rights abuses, and allegations of organized crime.[1019] Any one of these characteristics provided grounds for the immediate assertion of federal jurisdiction, but the PGR did not take up the case until three months later.[1020]

Complexity within the Attorney General's Office

The PGR, Mexico's Attorney General's Office, is unduly bureaucratic and opaque. Beyond the federal-state relationship, and the federal government's prolonged reluctance to relinquish military jurisdiction over atrocity crimes committed by the military,[1021] the organizational complexity of the PGR has created further warrens of confusion and opportunities for obstruction.[1022]

For example, at least five different offices may intervene in the investigation of enforced disappearances: Specialized Investigation Units within the Deputy Attorney General's Office for Special Investigation into Organized Crime (SEIDO); the Specialized Prosecution for the search of disappeared persons of the Deputy Attorney General's Office for Human Rights, Crime Prevention and Community Services; the Unit for the Investigation of Crimes for Migrants in the Deputy Attorney General's Office for Human Rights, Crime Prevention, and Community Services; the Specialized Investigation Unit for Crimes committed by Federal Public Servants and against the Administration of Justice of the Deputy Attorney General's Office for Federal Crimes; and the General Direction of Crimes committed by PGR's Public Servants of the PGR of the General Inspection (*Visitaduría General*). Similarly, from November 2013, there were three divisions within the latter two units that had jurisdiction to conduct torture investigations;[1023] although this changed in 2015 with consolidation of jurisdiction within a single office.[1024] And killings may also be handled by different units. If federal or PGR officials were involved, it might go to the latter two units. If there is a link to organized crime, it could go to SEIDO. If women were victims, it might be treated as a case of femicide and handled by FEVIMTRA. A case with a mix of these attributes can cause confusion about which section handles it.

The PGR lacks clear internal, updated rules for the determination of competence among its various offices (or, if such rules do exist, they are not publicly available or made known to victims.)[1025] As a matter of law, the Deputy Attorney General's Office for Legal Matters and International Issues has the authority to resolve internal PGR disputes over the application of the organic law.[1026] In practice, when it comes to enforced disappearance cases, SEIDO has "preferential jurisdiction" over other PGR units, and usually succeeds in taking cases it wants.[1027] Ultimately, the attorney general holds the discretion to decide.[1028]

Whichever unit or division does succeed in taking a case, it must also liaise with the Agency for Criminal Investigation (*Agencia de Investigación Criminal*), within which sit the Federal Investigative Police, the General Coordination of Expert Witness Services (*Coordinación General de Servicios Periciales*), and the National Center for Planning, Analysis and Information to Fight against Crime (*Centro Nacional de Planeación, Análisis e Información para el Combate a la Delincuencia*).[1029]

Finally, the Interior Ministry (SEGOB) has been a wild card in some investigations of atrocity crime.[1030] In at least one case of alleged extrajudicial killing by members of the military, a senior SEGOB official resisted the case's appropriate transfer to civilian prosecutors in accordance with the law.[1031] And senior PGR officials have said that SEGOB is trying to take over all disappearance investigations from the Specialized Unit for the Search of the Disappeared.[1032]

Inadequate Coordination Mechanisms

Senior PGR officials have acknowledged that there are deep problems in the coordination of cases between state and federal levels, and within their own organization that have led to a duplication of functions and lack of communication; these have impeded prosecutions, including for torture and disappearances.[1033] Various reforms and mechanisms have been launched to try to address the problems, but with little success.

Both the Calderón and Peña Nieto governments have promoted the notion that unifying police commands at state and/or federal level, the *mando unico*, would be one way to improve the coordination of investigation of crime, as well as address problems of corruption in municipal policing.[1034] However, some justice system experts say that in federal entities that have formally adopted a unified command, there have not been improvements in the coordination of investigations.[1035]

Official Resistance to Reform

When questioned about why it took ten days for the PGR to open an investigation into the Ayotzinapa student disappearances of September 2014, former federal Attorney General Murillo Karam argued that federal authorities could not intervene until Guerrero state prosecutors officially transferred jurisdiction over the case.[1036] However, information on Iguala Mayor José Luis Abarca's alleged ties to organized crime had been public since at least 2013,[1037] and leaked information from the

PGR revealed that SEIDO had been investigating Abarca for ties to organized crime since at least April 2014.[1038] Guerrero's preliminary examination into the disappearances contained information on the roles of officials from the Army, Navy, and Federal Police, including their intimidation of victims.[1039] But the PGR's preliminary results (which it tried to declare final) mentioned none of this.[1040]

There have been many other instances where officials have cited systemic complexity as an apparent pretext for their reluctance to prosecute. Thus, military officials—at times with the connivance of SEGOB and PGR officials—have couched in formalistic procedural terms their active resistance to international and Supreme Court decisions ending military jurisdiction over human rights abuses committed by Army and Navy personnel.[1041] Even when the military grudgingly relinquishes control of a case, it cites formalities in refusing to share its files and the investigation must be restarted from the beginning. In the groundbreaking case of Valentina Rosendo Cantú and Inés Fernández Ortega, such foot-dragging contributed to a delay of 11 years between their rape by soldiers and the issuance of indictments. (See text box, "Achieving Arrests in a Case of Rape and Torture by the Military," above.) Human Rights Watch has documented multiple disappearance cases in which "federal and state prosecutors take advantage of [a] dilution of responsibility and the ambiguities regarding jurisdiction to preemptively decline to investigate cases, transferring them instead to counterparts."[1042] In the years since a Mexican and a Finnish activist were murdered in Oaxaca for apparently political reasons in 2010, federal and state prosecutors have engaged in mutual finger-pointing over which jurisdiction is responsible.[1043] Similarly, in the case of the San Fernando, Tamaulipas mass graves,[1044] PGR and state prosecutors have arbitrarily divided jurisdiction over the victims, with the PGR investigating the deaths of 120 and Tamaulipas state prosecutors those of 72.[1045]

In Coahuila, where families of the disappeared have had some success in engaging the government, federal authorities eventually dropped out of meetings among families, civil society, and state political and prosecution officials; PGR and SEGOB officials also refused to follow through on previous agreements.[1046] Beyond Coahuila, prosecutors and other officials at the federal and state levels have resisted the creation of protocols to better coordinate investigations. In part, this is due to frequent mutual distrust between entities. Officials often believe that their counterparts are corrupt, complicit with organized crime, or simply arrogant.[1047] This reluctance only perpetuates corruption, collusion, and inefficiency. It also incubates the other fundamental plagues on the Mexican justice system: politicization and public distrust.

V. BUILDING ON A MIXED RECORD OF REFORM

MEXICO FACES ENORMOUS CHALLENGES IN DEVELOPING EFFECTIVE CRIMINAL JUSTICE FOR ATROCITY CRIMES ON A SCALE COMMENSURATE TO THE EXTENT OF ITS CRISIS. BUT THE SITUATION IS NOT HOPELESS. BECAUSE THE MAIN REASONS FOR THE PERVASIVE LACK OF JUSTICE FOR ATROCITY CRIMES ARE POLITICAL, MEXICO'S LEADERS HAVE IT WITHIN THEIR POWER TO SHIFT COURSE IN WAYS THAT WOULD MAKE A PROFOUND DIFFERENCE. EVEN IF ADDRESSING TECHNICAL AND CAPACITY SHORTCOMINGS WITHIN REFORMED INSTITUTIONS WILL TAKE TIME, A NEWFOUND POLITICAL COMMITMENT COULD MAKE RAPID, DEMONSTRABLE IMPROVEMENTS. STRONG POLITICAL LEADERSHIP COULD REDRESS SHORTCOMINGS IN THE LEGAL FRAMEWORK, REFORM INSTITUTIONS TO PROVIDE THEM WITH APPROPRIATE AUTONOMY, ENSURE PRINCIPLED EXECUTIVE APPOINTMENTS FOR KEY JUSTICE SECTOR POSITIONS, AND DEMONSTRATE CONSISTENT OPENNESS TO ACCOUNTABILITY AND CRITICISM FROM VICTIMS, CIVIL SOCIETY, AND INTERNATIONAL WATCHDOG AGENCIES OF THE INTER-AMERICAN SYSTEM AND UNITED NATIONS.

In recent years, Mexico has adopted a number of justice sector reforms, and is currently considering others, that hold potential for making important but limited improvements. Sustained reform requires healthy institutions that can drive the process, provide systemic accountability, and resist political pressure. Strong internal oversight mechanisms, a committed Congress, an independent judiciary, and a vigorous National Human Rights Commission should be critical drivers and guarantors of genuine justice for atrocity crimes in Mexico. This chapter examines the state of reform in a number of Mexican institutions, and their potential to form a more enduring foundation to address the country's crisis of atrocity and impunity.

CURRENT AND PROPOSED REFORMS

AT TIMES, USUALLY UNDER PRESSURE, the government has acknowledged shortcomings related to many of the obstacles to justice for atrocity crimes identified in this report. Partly as a result of that pressure—from groups of victims, human rights organizations, members of the bar, committed individuals in federal and state governments, and, increasingly, international organizations—a raft of reforms currently being introduced in the justice sector could herald new breakthroughs in addressing Mexico's crisis of atrocity and impunity. But these must be considered in light of Mexico's long history of perpetual institutional change. For at least 20 years, incoming presidents have proclaimed that their overhauls of policing will create more effective forces, and yet fundamental problems remain.[1048] With regard to justice for atrocity crimes, President Fox could point to his appointment of a special prosecutor to investigate Dirty War atrocities. President Calderón could point to the establishment of PROVÍCTIMA. And President Peña Nieto could point to the Victims' Law, a disappearances database, and a Specialized Unit for the Disappeared as markers of genuine commitment. Yet none of these initiatives have substantially held perpetrators to criminal account or provided a sense of justice to victims.[1049] The passage of new reforms and creation of new institutions have been used to defuse criticism in the past, with leaders claiming that the country was on the cusp of dealing with the problem. With this in mind, the following current and proposed reform proposals require close scrutiny.

New Criminal Justice System and Other Reforms on Torture

Extensive but slow-moving justice-sector reforms and jurisprudence from Mexico's Supreme Court of Justice may offer the best hope of curtailing the pervasive practice of torture-based criminal investigations. These provide new checks on the conduct of prosecutors and police, and, if properly implemented, should ensure that convictions can no longer rely on coerced confessions.

Constitutional amendments in 2008 set Mexico on a transition to an oral, adversarial system of justice, called the New Criminal Justice System (*Nuevo Sistema de Justicia Penal*—NSJP), and established a deadline of June 2016 for states to implement it.[1050] The broad reform includes new, formal safeguards against torture that complement those set forth in the Federal Torture Law.[1051] The NSJP establishes a right to access of defense counsel from the moment of detention, which the state is obligated to record immediately.[1052] It also renders confessions made in the absence of defense counsel inadmissible, as well as any evidence[1053] and procedural acts in violation of fundamental rights.[1054] Under the outgoing inquisitorial justice system, evidence collected it the investigatory phase (*averiguación previa*) can be introduced in the trial and has probative value.[1055] Under the NSJP, judges are empowered to exercise control in the collection of evidence during criminal investigations (*investigaciones*). Therefore, by general rule, the final judgment of a criminal trial cannot be based just on evidence gathered during the investigation or in prior stages of the trial.[1056] These reforms

offer important new tools for reducing the incidence of torture, but they will only be effective if their implementation is prioritized, tracked, made public, and regularly assessed with the participation of civil society and victims. The need to ensure proper implementation is underscored by the fact that in jurisdictions that were early to adopt the adversarial system, some courts have still accepted evidence obtained through torture.[1057]

In 2010, the UN Subcommittee on the Prevention of Torture observed that part of the problem could lie in criminal procedure law, which grants pre-eminence to statements of the accused to the prosecutor, providing strong incentive to use threats and torture to coerce confessions and extract information.[1058] The new unified National Code of Criminal Procedure for federal and state governments, adopted in March 2014 and scheduled to take effect in 2016 could help remedy this problem. Unlike the existing federal and state-level criminal procedural codes, the National Code does not explicitly regulate the procedural rules or probative value of the confession of a crime, leaving ample margin for judicial interpretation. If other legal safeguards are properly interpreted, the judiciary could have more leeway to reject coerced confessions. The new code also reiterates some defense rights and creates others. These include the right of suspects and accused persons to counsel from the moment of detention,[1059] the right of confidential communication with counsel,[1060] the right to know the reason for detention, the right to contact a family member, the right to a medical evaluation, and the right to be informed of all of legal rights.[1061] Furthermore, under the new code, the accused has the right not to be subject, at any time, to any method or technique that infringes dignity, or induces or alters free will.[1062]

Despite these positive elements, the National Criminal Procedure Code could have done more to prevent torture. For urgent cases related to serious crimes, prosecutors may still order detention of a person without judicial approval.[1063] Judges are obliged to report torture allegations to prosecutors and contribute to torture investigations,[1064] but investigations remain in the hands of prosecutors, under whose watch torture may be taking place, and there are no mechanisms that guarantee independent investigations. The code recognizes the fundamental role of forensic experts in criminal investigations and trials, but does nothing to enhance their autonomy.[1065] It also establishes no procedure for application of the existing exclusionary rule that bans evidence gained through torture; the lack of such a procedure has been an obstacle to implementation of the rule and a requirement that prosecutors report torture.[1066]

In July 2015, lawmakers amended the Constitution to provide Congress with the authority to adopt general laws[1067] on torture and enforced disappearance.[1068] The July 2015 amendment created a 180-day deadline for adoption of those laws, by January 2016.[1069] A unified definition of torture, applicable across Mexico, could be an important step in correcting legal deficiencies in existing definitions at the federal level and in many states—but only if the new definition meets international standards and provides rigorous, independent mechanisms for the independent investigation of torture allegations, including forensic investigations independent

of the Attorney General's Office,[1070] as well as adequate procedures for the exclusionary rule, sanctions for perpetrators reflecting the gravity of the crime, and remedies for victims.[1071]

In addition to legal reforms that may hold potential to reduce the incidence of torture and increase chances for its punishment, there have also been relevant protocols and regulations on the matter. In August 2015, the National Conference of Prosecutors approved the Unified Protocol for the Investigation of Torture (*Protocolo Homologado para la Investigación del Delito de Tortura*), which is binding for federal and local prosecutors across the country.[1072] And in October 2015, the PGR published an administrative regulation establishing procedures for the handling of torture cases by its officers, including forensic experts.[1073] These new guidelines supersede previous, ineffective regulations from 2003 and 2012.[1074] A further reform in October 2015 withdrew authority for the investigation of alleged torture from the Deputy Prosecutor for Human Rights, consolidating all torture investigations in a Specialized Unit for the Investigation of Torture, under the Deputy Prosecutor for the Investigation of Federal Crimes, except those involving allegations against PGR personnel.[1075] These changes do not address core shortcomings of the previous regulations: reliance on forensic services that remain prone to improper influence so long as they reside within the PGR—an office that has been extensively implicated in the perpetration of torture—and reliance on medical examinations as a sole method of investigating torture allegations.

The most promising reforms on torture have come from the federal judiciary, which has issued important rulings that have begun to breathe life into pre-existing safeguards against torture, and have shrunken the space in which torture can be committed. Between 2001 and 2015, the federal judiciary (Supreme Court of Justice and Collegiate Courts) issued over 30 judicial precedents on torture,[1076] including on the obligation of judges when the accused presented before them allege torture,[1077] Mexico's positive obligations under international law for the investigation of torture,[1078] the procedural consequences for a criminal trial with torture allegations or torture-tainted evidence,[1079] and sexual violence as a form of torture. In one landmark ruling on November 6, 2013, it ruled that any authority that receives torture allegations must refer the case to prosecutors, who shall conduct an independent, prompt, and impartial investigation into torture, regardless of the stage of the investigation or criminal trial.[1080] Then on March 18, 2015, the Supreme Court of Justice ordered the release of Alfonso Martín del Campo Dodd, who had been imprisoned for over 22 years for a double-murder, on the basis that the only evidence against him had been obtained through torture conducted by Mexico City police and prosecutors.[1081]

In two constitutional challenges (*acciones de inconstitucionalidad*) brought by the National Human Rights Commission, the Supreme Court of Justice narrowed the circumstances under which prolonged pretrial detention (*arraigo*) could be used.[1082] It ruled that states could no longer use *arraigo* because Article 16 of the Constitution only foresees its application in organized crime cases, which are under sole jurisdiction of federal authorities, thus rendering it no longer available

to authorities at state level. Because the greatest incidence of torture in Mexico (as in many other countries) occurs during pretrial detention, it can be expected that this ruling, if properly implemented, will reduce levels of torture in state jurisdictions.[1083] At the federal level, the practice of *arraigo* has continued, although at diminished rates in recent years,[1084] and could further diminish once the adversarial system enters into force in June 2016.[1085] The federal government has indicated that it intends to continue the practice of *arraigo*, at reduced levels.[1086]

Beyond jurisprudence, there is a new effort within the federal judiciary to keep detailed records of torture cases,[1087] but it remains to be seen how many judges will report torture, and whether the judiciary follows through on keeping reliable statistics. The Supreme Court of Justice recently issued a protocol for torture cases (a soft law instrument), addressed to federal judges.[1088]

These recent actions by the federal judiciary show one possible path forward for Mexico. But they also highlight that torture has persisted to the present despite previous acts of government that formally prohibited the practice and obligated its punishment.[1089] The prohibition is enshrined in the Constitution and in current (faulty) federal law;[1090] Mexico has ratified the UN Convention against Torture, the Inter-American Convention to Prevent and Punish Torture, the Optional Protocol to the UN Convention against Torture, and the Rome Statute of the International Criminal Court. It has twice committed to applying recommendations from its 2009 Universal Periodic Review by the UN Human Rights Council. If past is prologue, ending torture-based criminal investigations will require more than the approval of new promises, reforms, and vigilance from the country's highest courts, however critical and welcome these are. It will also need to extend beyond training programs to inform officials about their human rights obligations,[1091] although these, too, are important. Rather, removing the malignancy of torture from Mexico's criminal justice system will require a commitment from police, prosecutors, and trial judges that can only be forthcoming on a comprehensive basis if the country's political leaders embrace the limits established by the new adversarial system and demand an end to the practice once and for all.

New Initiatives on Disappearances

The July 2015 constitutional amendment paving the way for a general law on torture also mandated Congress to adopt a general law on enforced disappearance by January 2016 that would be applicable at federal level and in every state. The amendment offered important opportunities to address shortcomings in the legal definition of enforced disappearance under federal law, rectify deficiencies in the definitions in the laws of the states and Federal District (or, in some, define the crime for the first time),[1092] increase coherence in the collection and organization of data on disappearances, properly investigate and prosecute them, coordinate on data and investigations across jurisdictions, and provide support to families and reparations to victims. However, as the Interior Ministry (SEGOB) took charge of the drafting process, civil society organizations and families of the disappeared protested that they were not being consulted on the content,[1093] a concern echoed

by the Mexico office of the UN Office of the High Commissioner for Human Rights.[1094] In this context, President Peña Nieto submitted SEGOB's draft *General Law to Prevent and Punish the Crime of Disappearance* to Congress on December 10, 2015.[1095] As of March 2016, the bill was still being debated in Congress.

In February 2015, Mexico informed the UN Committee on Enforced Disappearances that the National Council for Public Security would develop a standard protocol for the investigation of enforced disappearance[1096] and collaboration with an unnamed "international organization" for technical assistance on emblematic disappearance cases in order to define potential lines of investigation; these informed the development of a unified protocol for the investigation of disappearances approved in September 2015.[1097] It remains to be seen how this protocol will be reconciled with the general law on disappearances.

In October 2015, the Unit Specialized in the Search of the Disappeared was replaced by the "Specialized Prosecution for the Search of Disappeared Persons" (*Fiscalía Especializada de Búsqueda de Personas Desaparecidas*),[1098] but as of March 2016 no one had been named to lead the new office. Another new unit within the PGR, created in December 2015, will have responsibility for crimes perpetrated against and by migrants (*Unidad de Investigación de Delitos para Personas Migrantes*); this could include jurisdiction over the enforced disappearance of migrants.[1099]

Promise of the Fiscalía?

In September 2014, President Peña Nieto spoke frankly of the "politicized justice" of the PGR in the context of its service as an "organ [...] of executive power," which had caused "distrust" and "a perception that law enforcement is used to suppress political opponents and dissidents."[1100] He made these remarks as he presented the Chamber of Deputies with a bill to replace the PGR with an autonomous "Fiscalía" (*Fiscalía General de la República*, FGR). Both chambers of Congress had already taken initial steps to create a Fiscalía by adopting prerequisite constitutional amendments in December 2013.[1101]

Under the bill, the Fiscalía would be an autonomous constitutional organ outside the executive, with budgetary independence.[1102] The president would still appoint the attorney general, but from a slate of ten candidates approved by the Senate. The president would only be able to remove the attorney general for "grave causes as established by law," and that decision could be overturned by the Senate. The attorney general would also have a nine-year term, ending alignment with the president's six-year term (*sexenio*). As of March 2016, the bill had passed the Chamber of Deputies but still required approval of the Senate. It would take effect at the end of Peña Nieto's term in 2018.[1103] However, under the transitional provisions of the constitutional amendments paving the way for a Fiscalía, President Peña Nieto's appointee for attorney general would become the first *Fiscal*, with a new, nine-year term—so that the first use of the new appointment process would be in 2027.

The transition of the PGR to the FGR has some potential to eventually weaken prosecutors' incentives to align their actions with political interests. This could enhance willingness to prosecute atrocity crimes, especially those committed by state actors. However, it also creates an immensely powerful institution that will need strong checks to resist the temptations of corruption, collusion, and bias. The substantial risk that forensic evidence and protected witnesses will be manipulated to undermine investigations and prosecutions—or support flawed ones—will persist as long as those responsibilities remain within the FGR. This issue must be addressed if the costly transition to the FGR is to advance true accountability in Mexico, rather than join a long list of symbolic and failed reforms.[1104]

Independent Forensics and Witness Protection

The Mexican government has resisted repeated calls to address the politicization of forensic services. Civil society organizations have made this recommendation at least since 2008.[1105] More recently, the importance of autonomous forensic services has been recommended by the UN Special Rapporteur on Torture[1106] the UN Special Rapporteur on Extrajudicial Killings,[1107] and the Inter-American Group of Independent Experts examining the botched federal investigation into the Ayotzinapa disappearances.[1108]

In response to the recommendation from the UN Special Rapporteur on Extrajudicial Killings, Mexico responded that it was working to standardize forensic practices across the country, organize them at regional level, and implement national control over forensic identifications. Its response remained silent on the question of institutional autonomy.[1109] The PGR recently implemented legal changes mandating that forensic services be incorporated within the Criminal Investigation Agency (*Agencia de Investigacion Criminal*, AIC), making the head of the forensics unit subordinate to the AIC chief instead of directly to the attorney general.[1110] This would unlikely have any impact on the ability of forensic experts to conduct their work with adequate autonomy.

Opposition parties in the Senate proposed two bills on independent forensic services in September 2015. One, put forward by PRD senators, would amend the Constitution to allow the creation of autonomous expert and forensic service offices at the federal level and in the 32 federal entities, and a coordination mechanism among them. Implementation in the states and Federal District would require appropriate legislation.[1111] The second proposal, from a group of PAN senators, would amend the Constitution to allow creation of a single autonomous expert and forensic institute to serve federal and local jurisdictions, and set deadlines for the adoption of secondary legislation.[1112] The PAN likewise included the creation of a proposed National Forensic Science Institute in a broader justice reform bill presented in November 2015.[1113] As of January 2016, it was not clear that there had been any debate on the proposals.

With regard to witness protection, as of February 2016, the Open Society Justice Initiative was not aware of any proposals to make the Center for Witness

Protection autonomous from the PGR, or create missing mechanisms for accountability and safeguards for the protection of operational information. Until addressed, these shortcomings will continue to create space for the improper manipulation of investigations and prosecutions.

Police Reform

Deep reforms are needed to policing in Mexico if police abuses are to be curtailed and police capacities to professionally investigate crimes are to be strengthened. There needs to be a focus on police selection, accountability, and training.[1114]

However, much current debate on police reform has revolved around proposals to unify police forces or their commands at state level (*mando único*), as foreseen in the 2012 Pacto por Mexico,[1115] and it is far from clear that doing so would enhance police professionalism in ways that could also improve their ability to advance accountability for atrocity crimes.[1116] Following the September 2014 Ayotzinapa disappearances, the Peña Nieto administration submitted a proposed constitutional reform to Congress that would have placed all municipal police forces into 32 state police forces.[1117] The proposal was controversial because it would strengthen the power of governors at the expense of municipal officials. The administration appeared to be quietly backing away from the proposal in 2015, with officials saying new emphasis should be placed on the quality of municipal police forces,[1118] but in early 2016 was pressing again for passage of the bill.[1119] Governors and representatives of the opposition PRD party each proposed alternate models for more unified police commands.[1120]

There have been no major proposals to reduce the militarized nature of the federal police force and structure forces more appropriately to undertake investigations. To the contrary, the ruling party has sought to further entrench the role of the military itself in domestic policing, arguing that there is need for a law that "provides legal certainty to armed forces when they carry out public security tasks."[1121]

A justice reform bill announced by the opposition PAN party in November 2015, however, did propose a number of reforms to the justice sector, including the creation of a National Public Safety Institute (INSP) that would be vested with the authority to create national policing standards; certify law enforcement agencies at federal, state, and municipal level; intervene in poorly functioning forces; or dissolve forces that continued to fail in meeting standards. Further, the bill would create a civil service law for police and other justice sector officials, and remove governors' veto over decisions on police structures by eliminating the National Public Safety Council.[1122] If this or similar proposals could reduce abuse and corruption within police forces and hold them more accountable for their performance, this could provide a firmer basis for developing investigation units skilled in the investigation of complex crimes, including atrocity crimes.

ACCOUNTABILITY MECHANISMS

REFORM OF LAWS AND INSTITUTIONS to enable the proper investigation and prosecution of atrocity crimes is necessary, but insufficient if there is inadequate accountability for the institutions tasked with conducting those investigations and prosecutions. And ensuring accountability for prosecutors is difficult, especially if they are obstructing genuine investigations and prosecutions through acts of omission. Shortcomings in staff capacity or institutional procedure explain only so much, and trainings or technocratic reforms will have limited impact unless reforms address the underlying incentive structure that leads prosecution officials to respond to political impulses. At the same time, PGR officials face real technical and structural challenges for which various forms of capacity building and technical reform may well be the answer.

International standards and best practices offer some guidance on means to enhance prosecutorial accountability. According to guidelines from the Organization for Economic Cooperation and Development (OECD), prosecutorial accountability relies on six main elements of effective criminal justice oversight: executive control (although, as discussed below, this can be a source of problems), internal oversight, parliamentary oversight, judicial review and inspections, independent bodies such as human rights commissions, and civil society.[1123] The International Association of Prosecutors points to the importance of public accountability. This can be strengthened through transparency, including public reports on prosecution standards and performance, as well as consultations with crime victims as an important means of increasing transparency and building public confidence.[1124] Beyond consultations, one of the best hopes for prosecutorial accountability lies in taking further actions to allow appropriate victim participation in the process.[1125]

In the Mexican context, executive control of prosecutorial actions has been one of the main problems. This could change if national leaders prioritized justice for atrocity crimes instead of downplaying the extent of their existence, appointed individuals with proven dedication to using professional means for achieving justice, and supported reforms to make justice institutions more autonomous and professional. It could also be mitigated by requiring that any direction or instruction given to a prosecutor by another entity be done transparently, and with respect for the law and guidelines on prosecutorial independence.[1126] As discussed below, the remaining five OECD options for effective criminal justice oversight for ensuring accountability for the performance of Mexico's prosecutors to provide justice for atrocity crimes have underperformed, don't exist, or have been undermined and attacked.

Internal Oversight

According to UN Guidelines on the Role of Prosecutors (a soft law instrument) states should ensure that there are effective procedures in place to process

complaints against prosecutors in an expeditious and fair manner. Independent proceedings should evaluate prosecutors' actions against the law, codes of conduct, other relevant ethical standards, and the UN Guidelines themselves.[1127] The body investigating breaches of law and other standards should be separate from the body adjudicating the outcome of such investigations. International best practices suggest that, for prosecutors, the adjudicating body should be the judiciary or legislative branch.[1128]

The PGR has a General Inspector's Office (*Visitaduría General*), with a mandate to supervise, inspect, monitor, and control prosecution agents, the investigative police, official forensic experts, and all other public servants of the PGR.[1129] Through its General Direction of Crimes Perpetrated by Public Servants of the Prosecution (*Dirección General de Delitos Cometidos por Servidores Públicos de la Institución*), it investigates irregularities in the performance of PGR employees, including atrocity crimes.[1130] There are also other mechanisms of internal oversight relevant to justice for atrocity crimes. Among these are a committee and advisory body established to oversee the PGR's performance of medical examinations related to allegations of torture; but both entities have been inactive, opaque, and apparently composed without participation of outside experts, as required by the regulation creating them.[1131] Shortly after Attorney General Arely Gómez González took office in March 2015, the PGR announced the creation of a new "Unit of Ethics and Human Rights in Prosecution" (*Unidad de Ética y Derechos Humanos en la Procuración de Justicia*), which would answer to the deputy prosecutor of human rights.[1132] It is charged with supervising all PGR offices' compliance with the PGR code of ethics and all regulations on human rights. The regulation does not explain the new body's relationship to the General Inspector's Office. As the head of the unit is also appointed and dismissed by the attorney general, its margin for independence may also be limited.

Accountability for prosecution decisions not to prosecute can be enhanced by requiring prosecutors to provide written justifications for not investigating or prosecuting a case, with those reasons subject to potential judicial review and/or public oversight; accountability is further strengthened through transparency about the use of appeals mechanisms.[1133] In Mexico, victims of crimes may challenge federal prosecutors' decisions not to prosecute, administratively at the PGR, and ultimately by filing an *amparo* constitutional complaint.[1134] However there is no data available on how often these mechanisms have been used, or what the outcomes have been.

Congress

The legislative branch can give prosecutors the substantive and procedural tools they need to investigate and prosecute atrocity crimes, and create structures that enhance prosecutorial accountability. As new reform initiatives emerge, including those discussed above, the mixed record of reforms in Congress raises some concern.

Congress has a long history of failing to define international crimes in domestic law.[1135] Proposals to domesticate Rome Statute crimes failed in 2008[1136] and again in

2012.[1137] With regard to enforced disappearance, proposals to amend the definition of the crime failed when presented to the Senate by President Calderón in October 2010,[1138] and again when presented by President Peña Nieto in October 2013.[1139] Congress passed a law on torture in 1991, and amended it in 1992 and 1994, but its definition of the crime still falls short of international standards.[1140] The Pact for Mexico of 2012 promised the creation of a unified criminal code (in addition to the unified National Criminal Procedure Code), which would ensure crimes were defined the same way in all Mexican jurisdictions, but Congress has not taken it up.[1141]

Congress has made progress in creating greater coherence in criminal procedure, and aligning it more with Mexico's international obligations. It passed sweeping constitutional amendments in 2008 to create the New Criminal Justice System (discussed above), which creates new safeguards against torture as Mexico transitions from a largely inquisitorial to an adversarial system of justice. Constitutional amendments passed in 2011 raised treaty-based human rights protections to the status of constitutional law and created important new avenues for citizens to file constitutional challenges (*amparos*) in defense of their rights. In February 2014, Congress adopted a unified criminal procedure code that will be applicable to all jurisdictions in the country from June 18, 2016 at the latest. Even if some elements of the new code are problematic, the simple fact of having a unified code should have important benefits for coordination, cooperation, predictability, and thus public trust. In 2014, Congress ended military jurisdiction over human rights violations perpetrated by the military against civilians, but only after great delay, and without fully complying with international law standards.[1142] Finally, legislation on cooperation with the International Criminal Court has languished in Congress since 2006, and a constitutional provision remains in place, making ICC cooperation contingent on case-by-case approval of the executive and the Senate; that provision is clearly at odds with the Rome Statute.[1143]

Congress's performance in passing legislation to create (or reform) institutions with adequate autonomy and mechanisms of accountability has been mixed. While the Chamber of Deputies has passed a bill to create a more autonomous Fiscalía, it failed to address the independence of forensics and witness protection services from the Attorney General's Office. Congress passed important legislation to create the National Human Rights Commission (CNDH) in 1990 and strengthen its mandate to investigate grave human rights violations in 2011.[1144] Despite its many deficiencies, discussed below, the CNDH has enhanced external checks on investigations and prosecutions, and has often been responsible for prompting such investigations in the first place.[1145] Further, by establishing in constitutional and statutory law one of the most progressive right-to-information regimes in the world, Congress has enabled some insight into the performance of police, prosecutors, and other justice sector actors.[1146]

Directly and indirectly, both chambers of Congress play a critical role in ensuring adequate checks on the performance of prosecutors by scrutinizing executive appointments to key justice sector positions including those to the judiciary. Their recent performance in this regard has been troubling, as best exemplified by the

March 2015 Senate confirmation of Eduardo Medina Mora to fill a vacancy on the Supreme Court; Medina Mora has been heavily criticized for involvement in human rights abuses while serving in the Fox and Calderón administrations.[1147] The Senate also has responsibility for making appointments to the Federal Judicial Council.[1148]

Judiciary

The judiciary plays a critical role—enhanced under the incoming adversarial justice system—in holding prosecutors accountable for the quality of the cases they present in court, and also in ensuring that they have lawfully conducted each prosecution. Fulfilling these roles requires independence and appropriate accountability mechanisms within the judiciary itself.

The federal judiciary's track record in acting as a check on prosecutions is uneven. Mexico's Supreme Court has made numerous rulings over the years that strengthen defense rights. This has begun to alter the incentives of prosecutors and police investigators, and over time, could lead to more professionalism in investigations and prosecutions. It has made rulings and issued guidance to judges that should help reduce the incidence of torture and spur greater accountability for torture (discussed above), and it played an important, if belated and incomplete, role in reining in military jurisdiction over Army and Navy human rights abuses.[1149] In recent years it has made rulings important to the provision of access to information on atrocity crimes and to enhancing state financial liability for human rights abuses.[1150]

Federal and state level trial judges have been largely untested in the handling of atrocity crimes because prosecutors have brought so few cases before them, especially against suspected state perpetrators. Judges' greatest intersection with atrocity crimes has been in the area of torture, not because prosecutors are prosecuting cases of torture, but because so many defendants who appear in court have been tortured, often as part of the "investigation." The Federal Judicial Council, which is mandated to supervise the judiciary, has no record of how often federal judges have ordered prosecutors to investigate torture,[1151] but this may be changing, as discussed above.

National Human Rights Commission

The National Human Rights Commission (*Comisión Nacional de Derechos Humanos*, CNDH) has been one of the most important sources of information on specific incidents of atrocity crime, and in doing so has been a force for greater prosecutorial accountability. However, a weak mandate and underperformance have limited its positive influence.

The government of Mexico established the CNDH in 1990 as a public, autonomous organ with a mandate to document human rights violations committed by federal authorities other than those belonging to the judicial branch.[1152] In 1999, a constitutional reform enhanced the CNDH's independence from the government.

The Senate appoints its ten commissioners and president. The CNDH has competence to receive complaints and investigate the following type of human rights violations:

a) acts or omissions that violate human rights; illicit acts, especially those affecting physical integrity of individuals, committed with the tolerance, aid or abetting of a public official, or when officials refuse to act upon such illicit acts, or;

b) omissions or inactivity by local human rights commission, or the failure of authorities to meet the recommendations of local commissions.

The CNDH can launch investigations *ex officio*, or upon receiving individual victim claims. It may then investigate, request further information from the authorities and issue reports (*informes*) containing non-binding recommendations.

In an assessment conducted in 2008, Human Rights Watch concluded that the CNDH fell well short in implementing its mandate, including by failing to follow through on its recommendations.[1153] An academic study more narrowly focused on CNDH complaints against the PGR conducted in 2010 came to similar conclusions.[1154] The report identified several CNDH failings, including a failure to maintain contact with the victims following the receipt of complaints, and failure to make adequate use of its investigative authority. Specifically with regard to CNDH investigations of alleged torture, the report found that the CNDH failed to follow the Istanbul Protocol.

Following such criticism, lawmakers amended the Constitution in 2011 in order to strengthen the CNDH.[1155] The reforms extended authority to initiate CNDH investigations to the president, Senate, House of Representatives, governors, state legislatures, and the head of government in the Federal District. Further, the reforms gave more weight to CNDH recommendations. Whereas before the CNDH could only issue "non-binding public recommendations (*no vinculatorias*) and denunciations and complaints before the respective authorities,"[1156] now all public authorities must answer CNDH recommendations, and are obligated to provide reasons for refusal to comply with recommendations if called for testimony before the Senate or state legislatures. The commission has also developed a capacity to conduct the Istanbul Protocol in cases of alleged torture and ill-treatment, and can also carry out the procedure at the request of those state human rights commissions unable to do so themselves.[1157]

Despite these reforms, critics cite deficiencies in the work of the CNDH, largely due to its still weak mandate and authority. While state authorities must answer to CNDH's recommendations, the Constitution provides for the opportunity for the public authority to reject the recommendation as long as the rejection is publicly pronounced. The Constitution provides that the only mechanism for responding to such a rejection is the possibility for the Senate to call the public authority to testify about the reasons for its rejection of the recommendation.[1158]

Despite significant resources and a clear mandate to issue recommendations, the CNDH has consistently issued a surprisingly small number of recommendations each year. In 2008 the CNDH issued recommendations in one percent of complaints it received about human rights violations by members of the armed forces.[1159] From 2006 through 2014, the CNDH issued recommendations in response to under three percent of enforced disappearance complaints it received.[1160] Over the same period it made recommendations in 21 percent of complaints received regarding extrajudicial killing, deprivation of life, and violations of the right to life.[1161] It seemingly did better with regard to torture, making recommendations regarding nearly half of torture complaints it received from 2006 through 2014.[1162] These figures may understate the problem. There are indications that the CNDH has artificially repressed the number of complaints of torture by wrongly categorizing facts as lesser violations.[1163] Compared to the 143 complaints it classified as torture from 2006 through 2014, it classified 9,074 complaints as cruel, inhuman or degrading treatment.[1164]

Further, many complaints of atrocity never result in recommendations that could help prompt criminal investigations by the PGR or reparations claims before the Victims' Commission (CEAV) because a large number of them are resolved through a conciliation process.[1165] The terms of these conciliations are not disclosed.

In 2011, Human Rights Watch reported that in several cases, the CNDH had refused to investigate allegations of state involvement in abuses, and instead referred complaints to civilian and military authorities.[1166] In Guerrero, where state and federal inmates are comingled across 15 state prisons with a reputation for violence and rampant disregard of international standards, the presence of federal inmates gives the CNDH a mandate to inspect all of the facilities.[1167] Yet human rights advocates say that such inspections are of little use because the CNDH gives prison authorities advance notice of inspection visits.[1168]

In January 2014, an NGO called Foundation for Justice and Democratic Rule of Law filed a legal complaint (*amparo*) against the CNDH itself for violating human rights. The organization claimed that the CNDH failed to properly investigate atrocities, including by failing to collect testimony from the families of the 72 migrants killed in August 2010 and whose bodies were subsequently found in the San Fernando mass grave in Tamaulipas. Further, the organization faulted the CNDH for its recommendations, including a failure to classify the case as a "grave violation of human rights," or issue a clear statement about the state's obligation to prevent such atrocities, and investigate and prosecute the perpetrators.[1169]

Even when the CNDH does issue recommendations, it has faced criticism for a lack of adequate follow-up.[1170] Others have also observed that despite an increasing number of complaints to the Commission about atrocity crimes, when there are recommendations, most of these focus on administrative and policy remedies rather than recommendations for investigation and prosecution.[1171] Amnesty International has observed that the CNDH's broad pursuit of conciliation agreements is linked to its frequent downgrading of the seriousness of the abuses at issue.

> **Given the tendency to deal with allegations of torture under lesser charges, there is concern that torture and other ill-treatment may have been dealt with using conciliation agreements which do not adequately reflect the seriousness of the abuses involved. In 2010, the CNDH concluded 6,384 complaints of which only 64 resulted in recommendations, while 3,240 resulted in "legal advice"(*orientación jurídica*), 1,348 in insufficient evidence, and 1,258 in conciliation.[1172]**

The CNDH's shortcomings are not due to a lack of resources. With a 2015 budget over 80 million U.S. dollars, it is one of the best-resourced national human rights commissions in the world.[1173] By comparison, the Inter American Commission on Human Rights had a 2014 budget of 5.3 million U.S. dollars.[1174]

Critics see the main roots of the CNDH's underperformance in a lack of independence from government. When former CNDH President Raúl Plascencia participated in Mexico's Universal Periodic Review before the Human Rights Council in October 2013, he did so as a part of the official government delegation rather than as an independent observer. Further, while at the time the CNDH was releasing a report on the country's "human rights crisis," in Geneva Plascencia was justifying a lack of Mexican action on civil-society backed reforms related to military jurisdiction over human rights abuses. For many, this further deepened doubts about the CNDH's independence.[1175] Encouragingly, when participating in the UN Committee on Enforced Disappearances meeting in Geneva in January 2015, new CNDH President Luis Raúl González Pérez did so independently of the government delegation.[1176] If this modest show of independence could be repeated and amplified across the range of the institution's work, the CNDH could have a much greater impact in helping Mexico effectively confront atrocity crimes by holding police, prosecutors, and other authorities accountable.

Civil Society

Civil society organizations have played an important role in pressing the Mexican government to effectively investigate and prosecute killings, torture, disappearances, and other atrocity crimes. Their work has included documenting crimes; conducting research; representing victims; analyzing patterns of crime and the justice system's performance; conducting various forms of public and private advocacy on specific cases and broader issues of policy reform; and providing technical assistance to authorities to devise, implement, and monitor relevant reforms. Especially where organizations have focused on specific cases or taken a confrontational approach with the government, they have been more susceptible to retribution from state and non-state actors. Threats persist despite formal mechanisms to protect human rights defenders.

Civil society has documented crime by collecting victim testimonies, compiling open-source materials, and filing right-to-information requests in order to obtain relevant government documents. The efforts of national, established non-governmental organizations such as Centro de Derechos Humanos Agustín

STATE HUMAN RIGHTS COMMISSIONS

In addition to the National Human Rights Commission, there are government-established and government-funded human rights commissions in each of the 31 states, as well as the Federal District. These bodies, which have mandates to document human rights abuses, including atrocity crimes committed by state authorities, are recognized in the federal Constitution. The reforms of 2011 granted them new authority to compel testimony from government officials who reject their recommendations.[1177] However, not all state commissions enjoy full autonomy, legal personality, or have their own assets. As of 2009, only 17 were fully autonomous, while nine had only technical, managerial, and budgetary autonomy, and six had autonomy only to issue recommendations.[1178]

Human rights advocates have been critical not only of many of the commissions' weak mandates, but their lack of vigor. Generally, civil society critics and victim organizations argue that the commissions issue too few recommendations, and do too little to exercise what authority they have in following up on recommendations. Human Rights Watch found that commissions routinely fail to take even basic investigative steps, often failing to open cases at all or closing cases prematurely, even when there appeared to be strong evidence of abuse. Further, "the commissions continue to abandon their work on cases when prosecutors open investigations into violations [...] rather than monitoring the handling of inquiries to ensure that prompt, thorough investigations are undertaken."[1179] In many cases, commissions often replicate government tendencies to miscategorize atrocity crimes as lesser abuses: for example torture is too often labeled "abuse of authority," and disappearances—in many cases, even those for which there are indications that state actors were involved—are counted as "kidnappings."

In Guerrero, the state commission had some success in shining a light on the extent of atrocity crimes. This drew the governor's ire, and, with no legal basis for doing so, he appointed an ally who promptly neutralized its effectiveness.[1180] The human rights commission of Coahuila has a reputation for serving as a way-station for politicians looking to clean up their images before moving on to other public offices.[1181] Local NGOs and victims' organizations distrust the commission and perceive its work to be marginal.[1182] Victims cite problems of leaks to the prosecutor's office about their complaints, and when attending commission sessions to complain about a lack of results in criminal investigations, encountering there the very officers about whom they wished to complain.[1183]

Pro Juárez (Centro Prodh), Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, and Fundación para la Justicia y el Estado Democrático de Derecho have been augmented by smaller, newer organizations, sometimes focused on a particular type of atrocity crime, or particular sets of victims, including women, migrants, and indigenous people.

The spike in atrocity crime in Mexico from 2006 prompted the creation of a disparate victims' movement, as citizens from across the political and socio-economic spectrum became fed up not only with serious crime, but also with the state's inability to locate the disappeared and prosecute the perpetrators.[1184] Some victims' organizations have supported the "tough on crime" approach of the Calderón and Peña Nieto governments. This has led some groups to vehemently oppose judicial decisions that disqualify evidence obtained through torture and ill-treatment, and to reject international criticism of widespread torture in Mexico.[1185]

At the same time, a broad array of civil society groups has played an important role in advocating for criminal justice reform, including the 2008 reform to move to an adversarial system, the 2011 human rights reforms, and the creation of a unified criminal procedure code in 2014, all of which are highly relevant to Mexico's ability to overcome impunity for atrocity crime.[1186]

Organizations working directly on atrocity crime cases have been vulnerable to intimidation, threat, and attack by members of organized crime and state actors. Between 2005 and 2011, 523 attacks on human rights defenders were reported to the National Human Rights Commission (CNDH).[1187] The CNDH reported 25 homicides of human rights defenders between 2010 and 2015 and three disappearances between 2009 and 2015;[1188] it reported 138 cases of aggression against journalists and human rights defenders in 2015 alone.[1189] Civil society organizations have compiled a list of 32 human rights defenders extrajudicially killed from June 2012 through May 2014.[1190]

Since 2012, human rights defenders who have come under threat have had the possibility of seeking precautionary measures from the CNDH.[1191] In 2012, Congress unanimously passed a law to create a national mechanism for the protection of human rights defenders and journalists.[1192] The Protection Mechanism for Human Rights Defenders and Journalists (*Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas en México*), is housed within the Human Rights Unit of the Interior Ministry (SEGOB). Human rights defenders under threat may also seek precautionary measures ordered by the Inter-American Commission of Human Rights.

Implementation of these measures has been problematic. Alberto Xicoténcatl and Father Pedro Pantoja, two representatives of the Coahuila-based NGO Casa del Migrante de Saltillo, have documented torture, kidnappings, aggression and extortion against migrants.[1193] When they received threats, they sought precautionary measures from the CNDH, but the federal government did not comply with these. In 2013, they were enrolled in SEGOB's mechanism after

the Inter-American Commission likewise granted them precautionary measures. [1194] Yet even then, they still felt threatened, and unprotected by either the federal or state government. For them, the SEGOB mechanism was poorly implemented, run by poorly trained staff, and not propelled by real political will.[1195] Civil society actors have criticized structural flaws in the mechanism.[1196] Among these, the mechanism has an insufficient budget and its staff is not properly trained. Further, since the mechanism's creation, the Unit for Analysis and Prevention has not been created, even though such a unit should be central to gathering and analyzing information from all of Mexico's states.[1197]

Victim Participation

Victims have been largely shut out of government initiatives addressing atrocity crimes. Thus, the government has made wildly fluctuating claims about disappearances, revising its lists of the missing and disappeared without clear criteria or explanation to families of the disappeared.[1198] There have also been instances of government agencies attempting to dissuade victims from exerting their rights through the assistance of human rights organizations.[1199]

In some cases the government has attempted to pay victims outside of formal reparation schemes that would also require acknowledgement of wrongdoing and an official apology. These have been apparent attempts to buy victims' silence.[1200] In the case of the 2014 Ayotzinapa disappearances, in a reported attempt to defuse public pressure on the government, media

CALLOUSNESS IN THE INVESTIGATION OF THE SAN FERNANDO MASSACRE

The 193 human bodies discovered across 49 mass graves in San Fernando, Tamaulipas in 2011 (less than a year after 72 other bodies were found in the area), showed signs of torture and violent execution. Most of the remains were presumed to be those of migrants who were heading to the United States. Following the grim discovery, federal and Tamaulipas state prosecutors refused to recognize Guatemalan and Salvadoran families of some victims as victims themselves, thus restricting their rights.[1201] Prosecutors ordered human remains found in the mass graves sent for cremation without the consent of families, who were merely sent ashes without confirmation of identity, or any information about how the individuals died. Families seeking information about the case have received replies that information is "strictly reserved." Excluding victims from the process has made it easier for prosecutors to close case files, when by all appearances the underlying investigation has been unprofessional, unethical, and incomplete. A court decision in March 2016 began to address this prosecutorial neglect.[1202]

reports indicated that former SEGOB Under-Secretary for Legal Affairs and Human Rights Lía Limon offered the families payments with a suggestion to tone down their advocacy.[1203]

These attempts implicitly acknowledge that appropriate victim engagement in the investigation, prosecution, and trial of atrocity crimes offers great potential for ensuring that such crimes are brought to light and are more vigorously pursued. When prosecutors must regularly explain to victims what investigative measures have been taken in a case, they are more likely to take concrete steps. Reluctant prosecutors have less space to shirk responsibilities or manipulate results. Victims who have suffered horrible losses through the disappearance or death of family members have a greater sense of agency when they have access to the officials responsible for pursuing their cases. Such access can also provide them with insight into systemic obstacles, whether these are based in politics, technical challenges and shortcomings, or a paucity of resources. That knowledge can then inform victim organizations' advocacy strategies and those of their supporters, providing a further sense of agency even if investigations into their cases are not making progress. In contrast to the federal and state investigation in San Fernando, active victim engagement in disappearance investigations in Nuevo León and Coahuila has demonstrated many of these benefits.

VICTIM PARTICIPATION IN NUEVO LEÓN AND COAHUILA

Coahuila

Families of the disappeared and civil society organizations in Coahuila have organized themselves and demanded the attention of the state's political leadership, resulting in commitments and some tangible actions to address the crisis of disappearance in the state.

As elsewhere in Mexico, atrocity crimes in the state increased dramatically from the beginning of the Calderón administration in December 2006, and there has been almost no accountability. Despite indications that torture is common,[1204] as of 2014 there had been only one criminal investigation for torture since 2006, and no indictments.[1205] Disappearances also climbed to shocking levels. The government announced in January 2012 that it had records of over 1,600 disappeared.[1206] By August 2013, civil society organizations and families of the disappeared had independently documented 321 disappearances since 2007, and there were indications that in 36 of these cases, the perpetrators were state agents.[1207]

Families of the disappeared began organizing in 2009 through the Fray Juan de Larios Human Rights Center, initially with 12 families seeking 31 disappeared persons.[1208] These family members, mostly women, faced authorities' indifference, and even unsubstantiated accusations that their missing loved ones were involved in organized crime. When the UN Working Group on Enforced

VICTIM PARTICIPATION IN NUEVO LEÓN AND COAHUILA

and Involuntary Disappearances visited Mexico in March 2011, they included meetings in Saltillo, Coahuila, at the urging of the families and their civil society allies.[1209] The Working Group's final reports came out just before a new governor took office.[1210]

Shortly after being sworn in, Governor Rubén Moreira Valdéz responded to the organized families by pledging to prioritize the problem of disappearances, including all of the recommendations of the UN Working Group. In January 2012, he created a deputy prosecutor for the investigation and search for missing persons.[1211] In September 2012, consultations between state officials and families about their cases were institutionalized in an agreement to form an Autonomous Working Group (*Grupo Autónomo de Trabajo*, GAT).[1212] As of 2015, the GAT had issued six reports.[1213]

The GAT mechanism has led to important improvements. Coahuila first defined enforced disappearance in law in 2012. GAT formed a venue to press the government on shortcomings in this law, leading to its revision in November 2013, and further reforms in May 2014 that created a new state institution to provide care for the families of the disappeared.[1214]

Despite the governor's acknowledgement of disappearance as a problem in the state, and improvements to the legal framework, families participating in the GAT have grown frustrated by a lack of progress on their cases. Although by May 2015, the state government claimed to have found 871 missing persons (821 alive and 50 dead),[1215] government statistics co-mingle people missing for criminal and non-criminal reasons, and families suspect that those found alive have mostly been from the latter category.

Further, despite the governor's acknowledgement of disappearance as a problem, he has not exhibited the same openness to acknowledging the extent of torture in the state. Indeed, a special elite police force launched by the governor to deal with atrocity crimes, the "Specialized Weapons and Tactics Group" (*Grupo de Armas y Tácticas Especiales*, GATE), has itself faced accusations of significant involvement in torture and enforced disappearance.[1216] By organizing themselves and demanding the attention of state authorities, the families of the disappeared in Coahuila have made some progress, but remain far from satisfied.

Nuevo León

Families of the disappeared in Nuevo León have organized together with civil society groups, leading to some encouraging results.

Families of the disappeared first gained significant access to state authorities when the Movimiento por la Paz brought its victims' caravan (*Caravana del Consuelo*) to Monterrey in June 2011, and Governor Rodrigo Medina de la Cruz invited national and local movement leaders and family members to meet with prosecutors.[1217] To that point, victim experiences with prosecutors had been marked by distrust, fueled by routine assertions from prosecutors that the disappeared were involved in organized crime; initial meetings were confrontational.[1218] From large, inefficient group meetings, a new format

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VICTIM PARTICIPATION IN NUEVO LEÓN AND COAHUILA

for the interaction soon developed, where family members, accompanied by a representative of the civil society organization Citizens in Support of Human Rights (*Ciudadanos en Apoyo a los Derechos Humanos*, CADHAC), could periodically meet directly with the prosecutor assigned to the case, and the coordinator for the region of the state where the case was being investigated. The meetings have provided a forum to discuss active leads and agree on further investigative steps that should be taken by the next meeting.

The mechanism has produced tangible results, perhaps foremost the development of greater trust between participating family members and prosecutors who have grown more sympathetic and interested in locating the disappeared. More family members feel comfortable providing information to the authorities, and prosecutors have provided CADHAC with access to investigation files. Further, participants meet regularly to discuss potential links between cases, and investigative lessons from one case that could be helpful to others. Prosecutors are more diligent in following obvious leads that had previously been left unexamined, including searching for and interviewing witnesses, tracking mobile phone numbers, obtaining call records, and viewing footage from security cameras.

The families and their supporters have also succeeded in pressing for institutional reforms. In early 2012, the state prosecutor appointed dedicated judicial police to work on disappearance cases, and later added more. With local and international input, in December 2012, Nuevo León adopted legal amendments on enforced disappearances that meet international standards.[1219] That same month, lawmakers narrowed the circumstances in which authorities may arrest individuals caught in the act of an offense (*flagrancia*), a provision that in Nuevo León and across Mexico has often been abused and led to enforced disappearance.[1220] Prosecutors also agreed to develop an investigative protocol for enforced disappearances to codify lessons from the working meetings with families, for whom finding their loved ones is the highest priority.

In March 2014, prosecutors unveiled the Protocol for the Immediate Search of Disappeared Persons (*Protocolo de Búsqueda Inmediata de Personas Desaparecidas*), focused on the first 72 hours of disappearance. In doing so, they had input from CADHAC, the UN Office of the High Commissioner for Human Rights, and human rights specialists from Colombia.[1221] Police, who were previously required to wait for three days before investigating a disappearance, are now obligated to begin the search immediately. A special inter-agency unit, the Group Specialized for the Immediate Search (*Grupo Especializado de Búsqueda Inmediata*, GEBI), comprised of prosecutors, researchers, and police officers, carries out the search. The government has claimed that GEBI has found many individuals alive.[1222] Some deceased victims have also been identified through DNA samples.[1223]

But despite some notable progress on disappearance investigations in Nuevo León, problems remain. There are also strong indications that in investigating

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disappearances, police and prosecutors continue to rely heavily on torture and ill-treatment.[1224] Officials at the state human rights commission say that torture is common in Nuevo León, and worsening, and in 95 percent of criminal cases torture is perpetrated for investigative purposes.[1225] There has also been a complete failure of accountability for the practice; 12 criminal investigations into torture opened in Nuevo León from 2004 to 2014 resulted in no indictments or convictions.[1226] Family members desperate to find their missing relatives, and subscribing to a common misconception that torture is an effective means of obtaining information, may understandably be accepting of the practice.[1227] But state officials have no such excuse. The introduction of the adversarial system in Nuevo León should impose new constraints on their ability to engage in torture.[1228] The sooner they fully embrace the kinds of proper investigative techniques that have been encouraged through the working groups on disappearances, the more effective they will become in prosecuting those and other crimes.

Attempts to formalize victim involvement in the investigation of atrocity crimes at federal level and in most states have struggled. President Calderón's pledge to "establish a constant dialogue with the victims" through the institution of PROVÍCTIMA was stunted in its vision, never properly implemented, and soon dismantled. Although the successor 2014 Victims' Law established a right of victims to assistance by a public lawyer and entitlement to active participation in criminal investigations, poor implementation has meant that neither of these rights has been effectively realized in the federation or the states.[1229]

External Scrutiny

When internal mechanisms for institutional accountability have failed, many Mexican victims of atrocity crimes and their advocates have turned to external actors to overcome obstacles to effective criminal justice. As a party to many human rights treaties, including the Inter-American Convention on Human Rights, International Covenant on Civil and Political Rights, the UN Convention against Torture, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Rome Statute of the International Criminal Court, Mexico has commendably opened itself to scrutiny with regard to the commission of atrocities and justice for these. Some international bodies can review compliance with treaty obligations, issue statements and reports, and communicate informally with the government, creating pressure for improved investigations and prosecutions. The office of the UN High Commissioner for Human Rights in Mexico prioritizes "combating impunity, strengthening accountability and the rule of law" and "early warning and protection of human

rights in the context of conflict, violence, and insecurity."[1230] The Inter-American Commission has ordered protective measures for human rights defenders, and the Inter-American Court has heard cases and issued decisions that have been influential in such areas as limiting military jurisdiction over human rights abuses. The Rome Statute creates the possibility for the ICC to investigate and prosecute crimes against humanity in Mexico, including for killings, disappearances, and torture, if these meet certain criteria and the state fails to genuinely investigate and prosecute them. International human rights organizations have also played an important role in documenting crime and exposing obstacles to effective justice.

At times Mexico has invited additional external scrutiny. From 2003 until 2008, experts from Physicians for Human Rights were based within the PGR's forensic unit and granted access to all files on alleged torture.[1231] Following the 2014 Ayotzinapa disappearances, at the request of victim families, it granted Argentine forensic experts partial access to the investigation and invited the Inter-American Commission on Human Rights to send the Interdisciplinary Group of Independent Experts (GIEI) to review the investigation.[1232]

Despite this partial openness, the Mexican state has usually sought to limit the extent to which external actors can step in when domestic justice fails. Successive governments have inserted reservations into key treaties and otherwise circumscribed their full potential—notably by refusing to approve the competence of the UN Committee on Enforced Disappearances to receive and consider individual communications from Mexican citizens. Even when it has accepted greater external scrutiny, this has often been followed by limitations in practice. Thus, the Argentine forensic team was not granted adequate access to the Ayotzinapa investigation, and Physicians for Human Rights pulled out of its partnership with the PGR and issued a highly critical report after its access to files on torture and ill-treatment was cut off. Further, when external actors have pointed to uncomfortable facts about torture, extrajudicial killings, and enforced disappearances, and the state failure to adequately investigate and prosecute these crimes, the Calderón and Peña Nieto governments have responded not by acknowledging grim realities and attempting to grapple substantively with the criticism, but by attacking the messengers.[1233]

It was all the more noticeable, then, when the Peña Nieto government initially responded more openly to the damning findings of the GIEI's September 2015 report on the Ayotzinapa investigation. It did not of follow the usual pattern of condemning the criticism and the messengers and complaining about external interference. Rather, it agreed to: make public a redacted version of the full case file from the disastrous initial investigation, enter into an agreement with the GIEI to incorporate its findings into a new investigation to be conducted jointly, and designate a new investigation team approved by the attorney general, the GIEI, and backed by representatives of the families of the 43 disappeared.[1234] In November 2015, those families cautiously accepted the attorney general's selection of prosecutors for the new team, which began following an array of leads ignored in the first federal investigation.[1235]

Starting in September 2015, media attacks on members of the GIEI did emerge from sources perceived to be sympathetic to the Mexican military.[1236] And it remained deeply problematic that the government continued to deny international investigators direct access to military personnel based in Guerrero who could be questioned about their activities at and near the crime scenes on the night in question.[1237] Nevertheless, it was remarkable that, at least for a time, a new federal investigation could garner any trust from victim families at all. In their incipient kernel of grudging trust lies a key insight. Bringing an end to Mexico's crisis of atrocity and impunity ultimately depends on internal reform, but that may only be possible with a period of greater external involvement.

VI. CONCLUSION

MORE THAN NINE YEARS AFTER THE FEDERAL GOVERNMENT LAUNCHED ITS SECURITY STRATEGY TO COMBAT ORGANIZED CRIME, MEXICO'S CRISIS OF KILLING, DISAPPEARANCE, AND TORTURE CONTINUES, FUELED BY ORGANIZED CRIME AND THE STATE'S HEAVY HANDED RESPONSE. IT APPEARS THAT FEDERAL FORCES AND MEMBERS OF AT LEAST ONE CRIMINAL CARTEL, THE ZETAS, HAVE COMMITTED THESE CRIMES IN PURSUIT OF STATE AND ORGANIZATIONAL POLICIES, IN THE COURSE OF ATTACKS ON CIVILIAN POPULATIONS, AND ON A WIDESPREAD OR SYSTEMATIC BASIS. THUS THERE IS REASON TO BELIEVE THAT STATE AND NON-STATE ACTORS ALIKE HAVE COMMITTED CRIMES AGAINST HUMANITY.

The human cost of these crimes is immeasurable. Tens of thousands of lives have been extinguished. Mothers and fathers of the disappeared cling to hope that their sons and daughters will walk through the door, even as new mass graves are discovered. Thousands more live with the trauma of beatings, sexual violence, and other forms of torture perpetrated against them, including by officials who regard such practices as "investigation."

For all of this suffering, there has been almost no criminal accountability. Reported intentional murders between 2007 and 2012 outnumbered court judgements for homicide, nationally, more than five to one,[1238] and federal prosecutors issued indictments in only 16 percent of the murder cases they opened between 2009 and July 2015.[1239] There have been tens of thousands of criminal disappearances, including many documented and suspected cases of enforced disappearance perpetrated by federal military, police, and prosecutors. But 313 federal investigations have yielded only 13 convictions for enforced disappearance,[1240] and it wasn't until August 2015 that a court convicted a soldier of the crime.[1241] Despite 9,217 complaints of torture and ill-treatment to the National Human Rights Commission from 2006 through 2014,[1242] by the end of 2014, 1,884 federal investigations of torture had resulted in only 12 indictments and five convictions.[1243]

Mexico's crisis of impunity is the result of a failure of political leadership. Senior government officials have denied and minimized the extent of the crisis, baselessly accused victims of criminality, and sought to discredit civil society organizations and international observers who draw attention to the problems. Their rhetoric has been reflected in misguided official policies: obscuring and misrepresenting data on

atrocities and justice; accepting torture as the basis for criminal investigation, which often jails the innocent while real perpetrators remain free; resisting accountability for the military; militarizing police so that forces are more adept at committing crimes than solving them; failing to insulate forensic services and witness protection from improper manipulation; and failing to streamline bureaucracies whose complexity has left the justice sector prone to further manipulation.

There are myriad technical deficiencies in Mexico's criminal justice system that must be addressed for there to be substantial accountability for atrocity crimes. But technical fixes and training cannot clear away underlying political obstacles to justice, and neither can they have much impact so long as those political obstacles persist. Mexico is not a country where the justice system has collapsed, or where the technical skills to undertake competent investigations and pursue effective prosecutions and trials are utterly lacking. To the contrary, Mexico has enormous advantages in the struggle against impunity, including substantial economic resources, a cadre of highly skilled legal professionals, and numerous examples of commitment, courage, and capability among members of academia and civil society.

Reforms to the justice sector are underway, some of them profound. Mexico's transition to an adversarial system of justice, launched in 2008, is scheduled to be complete in 2016, as is the implementation of a unified, national criminal code adopted two years ago. Both offer new safeguards for the accused, and hold promise to reduce the everyday use of torture. The Supreme Court of Justice has restricted to federal jurisdiction the use of *arraigo* detention, a practice associated with torture. Through the court's rulings and an act of Congress, military jurisdiction over most human rights abuses has finally ended. Congress stands poised to adopt general laws on torture and enforced disappearance, which will finally replace the kaleidoscope of differing legal definitions at the federal and state levels. Other proposed reforms may also help, including the transition of Mexico's Attorney General's Office to a more autonomous Fiscalía from 2018, and new investigative protocols for torture and disappearances.

And yet, even welcome reform proposals must be seen in light of other government initiatives over the past nine years that promised to address justice sector weaknesses but ended without demonstrable results. These include multiple rounds of police reform that have reshuffled bureaucracies and changed uniforms, but made no discernable improvement in investigations, the establishment of two mechanisms for victim rights whose main outcome has been victim disillusionment, and the creation of a Unit Specialized for the Search of the Disappeared that had little power or resources and was undermined by other government agencies. After repeated disappointments, many victims of Mexico's prolonged crime wave are understandably skeptical that new promises of reform will bear fruit.

As the fight against organized crime nears the decade mark, President Peña Nieto's term in office has become consumed by the ongoing crisis of atrocity and impunity. The Mexican public was outraged by the disappearance of 43 students in September 2014, then once again as an attorney general's "historical truth" was exposed as an

elaborate lie built on testimony obtained through torture. Dozens of mass graves unearthed by families of the disappeared in Guerrero, the revelation of an order to kill at Tlatlaya, Federal Police shootings in Michoacán, and rising homicide rates in 2015 have contributed to deepening public pessimism about security and justice in Mexico, and cynicism about the government's ability to effectively address these challenges. In response, human rights organizations are increasingly turning to bodies outside of Mexico, filing complaints with the Inter-American system, UN treaty bodies, and the prosecutor of the International Criminal Court.

But regardless of how those complaints are addressed, primary responsibility for legal accountability rests with authorities at the national level. If Mexico is to address this crisis and the attendant suffering of its people, it must take a series of concrete, far-reaching steps. The first and most important is to create an independent, international body based in the country with a mandate to investigate atrocity crimes and collusion with organized crime, and introduce cases into Mexican courts. This body could also provide technical assistance to the Attorney General's Office/Fiscalía and investigative police; develop justice sector reform proposals for consideration by the Mexican government, Congress, and public; and produce public reports on the state of justice sector reform and the rule of law in Mexico.

Establishing an independent, international body to investigate atrocity crimes in Mexico will take time. In the interim, the Mexican government should undertake additional measures to address the crisis. These include urgently creating integrated teams to investigate disappearances; making forensic services and witness protection autonomous, and locating them outside of the Attorney General's Office; and developing a plan to de-militarize public security operations in the country.

Taken together, these measures will go a long way toward ending the crimes against humanity currently wracking Mexico. Without these changes, the country's crisis of atrocity and impunity will only continue.

ENDNOTES

1 The security situation in each selected state did not prohibit research visits to conduct interviews and fact-finding. Despite severe levels of violence, Guerrero was judged to be safe enough for research access, although some other states in crisis, including Tamaulipas, Veracruz, Michoacán, and Jalisco, were not.

2 For more on atrocity crimes and atrocity law, see: David J. Scheffer, "The Future of Atrocity Law," Suffolk Transnational Law Review, Summer 2002, available at http://www2.law.columbia.edu/hri/Schefferarticle.html [accessed March 20, 2016].

3 United Nations Office on Genocide Prevention and the Responsibility to Protect, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, July 2014, p. 1, available at: www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf [accessed on January 4, 2015].

4 The legal characterizations of these as simple crimes under Mexican law are discussed in chapter two and their definitions under international criminal law in chapter three.

5 National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main Results, September 30, 2015, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf [accessed on January 4, 2016].

6 Chapter five discusses shortcomings at the National Human Rights Commission.

7 Detailed notes in Spanish and English were typed during the interviews and remain on file with the Open Society Justice Initiative.

8 Drafts were reviewed in identical English and Spanish translations.

9 It is not clear how many complaints have been sent to the ICC prosecutor with regard to Mexico; such complaints are not required to be made public. As of February 2016, four had been publicized. A group of 27,000 individuals sent a complaint to the OTP on November 21, 2011, alleging that President Calderón, other senior government officials, and the leaders of rival cartels had committed 470 violations of law that amounted to war crimes and possibly crimes against humanity. See: Juicio a Calderón, press release, December 2, 2011, available at: http://juicioacalderon.blogspot.mx/2011/12/boletin-de-prensa-mexico-en-la-corte.html [accessed on February 22, 2014]. On October 25, 2012, three human rights organizations—the *Centro para el Desarrollo de la Justicia Internacional (CDIJ), the Comisión Mexicana para la Defensa de los Derechos Humanos* (CMDPDH), and the International Federation of Human Rights (FIDH)—submitted a communication to the ICC prosecutor alleging crimes by the government. Document on file with the Open Society Justice Initiative and available at: http://webcache.googleusercontent.com/search?q=cache:8Evb3q4IEBAJ:www.cpimexico.org.mx/portal/wp-content/uploads/2014/12/comunicaci%25C3%25B3n_22102012_versi%25C3%25B3n_p%25C3%25BAblica.pdf+&cd=2&hl=fr&ct=clnk&gl=mx [accessed February 29, 2016]. In November 2012, the former governor of Coahuila and national head of the PRI political party sent a 40-page complaint to the OTP alleging that President Calderón had committed war crimes and crimes against humanity associated with his conduct of the fight against organized crime. See: "Humberto Moreira denunció un 'Estado de excepción,'" Excélsior, December 18, 2012, available at: www.excelsior.com.mx/node/875491 [accessed February 22, 2014]. In December 2014, CMDPDH, FIDH, and the Citizens' Commission of Human Rights of the Northeast (CCDH) sent a complaint to the ICC prosecutor with regard to torture in Baja California from 2006 through 2012. They made a summary of the complaint into a public report. See: *Report on the alleged commission of crimes against humanity in Baja California between 2006 and 2012*, September 2014, available at: www.fidh.org/IMG/pdf/mexique642ang2014web.pdf [accessed on February 16, 2016].

10 President Vicente Fox signed the Rome Statute of the International Criminal Court in 2000, the Senate ratified the treaty in 2005, and it came into effect for Mexico on January 1, 2006. The ICC has jurisdiction over Rome Statute crimes in Mexico from that date onward. The executive decree setting forth the entry into force of the statute was published in the Federal Official Gazette on December 31, 2005. See: http://dof.gob.mx/nota_detalle.php?codigo=2105558&fecha=31/12/2005.

11 See the Methodology section and chapter two for detailed discussion of the problems, and chapter four for discussion of their political causes.

12 There is no universal definition or treaty defining "killings." The UN Office on Drugs and Crime defines killing as "unlawful death purposefully inflicted on a person by another person." Where this report cites government statistics on killings, these are based on homicide definitions in Mexican law, which vary somewhat by federal entity. Many Mexican jurisdictions lack a specific definition of "extrajudicial killing," which are killings committed in contravention of, or simply without, due process of law.

13 Out of 86 countries surveyed by the UN Office on Drugs and Crime. See: data cited in Mexico Evalua, Indicadores de víctimas visibles e invisibles de homicidio, November 2012, page 43, available at: http://mexicoevalua.org/2012/11/indicadores-de-victimas-visibles-e-invisibles-de-homicidio.

14 Data from the Interior Ministry's SNSP, available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed on February 25, 2016].

15 According to data from the Interior Ministry's SNSP, from the end of 2006 through 2015, there were 299,167 homicides in Mexico nationwide: 156,827 intentional and 142,430 non-intentional. Data available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed on February 26, 2016].

16 Calculation by the Open Society Justice Initiative based on 196,327 reported deaths by homicide, 20,251 convictions at state level, and 64 at federal level. The total number of homicides (intentional and non-intentional) is taken from SNSP data. See: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed on March 2, 2016]. Data on convictions at state and federal level are taken from INEGI's customizable online database, "Judicial statistics on criminal cases, Sentenced Persons" (*personas sentenciadas*). Variables used: "federal level and state-level," "year of registration 2009-2012," "year of perpetration 2007-2012," "judgment-dismissal: convictions and acquittals," "crime: homicide, homicides of relatives (*homicidio en razón de parentesco*) and femicide." Information 2009-2012, available at: www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10. This calculation includes both intentional and non-intentional homicides because data on convictions for only intentional homicides is unavailable. For years 2007 and 2008, INEGI only provides statistics on judgments

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for homicides. For years 2009-2012, it provides judgments for homicides, homicides of relatives (*homicidio en razón de parentesco*), and femicide. For purposes of this assessment, the overall number of judgments for homicide encompasses all the categories of killings of civilians registered by INEGI at local and federal level.

17 The PGR conducted 261 investigations for grave homicide, leading to 56 indictments, and 317 investigations for non-grave homicide, leading to 38 indictments. Official documents SJAI/DGAJ/10912/2015 and SJAI/DGAJ/10913/2015, dated September 1, 2015, obtained in response to right-to-information requests 1700285315 and 1700285415 filed by the Open Society Justice Initiative.

18 According to RENPED, 2014 had the highest number of reported disappearances with 265 cases at federal level and 4,929 disappearances at state level. RENPED disaggretates information based on the year in which the disappearance occurred. As of February 2016, the government stated that 26,672 individuals remained disappeared, of which 939 were federal cases and 25,733 were state-level cases. These include disappearances from 2007-2015, and exclude disappearances for which the government was not able to identify the year of disappearance. However, according to RENPED there were 249 disappearance cases before 2007 (209 state cases and 40 federal cases) and in 738 cases (728 state and 10 federal) authorities have not been able to identify the year of the disappearance. Data taken from the government's RENPED database, available at: http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php [accessed on February 26, 2016]. RENPED is managed by the Executive Secretariat of the National System of Public Security (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*).

19 Data from the 2015 report of the government statistics office (INEGI), based on household surveys in 2014, page 11. The margin of error in the survey was +/-16.3%. See: *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública 2015*, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf [accessed on January 19, 2016].

20 The National Human Rights Commission reported in 2009 that over a five-month period, 9,758 migrants had been kidnapped in Mexico. The CNDH subsequently reported 11,333 migrant kidnappings during a six-month period in 2010. See: CNDH, *Informe Especial sobre los casos de secuestro en contra de migrantes*, February 2011, pp. 12 and 26, available at: www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secmigrantes.pdf.

21 An explanation of this calculation is in the "Disappearances" section of chapter two.

22 Summary records of the 8th session of the UN Committee on Enforced Disappearances, document CED/C/SR.120, February 2, 2015, para. 7, "... with regard to the investigation of state officials in relation to cases of enforced disappearance, she said that, according to information available at the federal level, 313 officials had been indicted and 13 had been convicted to date." Document available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FSR.120&Lang=en.

23 The soldier, a second lieutenant, was sentenced to just over 31 years for illegally detaining and causing the disappearance of the victim in the northern state of Nuevo León in 2012. Final judgment of criminal procedure 104/2013, First District Court on Criminal Matters of the State of Nuevo León. See: Informative note of the Federal Judicial Council, August 18, 2015, available at: www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2015/notaInformativa88.pdf. See also: "Mexico Sees First Conviction of Soldier in Disappearance," Associated Press, August 18, 2015, available at: http://bigstory.ap.org/article/3744d01c4e5245c79e1cbd4a6ce4a711/mexico-sees-first-conviction-soldier-disappearance [accessed on January 6, 2016].

24 From 2001 through 2006, the CNDH received 1,514 complaints of torture and ill-treatment; from 2007 through 2012, it received 7,055 complaints of torture and ill-treatment. Data taken from CNDH annual reports, 2006-2012, available at: http://www.cndh.org.mx/Informes_Anuales_Actividades.

25 Data taken from the annual reports of the National Human Rights Commission, 2007 through 2015, ibid.

26 In judicial precedents 1a. XXV/2016 (10a.) and 1a. XXVI/2016 (10a.) issued in February 2016, the first Chamber of the Supreme Court of Justice determined the legal requirements for the validity of a detention in *flagrancia*. See: *Federal Judicial Gazette*: http://sjf.scjn.gob.mx/.

27 See: Judicial Precedent 1a. CCLII/2015 (10a.), dated August 2015, on the legal requirements for a detention in urgent cases. Ibid. Importantly, the federal judiciary underscores that authorities must not use "urgent case detentions" as a mean to validate ilegal detentions.

28 Numbers for investigations and indictments are based on PGR data provided to Amnesty International in response to a public information request in June 2015. See: *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 7, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 6, 2016]. The government reported to the UN Special Rapporteur on Torture that there had been five federal convictions for torture between 2005 and 2013. See: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 32. See also: Infomex, Folio 000403312, 18 January 2012, Consejo de la Judicatura federal, cited in Amnesty International, *Known Abusers, But Victims Ignored: Torture and Ill-Treatment in Mexico*, October 2012, p. 5, available at http://www.amnestyusa.org/research/reports/known-abusers-but-victims-ignored-torture-and-ill-treatment-in-mexico [accessed on April 2, 2014]. As of mid-2015, the Open Society Justice Initiative was able to identify a total of eight federal judgments for torture, although the outcomes of those judgments (conviction or acquittal) were not clear: Federal criminal procedure 92/2003, Fourth District Court of the State of Chiapas; Federal criminal procedure 90/2004, Sixth District Court of the State of Oaxaca; Federal criminal procedure 22/2006, Fourth District Court of the State of San Luis Potosí; Federal criminal procedure 35/1999, Second District Court of the State of Morelos; Federal criminal procedure 175/2012, Seventh District Court of the State of Chihuahua; Federal criminal procedure 34/2013, Fourth District Court of the State of Chihuahua; Federal criminal procedure 7/2013, Ninth District Court of the State of Sonora; and Federal criminal procedure 27/2013, Fourth District Court of the State of Michoacán.

29 Then-Senator Arely Gomez (the current attorney general) proposed amendments to the witness protection framework in 2014, but this did not include a provision to make witness protection services independent from the Attorney General's Office or Federal Police. See draft amendments of November 20, 2014, available at: http://sil.gobernacion.gob.mx/Archivos/Documentos/2014/11/asun_3177174_20141125_1416931099.pdf.

30 In developing this internationalized body, Mexico could draw on important lessons from relevant existing or former entities, such as the International Commission Against Impunity in Guatemala (CICIG). See: Open Society Justice Initiative, *Against the Odds: CICIG in Guatemala*, New York, Open Society Foundations, 2016; and *International Crimes, Local Justice: A Handbook for Rule-of-Law Policymakers, Donors and Implementers*, New York, Open Society Foundations, 2011.

31 In 1989, Ernesto Ruffo Appel, of the Party of National Action (PAN) became the first opposition governor in the country when

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he won an election in Baja California. See: www.pan.senado.gob.mx/senadores/integrantes/ernestoruffoappel/. In 1997, the PRI lost its absolute majority in the Chamber of Deputies and with it, absolute control of the federal Congress. See: Alfonso del Rosal y Hermosillo, *Apuntes sobre la transición en el Poder Legislativo Mexicano: la reelección inmediata, la regulación del cabildeo y la disciplina de los legisladores federales*, pp. 11, 37, 123, 124, 132 at: http://biblioteca.diputados.gob.mx/janium/bv/ce/scpd/LX/apuntes.pdf.

32 See: Evelyn P. Stevens, "Mexico's PRI: The Institutionalization of Corporatism?," in: James M. Mally (ed.): *Authoritarianism and Corporatism in Latin America*, Pittsburgh, University of Pittsburgh Press, 1977, pp. 227-259.

33 Ernesto López Portillo, *La policía en México: función política y reforma. Inseguridad Pública y Gobernabilidad Democrática: Retos para México y Estados Unidos*, Smith Richardson Foundation, February 2000, p. 10, available at: http://pdba.georgetown.edu/Security/citizensecurity/mexico/evaluaciones/policia.pdf.

34 Phillippe C. Schmitter, "Still the Century of Corporatism?," in: Philippe C. Schmitter and Gerhard Lehmbruch (eds.), *Trends Toward Corporatist Intermediation*, London, SAGE Publications, Contemporary Political Sociology, Volume 1, 1979, pp. 7-44.

35 Ernesto López Portillo, *La policía en México: función política y reforma. Inseguridad Pública y Gobernabilidad Democrática: Retos para México y Estados Unidos*, Smith Richardson Foundation, February 2000, p. 10 and 14, available at: http://pdba.georgetown.edu/Security/citizensecurity/mexico/evaluaciones/policia.pdf.

36 There is more than one definition of the Dirty War's duration. The law creating Guerrero's truth commission defined it as encompassing the period 1969-1979. By other definitions, it started as early as 1964 and was not over until 1982.

37 See the National Human Rights Commission report on the complaints (*quejas*) of disappearances perpetrated in the 1970s and early 1980s, available at: www.cndh.org.mx/sites/all/doc/Informes/Especiales/2001_Desapariciones70y80.pdf. See also: Jorge Mendoza García, *La tortura en el marco de la Guerra sucia en México: un ejercicio de memoria colectiva*, available at: www.juridicas.unam.mx/publica/librev/rev/polis/cont/20112/art/art7.pdf.

38 "The Dead of Tlatelolco: using the archives to exhume the past," The National Security Archive, available at: http://nsarchive.gwu.edu/NSAEBB/NSAEBB201/index.htm.

39 For a vivid history of the Tlatelolco massacre, see: Elena Poniatowska, *La Noche de Tlatelolco*, Ediciones Era, 1971. See also: Julia Preston and Samuel Dillon, *Opening Mexico: The Making of a Democracy*, New York, Farrar, Straus and Giroux, 2004, pp. 63-93.

40 Kate Doyle, The Corpus Christi Massacre, June 10, 2003, available at http://nsarchive.gwu.edu/NSAEBB/NSAEBB91/.

41 *Final Report of the Truth Commission of Guerrero*, October 15, 2014, pp. 11, 21-22, 28-30, 32-33, 47-50, 89 and 95, available at http://congresogro.gob.mx/files/InformeFinalCOMVERDAD.pdf. Kate Doyle, who has carried out extensive research on the Dirty War period, has likewise argued that the repression "was not attributable to military units or renegade officers in an isolated fashion. It was an official practice." Kate Doyle, "Informe Sobre 'La Guerra Sucia,'" *Reforma*, March 12, 2006. For additional information maintained by Doyle, currently a senior analyst at the National Security Archive, see: http://nsarchive.gwu.edu/NSAEBB/NSAEBB180/.

42 The law granted amnesty to those indicted for sedition or those who invited or promoted rebellion, conspiracy, or other crimes perpetrated by groups or driven by political motives to "alter the institutional life of the country." Those charged with crimes against life, personal integrity, terrorism, and kidnapping who "did not represent a high peril" could be granted amnesty too. The law is available at: www.diputados.gob.mx/LeyesBiblio/abro/lamn78/LAmn78_abro.doc.

43 Laura Reyes, "Aguas Blancas, un genocidio que aún espera justicia en México," CNN, June 28, 2011, http://mexico.cnn.com/nacional/2011/06/28/aguas-blancas-un-genocidio-que-aun-espera-justicia-en-mexico. See the chorology of the case by the Centro de Investigación y Seguridad Nacional at http://www.cisen.gob.mx/pdfs/actualidad/Cronologia-sobre-lo-ocurrido-en-Aguas-Blancas-28-julio-1995.PDF.

44 The Supreme Court concluded that, *inter alia*, the governor of Guerrero, the prosecutor and deputy prosecutor, the head of investigation police, the minister of protection and transit, the special prosecutor, and the general director of government were responsible for the massacre. See: *Final decision of the Supreme Court of Justice in the Aguas Blancas case*, p. 152, at: www.scjn.gob.mx/Transparencia/Epocas/Pleno/Novena%20%C3%A9poca/1996/3_96(4).pdf. See also: *Case 3/96 of the Plenary of the Supreme Court of Justice of the Nation, investigation into the grave human rights violations perpetrated in Aguas Blancas, Guerrero*, April 23, 1996, available at: http://200.38.163.178/sjfsist/Paginas/DetalleGeneralScroll.aspx?id=3650&Clase=DetalleTesisEjecutorias. The National Human Rights Commission also made findings on the case. See: *Recommendation No. 104/1995 of the National Human Rights Commission on the Aguas Blancas case*, August 14, 1995, available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/1995/REC_1995_104.pdf.

45 For a fuller discussion of this period, see Human Rights Watch, "Mexico: Torture and Other Abuses During the 1995 Crackdown on Alleged Zapatistas," Vol. 8, No. 3 (B), February, 1996, www.hrw.org/legacy/reports/1996/Mexico1.htm.

46 See: Recommendation No. 1/1998 of the National Human Rights Commission on the case January 8, 1997, available at http://www.cndh.org.mx/sites/all/doc/Recomendaciones/1998/Rec_1998_001.pdf. The victims were part of a non-violent group called The Bees (*Las Abejas*), believed to sympathize with the goals of the Zapatistas, who had launched an uprising in Chiapas in 1994.

47 Centro de Derechos Humanos Fray Bartolomé de Las Casas, AC, "La Política Genocida en el conflicto armado en Chiapas. Reconstrucción de hechos, pruebas, delitos y testimonios" (2005) and San Cristóbal de Las Casas, Chiapas, "Por la Verdad y la Justicia Acteal 11 años 5 meses y 17 días de impunidad ¿Cuántos más?" (2009).

48 For a chronology of the Acteal case, see: *El Universal*, April 10, 2013, available at: http://archivo.eluniversal.com.mx/notas/915931.html.

49 Catherine Daly, Kimberly Heinle, and David Shir, *Armed with Impunity: Curbing Military Human Rights Abuses in Mexico*, Trans-Border Institute, University of San Diego, July 2012, p. 4.

50 See, e.g.: Aileen Teague, "How Our War on Drugs Undermines Mexico," *Time*, May 11, 2015, http://time.com/3853971/1971-war-on-drugs/.

51 The harvesting of poisoned marijuana following Operation Condor contributed to a boom in the Colombian marijuana industry. See Carlos Antonio Flores Pérez, "Organized Crime and Official Corruption in Mexico," in Robert A. Donnelly and David A. Shirk (eds.), *Police and Public Security in Mexico*, San Diego, University Readers, 2010, pp. 93-123.

52 Ernesto López Portillo, Op. Cit. p. 10.

53 Ioan Grillo writes, "Often leftists would be arrested under the pretense of drug charges. Hundreds of activists were never seen again. Mexicans use the words *disappeared* to refer to these lost souls. Yet another modus operandi was established in

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the war on drugs—it could provide effective cover for anti-insurgency ops. Grillo, *El Narco*, p. 51. Hernández also notes that the so-called "White Brigade," a right-wing paramilitary police force established to crush the student movements of 1968 and eradicate leftist opponents, gained particular notoriety: it "was credited with exterminating several armed social movements of the day, such as the Revolutionary Armed Movement, the People's Armed Revolutionary Front, and the Peasants' Brigade Against Injustice." See: Anabel Hernández, *Narcoland: The Mexican Drug Lords and Their Godfathers*, New York, Verso, 2014, p. 28.

54 See Robert A. Donnelly and David A. Shirk, "Introduction," in Donnelly and Shirk (eds.), *Police and Public Security in Mexico*, p. 7.

55 See María Celia Toro, *Mexico's "War" on Drugs: Causes and Consequences*, Lynne Rienner Publishers, 1995, pp. 18-27.

56 Pérez, "Organized Crime and Official Corruption in Mexico," p. 122. Shirk makes a similar point, noting that, "During the 1980s, Mexico's highly centralized, single-party political system provided a favorable environment for organized crime groups." See: David A. Shirk, "Drug Violence and State Responses in Mexico,"p. 8, available at http://fsi.stanford.edu/sites/default/files/evnts/media/Shirk-Drug_Violence_and_State_Responses_in_Mexico.pdf.

57 See: Luis Astorga, *¿Qué querían que hiciera?, Inseguridad y delincuencia organizada en el gobierno de Felipe Calderón*, Grijalbo, 2015, pp. 20-21; Luis Astorga, *México: transición democrática, organizaciones de traficantes e inseguridad*, May 18, 2009, available at: www.razonpublica.com/index.php/internacional-temas-32/173-mco-transiciemocrca-organizaciones-de-traficantes-e-inseguridad.html; and Luis Astorga, *Estado, drogas ilegales y poder criminal, retos transexenales, Letras Libres*, November 2012, available at: http://www.letraslibres.com/revista/dossier/estado-drogas-ilegales-y-poder-criminal-retos-transexenales?page=full.

58 During this time, Mexico's most powerful drug-trafficker, Miguel Ángel Félix Gallardo, was based in Guadalajara. The two most prominent cartels in the 1990s, the Tijuana and Juárez cartels, grew out of Gallardo's organization after his arrest in 1989. On the relationship between the U.S. foreign policy and the rise of the Drug War, see Carmen Boullosa and Mike Wallace, *A Narco History: How the United States and Mexico Jointly Created the Mexican Drug War*, OR Books, 2015.

59 David Gagne, "How 100 Years of Failed Drug Policy Gave Rise to Mexico's Cartels," InSight Crime, April 6, 2015, available at: www.insightcrime.org/news-analysis/how-100-years-failed-drug-policy-rise-mexico-cartels.

60 See: Luis Astorga, *¿Qué querían que hiciera?, Inseguridad y delincuencia organizada en el gobierno de Felipe Calderón*, Grijalbo, 2015, pp. 20-21; Luis Astorga, *México: transición democrática, organizaciones de traficantes e inseguridad*, May 18, 2009, available at: www.razonpublica.com/index.php/internacional-temas-32/173-mco-transiciemocrca-organizaciones-de-traficantes-e-inseguridad.html; and Luis Astorga, *Estado, drogas ilegales y poder criminal, retos transexenales, Letras Libres*, November 2012, available at: www.letraslibres.com/revista/dossier/estado-drogas-ilegales-y-poder-criminal-retos-transexenales?page=full.

61 Luis Astorga, *Seguridad, traficantes y militares: el poder y la sombra*, Tusquets Editores, Mexico, 2007, pp. 11-14 and 27-28.

62 María Eugenia Suárez de Garay and Marcos Pablo Moloeznik, *El proceso de militarización de la seguridad pública en México* (2006-2012), pp. 128-129, available at: www.colef.mx/fronteranorte/articulos/FN48/5-f48.pdf.

63 Alejandro Madrazo Lajous, *Los costos constitucionales de la Guerra contra las drogas: una primera aproximación (desde México)*, Cuadernos de Trabajo del Seminario del Programa de Política de Drogas, 2014, CIDE, México, at: http://ppd.cide.edu/documents/302668/0/Libro%2012.pdf. Others have described this as the "coercive institutional isomorphism of non-military security stakeholders." See: Sabina Morales Rosas and Carlos Pérez Ricart, "Understanding militarization in Mexico beyond military expenditure: veto players and institutional isomorphism, a two folded approach," pp. 2, 11, and 13, available at: www.sipri.org/research/armaments/milex/ICES2013/papers/archive/morales-perez-understanding-militarization-in-mexico.

64 Shirk, "Drug Violence and State Responses in Mexico," p. 10.

65 Daly, Heinle, and *Shirk, Armed with Impunity*, p. 5. The same report notes that Salinas also granted the military an "elevated role" in national security matters when SEDENA and SEMAR were included in the formation of the national security cabinet, thereby diminishing civilian oversight of the military "by the fact that high-ranking officers [were] themselves charged with direct oversight and command of the armed forces at the highest levels within the executive branch." Ibid. Since the elevation of SEDENA and SEMAR to cabinet level positions, no civilian has ever been appointed to oversee these agencies. See: Marcos Pablo Moloeznik, "The Militarization of Public Security and the Role of the Military in Mexico," in Donnelly and Shirk (eds.), *Police and Public Security in Mexico*, p. 76.

66 Ibid. Anabel Hernandez notes that Zedillo "had been persuaded that soldiers would bring to the PGR order, discipline, and improved results in the fights against organized crime. The soldiers-turned-policemen were sent mainly to the border area of Nuevo León and Tamaulipas," p. 202. For more on the militarization of policing, see: Sabina Morales Rosas and Carlos Pérez Ricart, Op. Cit., pp. 11-12; and María Eugenia Suárez de Garay and Marcos Pablo Moloeznik, Op. Cit., pp. 130-132.

67 Donnelly and Shirk, p. 9. See also Luis Astorga, "México: transición democrática, organizaciones de traficantes e inseguridad," May 18, 2009, www.razonpublica.com/index.php/internacional-temas-32/173-mco-transiciemocrca-organizaciones-de-traficantes-e-inseguridad.html and "Estado, drogas ilegales y poder criminal, retos transexenales," *Letras Libres* (November 2012), www.letraslibres.com/revista/dossier/estado-drogas-ilegales-y-poder-criminal-retos-transexenales?page=full.

68 The ICCPR and CEDAW enabled the sending of individual communications to the Geneva-based treaty bodies.

69 The agreement is available at: www.hchr.org.mx/images/doc_pub/Acuerdo-ONUDH-MX_20020701.pdf.

70 See CNDH Recommendation 26/2001, available at http://www.cndh.org.mx/sites/all/doc/Recomendaciones/2001/Rec_2001_026.pdf. The report confirmed that at least 275 people had been arrested, tortured, and killed by state security forces, and signaled that 37 agencies or organizations and 74 government officials—not publicly named—should be investigated for alleged responsibility in the disappearances.

71 In June 2002, approximately eighty million documents were deposited in the GAN. See: Human Rights Watch, *Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox*, May 2006, p. 58, available at: www.hrw.org/sites/default/files/reports/mexico0506web_0.pdf.

72 For sample documents, see Kate Doyle and Jesse Franzblau, "Archival Evidence of Mexico's Human Rights Crimes: The Case of Aleida Gallangos," National Security Archive Electronic Briefing Book No. 307, available at: http://nsarchive.gwu.edu/NSAEBB/NSAEBB307/index.htm. See also: Human Rights Watch, *Lost in Transition: Bold Ambitions, Limited Results for Human Rights Under Fox*, May 2006, available at: www.hrw.org/sites/default/files/reports/mexico0506web_0.pdf.

73 Presidential decree published in the Federal Official Gazette on November 27, 2001 (*Acuerdo por el que se disponen diversas medidas para la procuración de justicia por delitos cometidos contra personas vinculadas con movimientos sociales y políticos*

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del pasado), available at: http://dof.gob.mx/nota_detalle.php?codigo=758894&fecha=27/11/2001.

74 The Executive Decree creating FEMOSPP was published in the *Federal Official Gazette* on November 27, 2001, available at: http://dof.gob.mx/nota_detalle.php?codigo=758894&fecha=27/11/2001. The decree did not include provisions on applicable law, and also did not address such questions as amnesty or statutes of limitations. This lack of clarity contributed to authorities' failures in applying and interpreting the law, ultimately contributing to the failure of prosecutions.

75 Submission to the Universal Periodic Review of the UN Human Rights Council by the International Center for Transitional Justice (ICTJ), Fourth Session, September 8, 2008, paragraph 7, available at: www.ictj.org/sites/default/files/ICTJ-Mexico-Periodic-Review-2008-Spanish_0.pdf.

76 Luz María González, "La Fiscalía en su Laberinto," *Contralínea*, available at: www.contralinea.com.mx/c12/html/portada/c12_fiscalia.html.

77 Sergio Aguayo Quezada and Javier Treviño Rangel, "El piadoso olvido: el PAN y los derechos humanos," in *Los Grandes Problemas de México, XV, Seguridad Nacional y Seguridad Interior*, Arturo Alvarado and Mónica Serrano (coords.), El Colegio de México, 2010, p. 347, available at: http://2010.colmex.mx/16tomos/XV.pdf.

78 On January 30, 2002, the First Chamber of the Supreme Court of Justice issued the final judgment on judicial docket 968/99, concerning an *amparo* complaint (constitutional challenge) filed in December 1998 by several members of the National Strike Council (*Consejo Nacional de Huelga*, CNH) and participants of the Student and Popular Movement of 1968 against the refusal of the Federal Prosecution to open an investigation into the possible perpetration of genocide, illegal deprivation of liberty, and abuse of authority perpetrated in the 1968 massacre, on grounds that the statute of limitations for the indictment of any perpetrators had already lapsed. The First Chamber ruled that the prosecution could not refuse the investigation of a case from the outset. Prior to determining whether perpetrators are no longer liable on the grounds of statute of limitations, the prosecution was obliged to investigate the facts and determine which crimes they constituted. Final Judgment of the case 968/99 available at: www.scjn.gob.mx/Transparencia/Epocas/Primera%20sala/Novena%20%C3%A9poca/1999/968_99.pdf.

79 See: "Nuevo fracaso de la Femospp en su intento de encarcelar a Echeverría," *La Jornada*, September 22, 2005, available at: www.jornada.unam.mx/2005/09/22/index.php?section=politica&article=016n1pol; "Pide la Femospp que se aprehenda a Echeverría por la matanza del 68," *La Jornada*, September 20, 2005, available at: www.jornada.unam.mx/2005/09/20/index.php?section=politica&article=018n1pol; "Carpetazo al 10 de junio; exoneran a Luis Echeverría y Mario Moya," La Jornada, July 27, 2007, available at: www.jornada.unam.mx/2005/07/27/index.php?section=politica&article=003n1pol.

80 Submission to the Universal Periodic Review of the UN Human Rights Council of the International Center for Transitional Justice (ICTJ), Fourth Session, September 8, 2008, paragraph 8, available at: www.ictj.org/sites/default/files/ICTJ-Mexico-Periodic-Review-2008-Spanish_0.pdf.

81 See chapter five of this report.

82 Ibid.

83 The Convention and Mexico's reservation are available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-6&chapter=4&lang=en#EndDec. This reservation may have become invalid following subsequent precedent-setting Supreme Court rulings regarding the duty to investigate grave human rights violations under international law.

84 Sergio Aguayo Quezada and Javier Treviño Rangel, "El piadoso olvido: el PAN y los derechos humanos," in *Los Grandes Problemas de México, XV, Seguridad Nacional y Seguridad* Interior, Arturo Alvarado and Mónica Serrano (coords.), El Colegio de México, 2010, p. 346, available at: http://2010.colmex.mx/16tomos/XV.pdf.

85 The 23-year-old victim was detained for having "subversive propaganda" that demanded justice for the 1971 student massacre. The court sentenced the perpetrator to five years in prison and one year of disqualification from serving as a public officer. Because the perpetrator presented an advanced level of senility when he was convicted (although he was 26 years old when he perpetrated the disappearance) his prison penalty was substituted with domiciliary surveillance. The final judgment contains evidence indicating that the victim was also subjected to torture but there was no further legal consideration of that crime. The Open Society Justice Initiative has the public version of the judgment in the case (179/2006) on file, and obtained it through right-to-information-request 00386614, filed with the Ninth District Court of Sinaloa. The FEMOSPP case represents one of the six convictions at the federal level for the offense of enforced disappearance that Mexico reported to the UN Committee on Enforced Disappearances in March 2014, CED/C/MEX/1, para. 164, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en.

86 The executive decree creating justice measures for Dirty War crimes mandated the Interior Ministry (SEGOB) to create an inter-disciplinary committee to provide reparations to victims, including the 275 victims of enforced disappearance and other human rights violations identified in the CNDH recommendation 26/2001. The committee was effectively installed on March 7, 2002 and held sessions between 2006 and 2010, including a meeting aimed to "create and approve a reparation project for the case of Rosendo Radilla Pacheco." The results and content of these meetings were neither clear nor transparent. SEGOB has reported that "steps have been taked to issue 55 payments for reparations to relatives of disappeared persons" and that 41 additional payments were approved under a 2012 trust for reparations for human rights violations. However, the extent to which payments were effectively made and families repaired remains unknown. SEGOB responses to right to information requests 0000400383914 and 0000400382614 filed by the Open Society Justice Initiative. In response to civil society requests for information on the work of the committee in 2007 and 2008, the organizations were informed that the information was reserved. See: Submission to the Universal Periodic Review of the UN Human Rights Council of the International Center for Transitional Justice (ICTJ), Fourth Session, September 8, 2008, paragraph 12 and footnote 16, available at: www.ictj.org/sites/default/files/ICTJ-Mexico-Periodic-Review-2008-Spanish_0.pdf. See also: Sergio Aguayo Quezada and Javier Treviño Rangel, *Fox y El Pasado: La Anatomía De Una Capitulación, Foro Internacional* XLVII, no. 4 (2007): 709–739, p. 730.

87 Quezada and Treviño Rangel, p. 727.

88 "Official Report Released on Mexico's 'Dirty War,'" National Security Archive, Electronic Briefing Book No. 209, available at http://nsarchive.gwu.edu/NSAEBB/NSAEBB209/index.htm. Even this achievement, however, had evident limitations. Following the report's launch, the authors of a prior draft publicly critiqued the special prosecutor for watering down their original findings. Despite the charges of censorship, the report provides clear evidence that the military routinely detained civilians, identifies some individuals and units involved, and provides evidence that the defense secretary and the president, in at least in a few cases, knew about the detentions. The report identifies that the state illegally targeted student and opposition groups, committing "crimes against humanity which culminated in massacres, forced disappearances, systematic torture, war crimes and genocide—with the intent to destroy this sector of society which was considered ideologically as its enemy." *El informe del Fiscal omite temas fundamentales incluidos en el Informe ¡Que no vuelva a suceder!, que se le entregó el 15 de diciembre*

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de 2005, Communiqué from Authors of the Draft Report of the Special Prosecutor (December 12, 2006), http://nsarchive.gwu.edu/NSAEBB/NSAEBB209/boletin_de_prensa.pdf; see also: http://nsarchive.gwu.edu/NSAEBB/NSAEBB180/. See also: *El Cambio Inconcluso Avances y desaciertos en derechos humanos durante el gobierno de Fox*, Human Rights Watch, May 2006, at: www.hrw.org/sites/default/files/reports/mexico0506spwebwcover.pdf.

89 The attorney general's decree A/317/06, ordering the dissolution of the Special Prosecution and the referral of cases to the PGR's General Investigations Coordination office (Coordinación General de Investigación) was published in the *Federal Official Gazette* on March 26, 2007: http://dof.gob.mx/nota_detalle.php?codigo=4966412&fecha=26/03/2007.

90 It sent the files to the PGR's General Investigations coordination office (Coordinación General de Investigación). See: "Desapariciones Forzadas Durante la Guerra Sucia en México y Impunidad," presented during the 7th Session of the Committee Against Enforced Disappearances (September, 15-26, 2014), p.13, http://bit.ly/1xYhUCC. Freedom of information requests, filed by the organization Centro de Derechos Humanos Miguel Agustín Pro Juárez with the PGR, revealed that as of 2011 the General Coordination of Investigation (*Coordinación General de Investigaciones*, or CGI) had not achieved any advances in its criminal investigations relating to the Dirty War.

91 State officials told the IACHR that of 159 Dirty War cases in which the PGR decided not to continue investigations, 106 were due to a lapsing statutes of limitations and 53 because the facts under investigation purportedly did not constitute crimes. Government officials also reported that 96 cases had been referred to state prosecutors, based on the determination that federal prosecutors lacked jurisdiction. This accounts for 255 of the 570 cases transferred to the PGR. Officials made no mention of the status of the remaining 315, or the ultimate outcomes of the 96 cases transferred to state jurisdictions. Video of IAHRC hearing on Mexico's Special Prosecutor for Past Crimes (*Fiscalía Especial para Movimientos Sociales y Políticos del pasado en México - FEMOSPP*) (October 30, 2014), available at http://bit.ly/1Hmm6m2.

92 The PGR stated that between 2006 and 2014, it received seven new reports of Dirty War crimes (*denuncias*). Added to the 570 cases transferred from FEMOSPP, this would mean there were a total of 577 cases. In 74 cases, the PGR reported that it decided not to bring charges, even though the statute of limitations had not yet expired: in 50 cases because it found no criminal liability of the alleged perpetrators, and in 24 cases because it identified no underlying crime. It suspended (*reserva*) the investigation of one case for unexplained reasons. It reported having transferred 47 cases to state prosecutors, and stated that 252 criminal investigations remained open. Altogether this leaves the fate of 203 of 577 cases wholly unexplained. PGR responses to right-to-information requests 0001700321214 (February 19, 2015), 0001700321414 (February 4, 2015) and 0001700321314 (February 4, 2015), filed by the Open Society Justice Initiative.

93 Ibid.

94 The Truth Commission had a mandate to investigate human rights violations and acts that could amount to crimes against humanity between 1969 and 1979. The law creating the Truth Commission is available at: http://i.administracion2014-2015.guerrero.gob.mx/uploads/2012/04/L932CCVIVDHGSASSEG.pdf. For information on the commission's difficulties accessing federal archives on the Dirty War, see: "Comisión de la Verdad del Estado de Guerrero, Informe Final de Actividades," October 15, 2014, p. 75; "Comisión de la Verdad del Estado de Guerrero, Segundo Informe de Avances," May 29, 2014, pp. 9, 14, available at http://comverdadguerrero.org.mx/images/descargas/2%C2%BA%20informe.pdf; and: "Desapariciones Forzadas Durante la Guerra Sucia en México y Impunidad," presented during the 7th Session of the Committee Against Enforced Disappearances (15-26 September 2014), available at: http://bit.ly/1xYhUCC.

95 "Cierran Archivos Históricos," *El Universal*, March 17, 2015, available at: www.eluniversal.com.mx/nacion-mexico/2015/cierran-archivos-historicos-1085114.html.

96 Luis Astorga, "México: transición democrática, organizaciones de traficantes e inseguridad," *Razón Pública*, May 18, 2009, at www.razonpublica.com/index.php/internacional-temas-32/173-mco-transiciemocrca-organizaciones-de-traficantes-e-inseguridad.html; "Estado, drogas ilegales y poder criminal, retos transexenales," at http://www.letraslibres.com/revista/dossier/estado-drogas-ilegales-y-poder-criminal-retos-transexenales?page=full.

97 Flores Pérez, "Organized Crime and Official Corruption in Mexico," pp. 115-122. See also: Luis Astorga, *¿Qué querían que hiciera?, Inseguridad y delincuencia organizada en el gobierno de Felipe Calderón*, Grijalbo, 2015, pp. 20-21. See also: Luis Astorga, "México: transición democrática, organizaciones de traficantes e inseguridad," May 18, 2009, available at: www.razonpublica.com/index.php/internacional-temas-32/173-mco-transiciemocrca-organizaciones-de-traficantes-e-inseguridad.html and "Estado, drogas ilegales y poder criminal, retos transexenales," *Letras Libres*, November 2012, available at: www.letraslibres.com/revista/dossier/estado-drogas-ilegales-y-poder-criminal-retos-transexenales?page=full.

98 Grillo, *El Narco*, 94.

99 For example, by November 2002, the PGR's Special Unit for Crimes against Health included 107 military officers. See: Luis Astorga, *Seguridad, traficantes y militares: el poder y la sombra*, Tusquets Editores, Mexico, 2007, pp. 63, 64, 65, 67, 77 and 81.

100 Moloeznik, p. 76.

101 The impact of Calderón's and Peña Nieto's post-2006 security policies on the perpetration of atrocity crimes by state agents is discussed in chapter three. The impact of this approach to policing on police suitability to conduct criminal investigations is discussed in chapter four.

102 Moloeznik, p. 80. Notably, Calderón did this with substantial encouragement from the United States government and, from 2008 onwards, with vastly increased U.S. assistance provided through the Merida Initiative. In its first years, the program provided the PFP/PF with armored vehicles, Blackhawk helicopters, and other equipment meant to aid interdiction efforts. For more on the mixed record of the Merida Initiative, see Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, Washington Office on Latin America, May 2014, pp. 18-19, available at www.wola.org/sites/default/files/Mexicos%20Police.pdf.

103 On May 3 and 4, 2006, in the course of their deployment at Atenco, State of Mexico, police forces killed two protesters and sexually assaulted 26 women. Overall, there were 209 victims of human rights violations. The National Human Rights Commission issued recommendation No. 38/2006 to Governor Peña Nieto, Federal Minister of Public Security Eduardo Medina-Mora Icaza (whom Peña Nieto, as president, named as ambassador to the United States, then successfully nominated to fill a vacancy on Mexico's Supreme Court), and the National Migration Institute. CNDH Recommendation 38/2006 is available at www.cndh.org.mx/sites/all/doc/Recomendaciones/2006/Rec_2006_038.pdf. The Supreme Court of Justice, which at the time had the authority to investigate grave human rights violations, opened a constitutional investigation and ruled that the incident amounted to grave violations of human rights. A summary of the resolution is available at www.scjn.gob.mx/Cronicas/Cronicas%20del%20pleno%20y%20salas/cr_casoAtenco.pdf. The Atenco case became a major issue during Peña Nieto's presidential election campaign. During a conference at the Universidad Iberoamericana in May 2012, Peña Nieto stated: "[The Atenco case] showed government's firm determination to make the rights of the inhabitants of the State of Mexico prevail [...] when they were affected by private interests. I decided to use public force to restore order and peace

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[...] There were incidents, but perpetrators were duly punished, and those responsible were taken before judicial authorities [...] It was a firm decision, which I personally assumed, to restore order and peace, enforcing the right of the state to the use of force; and it must be said, this was valdated by the Supreme Court[...]". The video of his statement is available at: www.youtube.com/watch?v=EUBCOhbyvLY. The statement proved controversial, and increased visibility and public support for the social movement #YoSoy132. See "Atenco, Ibero y la primavera mexicana en 2012," Proceso, May 15, 2012, at: www.proceso.com.mx/307625/atenco-ibero-y-la-primavera-mexicana-en-2012 and "Atenco, el tema que 'encendió' a la Ibero y originó #YoSoy132," CNN, June 4, 2012, at: http://mexico.cnn.com/nacional/2012/06/04/atenco-el-tema-que-encendio-a-la-ibero-y-origino-yosoy132. A decision of the Inter-American Commission on Human Rights concerning the Atenco protest had been expected before the end of 2015, but was still not announced as of March 2016.

104 Ibid, p. 2.

105 Open Society Justice Initiative interview with Lic. David Javier Baeza Tello, Federal Police, General Director of Legal Issues and President of the Committee of the Access to Information office of the Federal Police (*Director General de Asuntos Jurídicos y Presidente del Comité de la Unidad de Enlace de la Policía Federal*) and Alejandro Galvan Illanes, Ministry of Interior, Legal and Operational Director of the Transparency and access to information unit of the Ministry of Interior (*Director Jurídico y Operativo de la Unidad de Enlace de Transparencia y Acceso a la Información de la SEGOB*), Mexico City, June 20, 2014. During the process of confirming quotes with interviewees for this report, the Office of the General Inspector of the Federal Police requested that the Justice Initiative amend the response to the question on membership of the Federal Police. Specifically, it requested that the report reference the Federal Police mandate to "safeguard the life, integrity, safety, and rights of individuals; preserve freedoms, public order and peace, as well as implement and operate the public security policy on the prevention and combating of crime." Further, the request asserted that the Federal Police carry out their mandate with regard for "the principles of legality, objectivity, efficiency, honesty, professionalism and respect for human rights." Email to the Open Society Justice Initiative from Inspector General Jacqueline Orozco Rebollar, February 24, 2016.

106 "As Drug Kingpins Fall in Mexico, Cartels Fracture and Violence Surges," *New York Times*, August 12, 2015, available at: www.nytimes.com/2015/08/13/world/americas/as-mexico-arrests-kingpins-cartels-splinter-and-violence-spikes.html.

107 National Program on Justice and Prosecution (*Programa Nacional de Procuración de Justicia*) 2013-2018, published in the *Federal Official Gazette* on December 16, 2013, available at: www.dof.gob.mx/nota_detalle.php?codigo=5326462&fecha=16/12/2013.

108 National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main results, September 30, 2015, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf.

109 Mexico's increase of violence is largely attributable to drug trafficking and organized crime. See: *Drug Violence in Mexico Data and Analysis Through 2014, Special Report* by Kimberly Heinle, Cory Molzahn, and David A. Shirk, Justice in Mexico Project, Department of Political Science & International Relations University of San Diego, pp.10 and 11: https://justiceinmexico.org/wp-content/uploads/2015/04/2015-Drug-Violence-in-Mexico-Report.pdf. According to Mexico Evalúa, between 2006 and 2010, 50% of alleged homicides in Mexico could be attributable to organized crime. México Evalúa, *Indicadores de Víctimas Visibles e Invisibles de Homicidio*, México Evalúa, 2012, pp 7 and 11. The Calderón administration attributed the rise in violent crime, including homicide, from 2006-2012 to "systemic violence" related to drug trafficking. Systemic violence from organized crime was worsened by other factors, including an increase and diversification of criminal organizations, and institutional weakness, creating "a perfect storm." See: Alejandro Poiré *El aumento de la violencia en México*, available at: http://calderon.presidencia.gob.mx/documentos/El_aumento_de_la_violencia.pdf.

110 Mexico's domestic and international obligations to investigate and prosecute the crimes are discussed in chapter three.

111 See chapter four of this report for more detail on government provision of information.

112 Administrative regulation A/018/12, published in the *Federal Official Gazette* on February 7, 2012, available at: www.pgr.gob.mx/Normatec/Documentos/a-018-12.pdf.

113 Articles 60 of the Federal Criminal Code and 194, I.1 of the Federal Code of Criminal Procedures define the cases where a crime—including homicide—is grave. Thus, a grave homicide affects the fundamental values of the society and is the result of negligence if it could have been prevented. Article 410 of the National Criminal Procedure Code sets forth that the gravity of a crime is determined by the value of the right affected, the intentionality of the perpetrator (intentional or non-intentional), the means to perpetrate the crime, and the circumstances of the crime, as well as the participation of the perpetrator. Further, Article 150, Section I of the National Criminal Procedure Code defines grave crimes in the context of "urgent cases" as those requiring pretrial detention *ex officio* and those whose average penalty of deprivation of liberty is higher than five years. Article 167 also considers grave crimes to be those against national security, or the free development of personality and health, as provided by special laws.

114 PGR documents SJAI/DGAJ/10912/2015 and SJAI/DGAJ/10913/2015, September 1, 2015, obtained in response to right-to-information requests 1700285315 and 1700285415 filed by the Open Society Justice Initiative.

115 Ibid.

116 For a discussion of the CNDH's poor performance, see the CNDH section of chapter five of this report.

117 National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main results, September 30, 2015, pp 23-25, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf.

118 According to the head of the General Unit of Legal Issues of the Federal Ministry of Interior, almost 75 percent of the municipalities in Mexico could be vulnerable to organized crime infiltration. See: appearance before the Senate on January 21, 2014: http://comunicacion.senado.gob.mx/index.php/informacion/versiones/18178-version-estenografica-de-los-trabajos-de-la-mesa-3-en-el-segundo-dia-de-las-audiencias-publicas-en-materia-de-seguridad-y-justicia.html.

119 National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main results, September 30, 2015, page 28.

120 ENVIPE 2015, National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main results, September 30, 2015, pp. 27-29.

121 ENVIPE 2015, National Poll of Victimization and Perception on Public Security (Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública—ENVIPE 2015), Main results, September 30, 2015, pp. 27-29.

122 National Human Rights Program 2014-2018, section I.1, "Need to implement the constitutional amendments on human rights,"

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available at: www.dof.gob.mx/nota_detalle.php?codigo=5343071&fecha=30/04/2014 [accessed on September 8, 2015].

123 "Treated with indolence: the State's response to disappearances in Mexico," Amnesty International, January 14, 2016, page 15. Full report available at: https://www.amnesty.org/es/documents/amr41/3150/2016/en. See also: Human Rights Watch, *Neither Rights Nor Security*, November 2011, pp. 33-34.

124 See, e.g.: Amnesty International, "Urgent Action: Torture Victim at Risk of Reprisals," AMR 41/072/2013 (November 7, 2013).

125 Federal criminal code, Articles 302-328, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/9_120116.pdf [accessed on May 4, 2015].

126 Federal criminal code, Articles 52 and 60.

127 Federal code of criminal proceedings, Article 194.

128 Federal criminal code, Article 325.

129 International Criminal Court, Elements of Crimes, Article 7 (1) (a).

130 For example, non-intentional homicides may include deaths from medical negligence or from traffic accidents. See Federal criminal code, Articles 60-62.

131 According to data from the Interior Ministry's SNSP, from the end of 2006 through 2015, there were 299,167 homicides in Mexico nationwide: 156,827 intentional and 142,430 non-intentional. Data available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed on February 26, 2016].

132 See data cited in Mexico Evalua, *Indicadores de víctimas visibles e invisibles de homicidio*, November 2012, p. 43, available at: http://mexicoevalua.org/2012/11/indicadores-de-victimas-visibles-e-invisibles-de-homicidio.

133 See: Layda Negrete, Leslie Solís y Rolando Ochoa, "A punta de pistola," *Animal Político*, December 3, 2015, available at: www.animalpolitico.com/blogueros-el-blog-de-mexico-evalua/2015/12/03/a-punta-de-pistola.

134 See: Mexico Evalua, *Indicadores de víctimas visibles e invisibles de homicidio*, November 2012, page 43, available at: http://mexicoevalua.org/2012/11/indicadores-de-victimas-visibles-e-invisibles-de-homicidio. See also: UNODC Global Study on Homicide 2013, at: www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf.

135 See: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-victimas.php. August and November 2015 had the highest monthly rates of homicide in a two-year period. See: Alejandro Hope, "Homicides: the curve is not flattening," *El Daily Post*, December 23, 2015, available at: www.eldailypost.com/opinion/2015/12/homicides-the-curve-is-not-flattening [accessed on January 19, 2016].

136 For detail on statistics and methodologies, see Kimberly Heinle, Octavio Rodriquez Ferreira, and David A. Shirk, *Drug Violence in Mexico: Data and Analysis through 2014*, Justice in Mexico Project, University of San Diego, April 2015, https://justiceinmexico.org/wp-content/uploads/2015/04/2015-Drug-Violence-in-Mexico-final.pdf. On the difference of results of the INEGI and SNSP databases on homicides, see: *Indicadores de Víctimas Visibles e Invisibles de Homicidio*, México Evalúa, 2012, available at: www.mexicoevalua.org/wp-content/uploads/2013/02/IVVI-H-20126.pdf; and Un país que cubre sus espejos, Nexos, July 27, 2015, available at: http://redaccion.nexos.com.mx/?p=7308.

137 INEGI data on homicides is available at: http://www.inegi.org.mx/sistemas/olap/proyectos/bd/continuas/mortalidad/defuncioneshom.asp?s=et.

138 SNSP data on homicides is available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php.

139 SNSP *Incidencia Delictiva* data on victims is available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-victimas.php.

140 "Statistics on general deaths, Methodological summary," INEGI, 2014, pages 3, 11 and 12, available at: http://internet.contenidos.inegi.org.mx/contenidos/productos//prod_serv/contenidos/espanol/bvinegi/productos/nueva_estruc/702825063597.pdf [accessed on September 8, 2015]. INEGI's judicial statistics on criminal cases allow disaggregating information by federal and state cases. Concretely, they provide information on alleged criminals, indictments, convictions, and acquittals in federal and state-level jurisdiction for several crimes, including homicide. See: www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10. See also the methodological summary of INEGI's judicial statistics on criminal cases, INEGI, 2012, pp. 3-8, available at: www.inegi.org.mx/prod_serv/contenidos/espanol/bvinegi/productos/metodologias/judiciales/sintes_penal/sm_ejmp_2012.pdf.

141 INEGI database on homicides. From the beginning of 2007 through 2015, there were 339 homicides for which the date of perpetration remained unspecified. These ranged from a low of two per year in 2008 to a high of 95 in 2014. Calculation based on a database search using the variables "deaths by homicide," "year of registration: 2007-2015," and "year of homicide: not specified."

142 According to these figures, the number of homicide victims in 2014 and 2015 exceeded the number of homicide investigations by over 10% (35,955 victims and 32,631 investigations in 2014 and 36,168 victims and 32,791 investigations in 2015). SNSP data on homicide investigations is available at: SNSP statistics on homicide victims in 2014 and 2015 are available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-victimas.php.

143 State-level prosecutors often fail to properly classify homicide (intentional or non-intentional), or provide information on the circumstances and context of killings (i.e. by gunfire or stabbing). The number of homicides registered as cases "without information" on the means of perpetration has increased. See: Jonathan Furszyfer, "Contabilidad... ¿sin datos? Un vistazo a las categorías ambiguas del homicidio," *Animal Político*, January 7, 2016, available at: www.animalpolitico.com/blogueros-el-blog-de-mexico-evalua/2016/01/07/contabilidad-sin-datos-un-vistazo-a-las-categorias-ambiguas-del-homicidio/

144 Federal prosecutors only have jurisdiction over certain types of cases, as specified in Article 50 of the Organic Law of the Judicial Branch of the Federation. These include homicides related to offenses under other federal laws (i.e. the federal law against organized crime) and cases in which the perpetrator or victim is a federal public officer. Organic Law available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/172_041115.pdf [accessed on February 27, 2016].

145 While the PGR does provide statistics on some federal crimes, it does not provide information on homicides. There is therefore no available data on how many homicide cases from the state level end up under the jurisdiction of federal prosecutors, nor of the number of investigations of homicides at the federal level. In response to two right-to-information requests from the Open Society Justice Initiative, the PGR has expressly stated that it lacks information on federal homicide cases. PGR documents SJAI/DGAJ/10912/2015 and SJAI/DGAJ/10913/2015, both dated September 1, 2015, obtained in response to right-to-information requests 1700285315 and 1700285415 filed by the Open Society Justice Initiative.

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146 Investigative reporter Victor Hugo Michel compiled this figure from 479 right-to-information requests to state and municipal forensic centers, and local cemeteries. But even 24,000 was a partial figure, based on data from only 25 states and 210 municipalities; 190 of his requests remained unanswered or were rejected on grounds of "national security." Further, 50 cities reported that they had lost their registers, or lost the information on the location of the public mass graves. Some states responded that their data was incomplete because not all municipalities were included. In some states with extreme rates of violence, including Michoacán and Tamaulipas, authorities said they had either never established a registry of bodies or were unable to produce the information. See Víctor Hugo Michel, "A la Fosa Común, 24 Mil Muertos en este Sexenio," *Milenio* (October 28, 2012), available at http://nuestraaparenterendicion.com/index.php/red-de-periodistas-de-a-pie/item/1501-a-la-fosa-com%C3%BAn-24-mil-muertos-en-este-sexenio and http://www.milenio.com/politica/fosa-comun-cuerpos-dia_14_183721627.html.

147 See Articles 117 to 125 of the Federal Civil Code and similar provisions in the civil codes of the Mexican States and Federal District. See also Articles 347, 348, and 350 bis of the General Health Law that regulate the treatment of «corpses of unidentified persons» (*cadáveres de personas desconocidas*); see also Articles 122 to 124 of the Federal Civil Code (on the issuance of death certificates for unidentified bodies) and, as an example of similar provisions existing in all Mexican States, Articles 56 to 58 of the Regulations for cemeteries of the Federal District (on the handling of unidentified corpses and human remains).

148 "Las fosas clandestinas de la Fiscalía de Morelos," *Proceso*, November 5, 2015, available at: www.proceso.com.mx/?p=420052.

149 Press release #347 of the Ministry of Interior presenting the progress of the National Plan for the Search of Missing Persons, dated July 9, 2014, available at: http://segob.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A5067&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1 [accessed on April 20, 2015].

150 PGR document SJAI/DGAJ/09220/2014, September 22, 2014, in response to right to information request 0001700187314 filed by the Open Society Justice Initiative.

151 PGR response to right-to.information request 0001700283915, mentioned in "A history of violence: A Decade of Unmarked Grave Discoveries in Mexico," at: http://interactive.fusion.net/mexico-history-violence/.

152 Karla Zabludovsky, "Nobody, Especially the Government, Knows How Many Mass Graves Have Been Found in Mexico," *BuzzFeed*, March 26, 2015, available at www.buzzfeed.com/karlazabludovsky/nobody-knows-how-many-mass-graves-are-under-mexico#.ga9MYxLP5.

153 See the section on investigations for more discussion of the Protocol for Forensic Treatment and Identification (*Protocolo para el tratamiento e identificación forense*).

154 "Presentación del vocero de Seguridad de Base de Datos de Homicidios presuntamente relacionados con la delincuencia organizada en Diálogos por la Seguridad," January 12, 2011, available at http://calderon.presidencia.gob.mx/2011/01/presentacion-del-vocero-de-seguridad-de-base-de-datos-de-homicidios-presuntamente-relacionados-con-la-delincuencia-organizada-en-dialogos-por-la-seguridad. Shortly after its unveiling, the Calderón administration renamed this the "Database of Deaths Occurring from Alleged Criminal Rivalry" (*Base de Datos de Fallecimientos Ocurridos por Presunta Rivalidad Delincuencial*) in response to criticism that the executive branch was prejudging the criminal liability of persons included in the database. "Informa vocería de Seguridad cambio en nombre de base de datos publicada," April 1, 2011, available at http://calderon.presidencia.gob.mx/2011/04/informa-voceria-de-seguridad-cambio-en-nombre-de-base-de-datos-publicada. The database drew on information from the Ministry of Defense, the Navy, the Ministry of Public Security, and the Ministry of the Interior, and was administered by the PGR's Center for Planning, Analysis and Information for the Fight Against Crime (*Centro de Planeación, Análisis e Información para el Combate de la Delincuencia*, or CENAPI).

155 Killings were classified as "executions," "confrontations," and "aggressions." Database on file with the Open Society Justice Initiative. See also: www.inteligenciapublica.com/wp-content/uploads/2014/08/LO-BUENO-LO-MALO-Y-LO-FEO-DE-LAS-BASES-DE-DATOS.pdf.

156 "El Gobierno promete, ahora sí, cifras confiables de víctimas," *Animal Político*, November 14, 2012, available at http://www.animalpolitico.com/2012/08/lo-bueno-lo-malo-y-lo-feo-de-los-datos-de-muertes-por-guerra-contra-el-narco/. See also: Henia Prado, "Sepultan—también—cifra de ejecutados," August 15, 2012, available at http://issuu.com/ntrmedios/docs/20120815/13.

157 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Mission to Mexico*, document A/HRC/26/36/Add.1, April 28, 2014, para. 35. See also: Heinle, Ferreira, and Shirk, *Drug Violence in Mexico: Data and Analysis through 2013*, p. 22-25. The same authors note in their 2015 report that organized-crime-style killings—gun battles, group executions, torture, dismemberment, beheadings, mass graves—"still constitute a major share" of homicides. In particular, "About a third—and as many as half—of all homicides identified in 2014 bore such characteristics." Heinle, Ferreira, and Shirk, *Drug Violence in Mexico: Data and Analysis through 2014*, pp. 9-12.

158 The newspapers are Milenio and Reforma, and the consulting firm is Lantia. Milenio's account on execution in Monterrey in 2013 available at: www.google.com/mymaps/viewer?mid=ztDtDKMgwgEM.kNMqHwb6dylE&hl=en_US. Reforma's *Ejecutómetro* is available at: www.gruporeforma.reforma.com. The database of Lantia consulting was used in *Indicadores de Víctimas Visibles e Invisibles de Homicidio*, México Evalúa, 2012.

159 According to security analyst Alejandro Hope, these attempts are inherently flawed because they rely on flawed government and media accounts, and "hunches and guesses" about which murders fit typical characteristics of organized crime killings. See: Alejandro Hope, "How Violence in Mexico is Becoming Invisible," *El Daily Post*, November 2, 2015, available at: www.eldailypost.com/security/2015/11/how-violence-in-mexico-is-becoming-invisible [accessed on November 3, 2015].

160 Chapter four examines these government claims in greater detail.

161 "False positives" are discussed in the "Civilian Population" section of chapter three.

162 "Masacre de 72 personas migrantes en San Fernando," Fundación para la Justicia y el Estado Democrático de Derecho, available at: http://fundacionjusticia.org/masacre-de-72-personas-migrantes-en-san-fernando/. Among the victims were 24 migrants from Honduras, 14 from El Salvador, 13 from Guatemala, five from Ecuador, three from Brazil, and one from India. The San Fernando massacre is discussed in greater detail in the following chapter.

163 See the 2011 Special Report of the National Human Rights Commission on the kidnapping of migrants at: www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secmigrantes.pdf [accessed on September 8, 2015], and Amnesty International, *Invisible Victims: Migrants on the Move in Mexico*, April 2010.

164 *Relacion de personal fallecido en la aplicación de la campaña permanente contra el narcotrafico y la Ley Federal de Armas de Fuego y Explosivos, de 1 dic. 2006 al 16 Ene 2016*, SEDENA, available at www.sedena.gob.mx/images/stories/archivos/

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derechos_humanos/rel_pnal_fallecido.pdf.

165 *Drug Violence in Mexico: Data and Analysis Through 2014*, Special report by Kimberly Heinle, Cory Molzahn, and David A. Shirk, Justice in Mexico Project, Department of Political Science & International Relations, University of San Diego, April 2015, pp. 22-25, at: https://justiceinmexico.org/wp-content/uploads/2015/04/2015-Drug-Violence-in-Mexico-Report.pdf.

166 Even before the recent upsurge in killings of women, which coincided with the onset of the Calderón administration, studies have found that women have been disproportionately killed "by the most cruel means, such as hanging, strangulation, suffocation, drowning, immersion and knives" or "by poisoning or burns with chemicals or fire." See UN Women, et. al., *Violencia feminicida en México. Características, tendencias y nuevas expresiones en las entidades federativas*, 1985-2010 (2012), p. 31, available at www.unwomen.org/-/media/Headquarters/Attachments/Sections/Library/Publications/2013/2/Feminicidio_Mexico-1985-2010%20pdf.pdf.

167 The spike in killing of women and girls in Ciudad Juárez, beginning in 1993, also highlighted the failures of the state to prevent and respond to atrocities. More than 400 women and girls were reportedly killed over little more than a decade. Impunity for these killings arguably helped create a permissive atmosphere for subsequent femicides. See e.g.: Girish Gupta, "Mexico's Disappeared Women," *New Statesman*, February 17, 2011, www.newstatesman.com/south-america/2011/02/ciudad-juarez-women-mexico. See also: Inter-American Court of Human Rights Case of González et al. (*"Cotton Field"*) v. Mexico. Judgment of November 16, 2009 (Preliminary Objection, Merits, Reparations, and Costs), para. 2, available at: www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf. With regard to the disappearance and death of Claudia Ivette González, Esmeralda Herrera Monreal, and Laura Berenice Ramos Monárrez, whose bodies were found in a cotton field in Ciudad Juárez on November 6, 2001, the court found the state responsible for "the lack of measures for the protection of the victims, two of whom were minor children, the lack of prevention of these crimes, in spite of full awareness of the existence of a pattern of gender-related violence that had resulted in hundreds of women and girls murdered, the lack of response of the authorities to the disappearance [...]; the lack of due diligence in the investigation of the homicides [...], as well as the denial of justice and the lack of an adequate reparation."

168 José Merino, Jessica Zarkin y Joel Ávila, "¿Cómo se cuentan los feminicidios en México?," *Animal Político*, December 16, 2014, available at: www.animalpolitico.com/blogueros-salir-de-dudas/2014/12/16/como-se-cuentan-feminicidios-en-mexico/.

169 "Informe sobre la situación de las y los defensores de derechos humanos en México: actualziación y balance 2013," p. 10, at: http://www.hchr.org.mx/images/doc_pub/Informe_defensoresDH_2013_web.pdf and "Pronunciamiento IV Encuentro Nacional Red Nacional de Defensoras de Derechos Humanos en México," page 2, at: http://www.cladem.org/mexico/151206-IV-Encuentro-Nacional-de-Defensoras. See also: "Mexico City murders put defenders of women's rights on high alert," *The Guardian*, August 20, 2015, available at: www.theguardian.com/global-development/2015/aug/20/mexico-city-murders-put-defenders-of-womens-rights-on-high-alert [accessed on November 2, 2015].

170 Professor Guadalupe Barrena argues that despite the sharp increase in the number of homicides, the capacity to investigate and prosecute—resulting in "a range of 4,800-5,600 convictions" per year—has remained about the same. See: Guadalupe Barrena, "Enfrentar la impunidad: la promesa de una nueva justicia penal en México," in Mariclaire Acosta Uruquidi (coord.), *La impunidad crónica de México: una aproximación desde los derechos humanos*, CDHDF, 2012, pp. 149-235.

171 In total, 20,315 individuals were found guilty. Data on convictions at state and federal level are taken from INEGI's customizable online database, "Judicial statistics on criminal cases, Sentenced Persons" (*personas sentenciadas*). Variables used: "federal level and state-level," "year of registration 2009-2012," "year of perpetration 2007-2012," "judgment-dismissal: convictions and acquittals," "crime: homicide, homicides of relatives (homicidio en razón de parentesco) and femicide." Information 2009-2012, available at: www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10. This calculation includes both intentional and non-intentional homicides because data on convictions for only intentional homicides is unavailable. For years 2007 and 2008, INEGI only provides statistics on judgments for homicides. For years 2009-2012, it provides judgments for homicides, homicides of relatives (*homicidio en razón de parentesco*), and femicide. For purposes of this assessment, the overall number of judgments for homicide encompasses all the categories of killings of civilians registered by INEGI at local and federal level. INEGI's methodology note for 2012 confirms that conviction statistics relate to the number of persons convicted and not the number of cases with convictions (in which more than one person may be on trial). See: INEGI, *Síntesis metodológica de las estadísticas judiciales en materia penal*, pp. 12-13, available at: www.inegi.org.mx/prod_serv/contenidos/espanol/bvinegi/productos/metodologias/judiciales/sintes_penal/sm_ejmp_2012.pdf.

172 The "global" average is based on data from 60 countries. See: United Nations Office on Drugs and Crime, *Global Study on Homicide* 2013, p. 18, available at: www.unodc.org/documents/gsh/pdfs/2014_GLOBAL_HOMICIDE_BOOK_web.pdf [accessed on March 8, 2016].

173 Broken down, there were 261 investigations for grave homicides, leading to 56 indictments, and 317 investigations for non-grave homicides, leading to 38 indictments. Official documents SJAI/DGAJ/10912/2015 and SJAI/DGAJ/10913/2015, dated September 1, 2015, obtained in response to right-to-information requests 1700285315 and 1700285415 filed by the Justice Initiative.

174 PGR data provided to Human Rights Watch. See: Human Rights Watch, *Neither Rights Nor Security*, November 2011, pp. 165-166.

175 Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, September 2015, pp. 14-16, available at: https://www.opensocietyfoundations.org/sites/default/files/broken-justice-mexicos-guerrero-state-eng-20150826.pdf.

176 Human Rights Watch, *Neither Rights Nor Security*, November 2011, p. 166.

177 The UN Committee on the Elimination of Discrimination Against Women concluded that "...Since these are gender-based crimes, they have been tolerated for years by the authorities with total indifference. It is also alarming to learn that the problem is spreading under similar conditions to other cities in Mexico." See: Report on Mexico produced by the Committee on the Elimination of Discrimination against Women under Article 8 of the Optional Protocol to the Convention, and reply from the Government of Mexico, CEDAW/C/2005/OP.8/MEXICO, para. 66, at: www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf. The Inter-American Court of Human Rights reached a similar conclusion in the 2009 Cotton Field (*Campo Algodonero*) case, finding that Mexico had failed to protect three murdered women in Juarez, or to meaningfully investigate their murders. Notably, the court also concluded in May 2013 that, four years after the issuance of the judgment and 14 years after the deaths of victims, the Mexican government had still failed to conduct a proper criminal investigation and hold perpetrators accountable, and to sanction public officers who had failed to comply their obligations to investigate the case. See: www.corteidh.or.cr/docs/supervisiones/gonz%C3%A1lez_21_05_13.pdf.

178 *Estudio de la implementación del tipo penal de femininicido en México: causas y consecuencias*, p. 53, http://observatoriofeminicidiomexico.org.mx/wp-content/uploads/2014/11/17-NOV-Estudio-Feminicidio-en-Mexico-Version-web-1.

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pdf.

179 Data taken from INEGI's customizable online database, Judicial statistics on criminal cases, Sentenced Persons (personas sentenciadas). Variables: "federal level and state-level," "year of registration 2009-2012," "year of perpetration 2007-2012," "judgment-dismissal: acquittals," "crime: femicide." Information 2009-2012, available at: www.inegi.org.mx/sistemas/olap/Proyectos/bd/continuas/esop/sentenciados.asp?s=est&c=23723&proy=esop_sentenciados.

180 As of January 2016, it appeared that Congress would adopt a general law on disappearances, which would establish one definition for all criminal jurisdictions in Mexico. See chapter five for further detail.

181 See, for example, the interchangeable usage of the terms in the International Committee of the Red Cross Advisory Service on International Humanitarian Law's *Guiding Principles/Model Law on Missing Persons*, February 2009, available at: www.icrc.org/en/download/file/1066/model-law-missing-icrc-eng-.pdf.

182 Under Mexican federal law, kidnapping is the deprivation of liberty with the aim of: a) obtaining for oneself or third parties any benefit; b) holding a person hostage and threatening the victim with killing or any injury to oblige his relatives or a third person to do or omit any act; c) causing damage or injuries to the person deprived of liberty or to a third party; and d) perpetrating an express kidnapping, namely, a deprivation of liberty to extort or steal goods. Article 9 of the general law to prevent and sanction kidnapping crimes, which regulates section XXI of Article 73 of the Political Constitution of the Mexican United States, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LGPSDMS_030614.pdf.

183 Under Mexican federal law, deprivation of liberty is defined as "When a civilian deprives another of liberty, with or without violence." Article 364 of the Federal Criminal Code, available at: www.diputados.gob.mx/LeyesBiblio/pdf/9_120315.pdf.

184 Under Mexican federal law, human trafficking is any action or intentional omission of one or several persons to capture, take captive, transport, transfer, withhold, deliver, receive or host one or several persons for exploitation purposes. Article 10 of the General Law to Prevent, Sanction and Eradicate Crimes related with human trafficking and for the protection and assistance of victims of such crimes, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LGPSEDMTP.pdf.

185 Under Mexican law, a disappearance amounts to "enforced disappearance" if the perpetrator is a "public servant." Under definitions in international law that are applicable to Mexico, however, disappearances with indirect involvement of the state or its agents also count as "enforced." Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, to which Mexico is party, 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." As chapter three details, the Rome Statute definition is almost identical.

186 Inter-American Court of Human Rights, Sentence, November 23, 2009, Series C Number 209, paras. 299 to 313 and 321-322, available at: www.corteidh.or.cr/docs/casos/articulos/seriec_209_esp.pdf [accessed on May 5, 2015].

187 See the "New Initiatives on Disappearances" section of chapter five.

188 Rome Statute, Articles 7(1)(i); 7(2)(i). Similarly, Article 2 of the International Convention for the Protection of All Persons from Enforced Disappearance, to which Mexico is party, 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."

189 In November 2012, the *Washington Post* reported having received a leaked document from whistleblowers from within the PGR indicating that the government had been compiling a database of missing persons with names and information on 25,000 people. See: William Booth, "Mexico's Crime Wave Has Left About 25,000 Missing, Government Documents Show," *Washington Post*, November 29, 2012. Just days later, the civil society organization Propuesta Cívica made available a database, reportedly based on a secret list obtained from the PGR, that contains the names of 20,851 persons who went missing between December 2006 and November 2012. Database available at "Base de Datos de Personas Desaparecidas 2006-2012," http://desaparecidosenmexico.wordpress.com/descargas/. In early 2013, Under Secretary for Legal Issues and Human Rights of the Ministry of Interior Lía Limon confirmed the scale of information contained in a database developed under the Federal Prosecutor's Office during the Calderón administration, based on information from federal and state prosecutors' offices. She said that it contained information on 26,121 individuals. See: "26,121 personas desaparecidas en el gobierno de Calderón, reporta Segob," CNN Mexico, February 26, 2013, available at: http://mexico.cnn.com/nacional/2013/02/26/26121-personas-desaparecidas-en-el-gobierno-de-calderon-reporta-segob [accessed on March 31, 2015] and "Lía Limón da a conocer lista de 26,000 desaparecidos," *Aristegui Noticias*, February 26, 2013, available at http://aristeguinoticias.com/2602/mexico/lia-limon-da-a-conocer-lista-de-26000-desaparecidos. Since then, officials have provided wildly fluctuating numbers for how many disappearances there are in the country, with varying explanations for who is counted. See chapter four of this report for an assessment of Mexico's political will to maintain accurate and transparent records on disappearances.

190 Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, RENPED, available at: http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php [accessed on January 16, 2016].

191 Ibid [accessed on February 27, 2016]. The database included 25,733 cases from the federal entities and 939 federal cases. Of these, 249 were persons reported missing prior to 2007 (209 cases in federal entities and 40 federal cases), and in a further 738 cases (728 in federal entities and ten at federal level), authorities were unable to identify the year of disappearance.

192 RENPED reports disappearances based on the year of disappearance, not the year it was reported. According to RENPED, in 2014 there were 265 disappearances recorded by federal level authorities and 4,929 disappearances by authorities in the federal entities. RENPED, numbers as of December 2015 (at federal level) and October 2015 (for state-level authorities), http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php. RENPED is managed by the Executive Secretariat of the National System of Public Security (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*).

193 The memo went on to describe disappearances as "a common practice of criminal organizations [that] importantly affect the image of Mexico and pose economic burdens that are potentially unaffordable." Document titled "State-level Units for the Search of Disappeared Persons," January 2016, no longer available on the SNSP website, but on file with the Open Society Justice Initiative.

194 RENPED was created under the Law of the National Registry of Information of Missing or Disappeared Persons of April 17, 2012, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/9_120116.pdf.

195 Information on individual cases available at: https://rnped.segob.gob.mx/.

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196 Statistics from RENPED are available at: http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php.

197 For purposes of the National Registry of Information of Missing or Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*, or RENPED) a disappeared person is the one who, based on reliable information from families, close or related persons, is presumed a disappeared person according to domestic law, which can be related to an international or non-international armed conflict, a violent situation or internal riots, natural disasters or any situation that may require the intervention of a public authority. See: http://secretariadoejecutivo.gob.mx/rnped/nm-fuerofederal.php.

198 The RENPED methodology notes for federal and state-level records of disappearances are available, respectively, at: http://secretariadoejecutivo.gob.mx/rnped/nm-fuerofederal.php and http://secretariadoejecutivo.gob.mx/rnped/nm-fuerocomun.php.

199 At the federal level, numbers of "non-located persons" have as their sole source criminal investigations and investigative files opened by the PGR between 2014 and 2015 (for disappearances dating from various years). State-level data on missing persons reflected in RENPED draw on several sources, including investigative dockets (*carpetas de investigación*), criminal investigations, and reports of disappearances (*actas circunstanciadas*) and, according to its methodology note, it is not expressly limited to cases reported between 2014 and 2015.

200 A disappearance is removed from the database: 1) when a person is located; 2) when the investigation reveals the perpetration of a crime not included in RENPED database (i.e. kidnapping or human trafficking); 3) when the federal Attorney General's Office lacks jurisdiction to investigate the disappearance and refers the case to state level; 4) when the Attorney General's Office decides not to present charges related with the disappearance; and 5) when disappearance cases are duplicated in the database. See: Methodological note of RENPED, federal cases, available at: http://secretariadoejecutivo.gob.mx/rnped/nm-fuerofederal.php.

201 For example, RENPED provides no information on persons "located" even though its methodology calls for the database to be constantly updated to reflect persons found alive. Following the Interior Ministry's first acknowledgement of numbers from the database in February 2013, it conducted a review and removed 7,166 names.

202 Open Society Justice Initiative interviews with civil society representatives, December 2013 and January 2014.

203 As the RENPED database was being assembled, crimes reported as kidnappings were sent to a separate division of the PGR, called the Special Prosecutor's Office for Organized Crime (SIEDO), and a lack of communication prevented data on those files from being included. Open Society Justice Initiative interviews with PGR and SEGOB officials, Mexico City, March 4 and 5, 2013. (SIEDO changed its name to SEIDO in 2012, but at the time the database was assembled, was still called by the former name.)

204 SNSP data on kidnappings, available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed January 16, 2016]. As with SNSP homicide statistics, these figures represent investigations for kidnapping (deprivation of liberty), and some investigations involve multiple victims. The SNSP only began tracking statistics on the numbers of kidnapping victims in 2014. In 2014, there were 1,840 reported victims and 1,395 investigations; in 2015 there were 1,307 reported victims and 1,054 investigations. See: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-victimas.php [accessed on February 27, 2016].

205 INEGI's National Poll of Victimization and Perception on Public Security (*Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública*) has been conducted since 2011. For purposes of this assessment we include information from years 2012-2015 as those are the only ones containing specific information of kidnappings.

206 SNSP data on kidnappings 2007-2015, available at: http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php [accessed February 27, 2016].

207 Registro Nacional de Datos de Personas Extraviadas o Desaparecidas, RENPED, available at: http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php [accessed on February 27, 2016].

208 INEGI's 2013 survey of Mexican households, conducted in 2012, for the first time ever included a question on kidnapping. Based on this survey, the agency concluded that in 2012, there were 105,682 kidnappings in Mexico and 94,438 victims. The reasons for the discrepancy between the number of incidents and number of victims are not clear. See: INEGI, *Encuesta Nacional de Victimización y Percepción sobre Seguridad Pública 2013*, p. 21, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2013/doc/envipe2013_09.pdf [accessed on February 27, 2016]. The 2014 survey, conducted in 2013, found that there were a further 123,470 victims and 131,946 kidnappings that year. ENVIPE 2014, press release 418/14, page 8, September 30, 2014, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2014/default.aspx. ENVIPE 2015, with data on 2014, reports 102,883 kidnappings and 99,747 victims, main results, page 11, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2015/doc/envipe2015_presentacion_nacional.pdf [accessed on February 27, 2016]. The margin of error of these estimations is of +/-16.3% for 2014, +/-20.2% for 2013 and +/-19.9% for 2012. Ibid.

209 The glossary and questionnaires of ENVIPE 2015 include the categories kidnapping and "express kidnapping," in which victims are only briefly held. These definitions are similar to the legal ones. See: http://www3.inegi.org.mx/sistemas/glosario/default.aspx?clvglo=ENVIPE2015&s=est&c=33333.

210 Comparing the INEGI findings for 2012, 2013, and 2014 to Interior Ministry (SNSP) data on reported kidnappings in the same years (1,418, 1,683, and 1,395, respectively) indicates that the rate at which Mexicans reported kidnappings to the authorities over those three years was extremely low, and remarkably consistent (between 1.34 and 1.38% each year). That the massive (98.6%) rate of underreporting of kidnappings is worse than INEGI's figures on overall underreported crime (92.1% in 2012; 93.8% in 2013; and 92.8% in 2014), is plausible due to the nature of the crime. Family members of kidnapped individuals may be especially reluctant to report the crime because they fear that if they do, the abductors may kill their loved ones or endanger their own security, or because they suspect that law enforcement officials themselves were involved in the abduction, or they simply don't believe that the authorities would be willing or able to help them even if they did report it.

211 There is no INEGI survey data on kidnapping incidents for years prior to 2012, but if a more conservative 98% rate of under-reporting of kidnapping is applied to the years 2007 through 2011, then the 5,161 *reported* kidnapping cases over those five years amounted to just two percent of the likelier total: 252,889. Added to the INEGI totals for 2012-2014 (332,035), this suggests that there were over 580,000 kidnappings from the beginning of 2007 through 2014. INEGI's national survey, which obviously cannot poll households in Guatemala, Honduras, and other countries of migration origin, may still underrepresent the true dimensions of the crime because it does not capture extensive kidnappings of foreign migrants in transit to the United States of America.

212 Criminal organizations, with some degree of collusion by government officials, have targeted migrants in kidnapping and

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extortion schemes. The CNDH reported in 2009 that over a five-month period, 9,758 migrants had been kidnapped in Mexico. It subsequently reported 11,333 migrant kidnappings during a six-month period in 2010. See: CNDH, Informe Especial sobre los casos de secuestro en contra de migrantes, February 2011, pp. 12 and 26, available at: www.cndh.org.mx/sites/all/doc/Informes/Especiales/2011_secmigrantes.pdf.

213 Ibid, para. 68.

214 "Human Trafficking in Mexico Targets Women and Children," CNN, January 13, 2010, at: http://edition.cnn.com/2010/WORLD/americas/01/13/mexico.human.traffic.drug/.

215 *Diagnóstico situacional de la Trata de Personas en Querétaro*, Centro de Investigación Social Avanzada A. C., January 2015, available at: http://cisav.mx/wp-content/uploads/2014/12/Diagn%C3%B3stico-Situacional-electr%C3%B3nico.pdf.

216 Information provided by the Coahuila-based NGO Fray Juan de Larios. As of 2015, the organization had documented 167 disappearance cases in Coahuila in the years 2001, 2004, and from 2007-2015, involving 370 victims (312 men and 58 women). Most of the documented disappearances took place in 2009 and 2011.

217 In January 2015, the Mexican government reported to the UN Committee on Enforced Disappearances that there had been 13 convictions for enforced disappearance in Mexico up to that point and 313 indictments. See: *Summary records of the 8th session of the UN Committee on Enforced Disappearances*, document CED/C/SR.120, paragraph 7, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FSR.120&Lang=en. In April 2014, Mexico reported to the committee that there had been six convictions for enforced disappearance, all of which related to events prior to 2006. See: Mexico's report to the Committee on Enforced Disappearances, CED/C/MEX/1, para. 164, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en. As discussed directly below, after the government's January report there was another conviction in August 2015. It is possible that there were additional convictions of police for the crime of enforced disappearance between January and August 2015, although the Open Society Justice Initiative has been unable to find reports of any convictions during this period.

218 An information note on the case from the Federal Judicial Council from August 18, 2015 is available at: www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2015/notaInformativa88.pdf. See also: "Mexico Sees First Conviction of Soldier in Disappearance," Associated Press, August 18, 2015, available at: http://bigstory.ap.org/article/3744d01c4e5245c79e1cbd4a6ce4a711/mexico-sees-first-conviction-soldier-disappearance [accessed on January 6, 2016]. In February 2016, the federal judiciary refused to release the judgment in the case, citing a need to protect the presumption of innocence of the convicted soldier and his right to appeal. Ruling of the Transparency Committee of the Federal Judicial Council, in response to information request 00333615 filed by the Open Society Justice Initiative, requesting the public version of the judgment issued in criminal proceeding 104/2013 of the First District Court on Criminal Matters in the State of Nuevo León, ordinary session 4/2015, November 6, 2015, on file with the Justice Initiative.

219 Data taken from INEGI's customizable online database, Judicial statistics on criminal cases, Sentenced Persons (*personas sentenciadas*). Variables: "federal level and state-level," "year of registration 2009-2012," "year of perpetration 2007-2012," "judgment-dismissal: convictions and acquittals," "crime: enforced disappearance." Information 2009-2012, available at: www.inegi.org.mx/sistemas/olap/Proyectos/bd/continuas/esop/sentenciados.asp?s=est&c=23723&proy=esop_sentenciados.

220 WGEID Report, para. 66. See also Amnesty International, *Confronting a Nightmare: Disappearances in Mexico*, pp. 10-11.

221 *Tercer Informe de Labores de la Procuraduría General de la República 2014-2015*, pp. 113-114.

222 For specific examples of cases in which the military justice system has "downgraded" enforced disappearances, based on information from the National Human Rights Commission, see Human Rights Watch, *Neither Rights Nor Security*, pp. 135-137.

223 PGR response of August 26, 2014 to a request for information filed by the Open Society Justice Initiative, number 0001700172714, official document SJAI/DGAJ/07795/2014. With regard to kidnappings from 2006 through 2012, the PGR replied that it had no specific information on the numbers of criminal investigations, indictments, arrest warrants obtained, arrest warrants enforced, judicial decisions to subject a person to a procedure for kidnapping (*auto de formal prisión*), or convictions (first instance and *res iudicata*), but that it only maintains statistics for cases of illegal deprivation of liberty.

224 Data taken from INEGI's customizable online database "Judicial statistics on criminal cases." Variables "convicted," "state-level and federal cases," "year of registration: 2007-2012," "year of perpetration: 2007-2012," "crime: kidnapping," "judgment: acquittal, conviction and dismissal (*sobreseimiento*)." Database available at: http://www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10 [accessed on February 28, 2016].

225 CNDH, *Informe Especial sobre Secuestro de Migrantes en México*, pp. 14–15.

226 PGR response of August 26, 2014, official document SJAI/DGAJ/07795/2014, in response to request for information filed by the Open Society Justice Initiative, number 0001700172714.

227 Data taken from INEGI's customizable online database "Judicial statistics on criminal cases." Variables "convicted," "state-level and federal cases," "year of registration: 2007-2012," "year of perpetration: 2007-2012," "crime: kidnapping, illegal deprivation of liberty and deprivation of liberty for sexual reasons," "judgment: acquittal, conviction and dismissal (*sobreseimiento*)." Database available at: http://www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10 [accessed on February 28, 2016].

228 There were 106 convictions and 13 acquittals at the level of federal entities and one conviction and one acquittal at federal level. Data taken from INEGI's customizable online database "Judicial statistics on criminal cases." Variables "convicted," "state-level and federal cases," "year of registration: 2007-2012," "year of perpetration: 2007-2012," "crime: kidnapping, illegal deprivation of liberty and deprivation of liberty for sexual reasons," "judgment: acquittal, conviction and dismissal (*sobreseimiento*)." Database available at: www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10 [accessed on February 28, 2016].

229 ICCPR, Article 7, available at: www.ohchr.org/en/professionalinterest/pages/ccpr.aspx. Inter-American Convention available at: www.oas.org/juridico/english/treaties/a-51.html. This section focuses on the extent to which the legal framework provides an adequate basis for the prosecution of torture and other forms of ill-treatment. For a discussion of its adequacy for preventing torture and ill-treatment, see the section of chapter three on the extent of torture in Mexico.

230 Convention available at: www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx; Inter-American Convention available at: www.oas.org/juridico/english/treaties/a-51.html; and the Rome Statute is available at: www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf [all accessed on May 4, 2015].

231 Constitution of Mexico, Article 19: www.ordenjuridico.gob.mx/Constitucion/cn16.pdf.

232 Ibid, Article 20, B, (II).

233 Ibid, Article 29.

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234 The law provides the following definition of torture: "A public servant commits the offense of torture if, in the exercise of official functions, he or she inflicts on an individual severe pain or suffering, whether physical or mental, in order to obtain information or a confession from the individual or from a third party, or in order to punish the individual for acts she or he has committed or is suspected of having committed, or to coerce the individual to engage or refrain from engaging in a specific conduct." *Ley Federal Para Prevenir y Sancionar La Tortura*, adopted 27 December 1991, amended July 2, 1992 and January 10, 1994, Article 3, available at: www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf.

235 The limitation arises because the federal statute specifies purposes for which pain and suffering are inflicted (to obtain information or a confession, or to coerce certain conduct or the refraining from certain conduct). Definitions in the Convention against Torture, the Inter-American Convention, and the Rome Statute are all without limitations on intent beyond the intent to cause suffering. See: Convention Against Torture, Article X; Inter-American Convention, Article 2, and Rome Statute, Article 7.2(e).

236 The federal law foresees punishment for public servants who "instigate, compel or authorize third persons" to inflict torture (Law on torture, Article 5), but does not include language found in the CAT and Inter-American Convention encompassing acts inflicted by non-public persons acting, "at the instigation of or with the consent or acquiescence of a public official." Federal Torture Law available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf. The Rome Statute definition of torture includes no requirement that the perpetrator be a public official or acting together with a public official (Rome Statute 7(1)(f)). Under Mexico's current federal definition, cartel members cannot perpetrate torture; if police colluding with organized crime hand over victims and watch as cartel members inflict on them severe pain and suffering, the police—but not the cartel members—can be prosecuted for torture. See: Amnesty International, *Known abusers, but victims ignored: Torture and ill-treatment in Mexico*, October 2012, p. 13.

237 Guerrero has defined torture in a special law, and prosecutors cite this as a reason for failure to apply the law. See: Open Society Justice Initiative: *Broken Justice in Mexico's Guerrero State*, September 2015, p. 24, available at: www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state.

238 The Federal District has a definition close to international standards, as does Chiapas, although its law foresees light penalties for the crime. See: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum*, Document A/HRC/28/68/Add.3, para, 15, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68__Add_3_ENG.doc [accessed on January 10, 2016].

239 See the "New Criminal Justice System and Other Reforms on Torture" section of chapter five.

240 *Report of the Special Rapporteur, Mr. Nigel S. Rodley, submitted pursuant to Commission on Human Rights resolution 1997/38, Addendum: Visit by the Special Rapporteur to Mexico*, UN Commission on Human Rights document E/CN.4/1998/38/Add.2, January 14, 1998, para. 7, available at: www.refworld.org/docid/3ae6b091c.html.

241 UN Committee Against Torture, *Report on Mexico*, CAT/C/75, May 26, 2013, para 218, available at: www.refworld.org/docid/3f8d13b1a.html.

242 Although organized crime cartels have engaged in beatings and other forms of violence on a widespread scale, the focus here is on actions associated with government officials. Under Mexican law, a "public servant" can only commit the specific offense of torture and involvement of a government official is also an element of the crime according to the United Nations Convention Against Torture; other definitions under international law are not restricted in this way.

243 Data taken from CNDH annual reports, 2006-2015, available at: www.cndh.org.mx/Informes_Actividades.

244 It could be argued that the number of complaints to the CNDH with regard to torture and ill-treatment increase or decrease in response to causes other than fluctuations in the actual incidence of torture and ill-treatment. For example, results could fluctuate in accordance with resources available for taking complaints, the availability of legal pathways to file complaints, or changing levels of trust in police and prosecutors. However, in light of indications that the CNDH has been lax in fulfilling its mandate, there is good reason to believe that these figures significantly underrepresent the dimensions of torture and ill-treatment in Mexico. See the "National Human Rights Commission" section of chapter five.

245 *Situación de la tortura en México*, OMCT, 2012, p. 13, available at: http://centroprodh.org.mx/torturarnoesjusticia/wp-content/uploads/2014/04/InformeTorturaRedTDTOMCT.pdf.

246 The Open Society Justice Initiative has learned of an effort in the federal judiciary to collate information on torture judgments, but no detail on the initiative was available.

247 UN Committee Against Torture, Concluding Observations, CAT/C/MEX/CO/5-6, December 11, 2012, para. 16, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMEX%2fCO%2f5-6&Lang=en.

248 In addition to the examples cited above, see various requests to PGR departments and their responses, cited in the NGO Tlachinollan's "Addendum 1" to its October 2012 submission to the UN Committee Against Torture, pp. 1- 2.

249 PGR, Memorandum No. SJAI/DGAJ/09029/2012, September 17, 2012, cited in ibid.

250 See two sections of chapter four for additional information: "Concealing Information about Atrocity Crimes," and "Torture: An Accepted Malignancy."

251 Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), para. 16., available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fMEX%2fCO%2f5-6&Lang=en.

252 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, A/HRC/28/68/Add.3, December 29, 2014, paragraphs 24, 28 and 34, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Documents/A_HRC_28_68__Add_3_ENG.doc.

253 Calculation based on PGR data provided to Amnesty International in response to a public information request in June 2015. See: *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 7, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 6, 2016].

254 See the section on "Politicized Forensics" in chapter four.

255 PGR data provided to Amnesty International in response to right-to-information requests. See: Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 4, 2014, p. 46.

256 In April 2015, Mexico reported to the Inter-American Commission on Human Rights that there had been a total of 15 torture convictions at federal level; of these only six related to case files dated after 2006. The 15 cases are: (1) Case file 92/2003, Fourth District Court, state of Chiapas, April 19, 2014; (2) Case file 90/2004, Seventh District Court, state of Oaxaca, February 1, 2006; (3) Case file 90/2004, Seventh District Court, state of Oaxaca, January 19, 2007; (4) Case file 22/2006, Fourth District

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Court, state of San Luis Potosí, August 16, 2011; (5) Case file 35/1999, Second District Court, state of Morelos, October 26, 2006; (6) Case file 35/1999, Second District Court, state of Morelos, March 2, 2007; (7) Case file 35/1999, Second District Court, state of Morelos, April 20, 2007; (8) Case file 35/1999, Second District Court, state of Morelos, November 15, 2012; (9) Case file 35/1999, Second District Court, state of Morelos, May 21, 2013; (10) Case file 175/2012, Seventh District Court, state of Chihuahua, July 16, 2014; (11) Case file 34/2013, Fourth District Court, state of Chihuahua, March 13, 2014; (12) Case file 7/2013, Ninth District Court, state of Sonora, May 22, 2014; (13) Case file 27/2013, Fourth District Court, state of Michoacán, February 11, 2015; (14) Case file 27/2014, Fourth District Court, state of Michoacán, February 11, 2015; and (15) Case file 27/2014, Fourth District Court, state of Michoacán, February 11, 2015. See: Inter-American Commission on Human Rights, "The Human Rights Situation in Mexico," Doc. 44/15, December 31, 2015, para. 212 and footnote 293, available at: www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf.

257 See chapter 3 of this report for more information and sourcing for these data.

258 Data taken from INEGI's customizable online database "Judicial statistics on criminal cases." Variables "convicted," "state-level and federal cases," "year of registration: 2007-2012," "year of perpetration: 2007-2012," "crime: torture," "judgment: acquittal, conviction and dismissal (*sobreseimiento*)." Database available at: www.inegi.org.mx/est/lista_cubos/consulta.aspx?p=adm&c=10 [accessed on February 28, 2016].

259 See judgments of cases: Corte IDH. *Caso García Cruz y Sánchez Silvestre vs. México, Caso Cabrera García y Montiel Flores vs. México, Caso Rosendo Cantú y otra vs. México, Caso Fernández Ortega y otros vs. México, Caso Radilla Pacheco vs. México, and Caso Alfonso Martín del Campo Dodd vs. México*. All are available at: www.corteidh.or.cr/CF/Jurisprudencia2/busqueda_casos_contenciosos.cfm?lang=es.

260 Human Rights Watch, *Neither Rights Nor Security*, November 2011, p. 56.

261 *Personal militar involucrado en conductas ilícitas consideradas como violaciones a derechos humanos derivadas de las 155 recomendaciones emitidas por la C.N.D.H. en contra de esta Secretaría*, SEDENA.

262 Recommendations 77/2009, 11/2010, 49/2010, 50/2010, 57/2010 and 14/2011.

263 The government provided the CAT with no information in critical areas: how many criminal complaints had been lodged for these crimes, penalties imposed in cases of conviction, reparations provided, or actions taken in response to specific recommendations from the CNDH. Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), Committee Against Torture, CAT/C/MEX/CO/5-6, para 16.

264 Under the International Criminal Court's Elements of Crimes, a killing counts as "murder" if a perpetrator killed one or more persons, and other contextual elements of crimes against humanity (discussed below) are satisfied. The Elements specify that "killed" is synonymous with "caused death," meaning that the killing need not be intentional. Even non-intentional homicides (under Mexican domestic law) could be murders as a crime against humanity if they were part of a widespread or systematic attack against a civilian population, and the perpetrator was aware that the conduct was part of that attack. International Criminal Court, Elements of Crimes, Article 7 (1) (a).

265 Mexico is party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, with its ratification published in the *Federal Official Gazette* on April 22, 2002, available at: http://dof.gob.mx/nota_detalle.php?codigo=734644&fecha=22/04/2002. Mexico made a declarative interpretation that the convention would only apply to crimes perpetrated after its entrance into force in Mexico. All the crimes mentioned in this chapter were perpetrated after 2002, and therefore, this reservation is not applicable to any of them.

266 United Nations Office on Genocide Prevention and the Responsibility to Protect, *Framework of Analysis for Atrocity Crimes: A Tool for Prevention*, July 2014, p. 1, available at: www.un.org/en/preventgenocide/adviser/pdf/framework%20of%20analysis%20for%20atrocity%20crimes_en.pdf [accessed on January 4, 2015].

267 Rome Statute of the International Criminal Court, U.N. Doc. A/CONF.183/9, Art. 7 (July 17, 1998).

268 Darryl Robinson, "The Draft Convention on Crimes Against Humanity: What to Do With the Definition?," in: Morten Bergsmo and Tianying Song (eds.), *On the Proposed Crimes Against Humanity Convention*, 2014, p. 112.

269 *The Prosecutor v. Germain Katanga*, ICC-01/04-01/07-3436-tENG, Judgment Pursuant to Article 74 of the Statute, para. 1110, ICC Trial Chamber, March 7, 2014.

270 As the first deputy prosecutor of the Special Court for Sierra Leone put it, "you can fight on the same side of the angels and nevertheless commit crimes against humanity." IRIN, *Sierra Leone: Special Court Opens Its Doors Amid Controversies*, March 15, 2004, http://www.irinnews.org/report/49101/sierra-leone-special-court-opens-its-doors-amid-controversies.

271 Robinson, "The Draft Convention on Crimes Against Humanity: What to Do With the Definition?," p. 120.

272 *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, A/HRC/26/36, paras. 22-23, April 20, 2014.

273 Ibid.

274 This principle is reflected in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which provides: "Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life." United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, August 27 - September 7, 1990, Art. 9. Mexico's Supreme Court has articulated the following parameters for the use of force: 1) legitimacy: law enforcement must have the authority to use force and it must pursue a legitimate goal; 2) necessity: public force must be the last resort and be preceded by non-violent means; 3) suitability (idoneidad): the use of force must be an adequate means to achieve a legitimate goal; and 4) proportionality: the forces used must be proportional to the circumstances presented. Judicial Precedent 1A. CCLXXXVII/2015 (10A.), First Chamber, October 2015. See also the 2010 judicial precedents of the Plenary of the Supreme Court on the use of force in contexts of grave human rights violations: P. L/2010, P. LI/2010, P. LII/2010, P. LIII/2010, P. LIV/2010, P. LV/2010, P. LVI/2010, P. LVII/2010, P. LVIII/2010, P. LIX/2010, P. LX/2010, P. LXI/2010, P. LXII/2010, P. LXIII/2010 and P. LXVIII/2010. Source: Judicial Gazette, December 2015 at: http://sjf.scjn.gob.mx/. In the same vein, the 2012 judgment of the Inter American Court of Human Rights in *Nadege Dorzema, et.al. v. Dominican Republic* refers to the principles of legality, absolute necessity, and proportionality as governing the use of force.

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275 The presidential decree (*Decreto de Promulgación*) setting forth January 1, 2006 as the date of entry into force of the Rome Statute in Mexico is available at http://dof.gob.mx/nota_detalle.php?codigo=2105558&fecha=31/12/2005. Pursuant to a constitutional amendment passed in June 20, 2005, "The President of the Republic may, with the approval of the Senate in every case, acknowledge the jurisdiction of the International Criminal Court," available at https://www.scjn.gob.mx/normativa/analisis_reformas/Analisis%20Reformas/00130178.pdf.

276 The laws that created the truth commissions in Oaxaca and Guerrero included the mandate to investigate crimes against humanity but neither of those laws, nor the Mexican legal framework (federal or local) regulate crimes against humanity. The section of the federal criminal code titled "crimes against humanity" is a misnomer. (See the "Inadequate Legal Framework" section of the following chapter.) Thus, in conducting the analysis of crimes against humanity perpetrated by state agents during the Dirty War, the Truth Commission of Guerrero applied the Rome Statute and case law from the Inter-American Court. See: http://congresogro.gob.mx/files/InformeFinalCOMVERDAD.pdf.

277 While there is, as yet, no comprehensive treaty with respect to crimes against humanity, a duty to repress "may be found under instruments prohibiting specific offences that also comprise some of the underlying offences of crimes against humanity." Payam Akhavan, "Whither National Courts? The Rome Statute's Missing Half," *Journal of International Criminal Justice* 8(5) (2010), 1255-56. The UN Convention against Torture (Arts. 4, 5, and 7) and the International Convention for the Protection of All Persons from Enforced Disappearance (Arts. 4, 6, 9, and 11), both of which Mexico has ratified, contain such obligations. The Inter-American Convention on Forced Disappearance of Persons, to which Mexico is also party, reaffirms that the systematic practice of forced disappearances constitutes a crime against humanity. It also obliges state parties to undertake all measures to punish this crime (Articles I, III and IV). Moreover, as crimes against humanity do not require a nexus to armed conflict, the obligation to investigate and prosecute found in regional human rights conventions (for Mexico, the American Convention on Human Rights) would "broadly correspond to an obligation to repress the core international crimes." Ibid. Indeed, the Inter-American Court on Human Rights has held that the American Convention on Human Rights obligates states parties to prevent, investigate, and punish any violations of the rights recognized by the convention. In the court's words, "[t]he State has a legal duty to take reasonable steps to to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation." See: *Velásquez Rodriguez v. Honduras*, para. 174. Arguably, customary international law may also impose a duty to investigate and prosecute. See, e.g.: International Law Commission, *Second Report on the Obligation to Extradite or Prosecute*, para. 26, UN Doc. A/CN.4/585 (June 11, 2007).

278 Article 102.B, last paragraph, of the Federal Constitution states that, "The National Human Rights Commission can investigate facts that constitute grave human rights violations […]."According to the jurisprudence of the Supreme Court of Justice, the state has an obligation to conduct a serious, impartial and effective investigation into the facts to impede that such violations go unpunished. See Judicial Precedent 1A. CCCXLI/2015 (10A.), First Chamber, November 2015; Judicial Precedent I.9O.P.59 P (10A.), Collegiate Courts. The state must also assume the investigation of human rights violations as a legal obligation *proprio motu* and not as a mere formality "condemned in advance to failure." Judicial Precedent P. XVIII/2015 (10A.), Plenary, September 2015.

279 Rome Statute, Arts. 15(4) and 53(1).

280 *Situation in Kenya*, ICC-01/09-19-Corr, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya (ICC Pre-Trial Chamber II, March 31, 2010), paras. 27. 35; *Situation in Georgia*, ICC-01/15. Decision on the Prosecutor's Request for authorization of an investigation (ICC Pre-Trial Chamber I, January 27, 2016), paras 24-25. See also: Michael Ramsden and Cecilia Chung, "'Reasonable Grounds to Believe': An Unreasonably Unclear Evidentiaty Threshold in the ICC Statute," *Journal of International Criminal Justice* 13(3) (July 2015), 569 (explaining that 'reasonable basis to proceed' is a "purposefully low test").

281 Morten Bergsmo and Jelena Pejic, "Prosecutor: Article 15," in: Otto Triffterer (ed.): *Commentary on the Rome Statute of the International Criminal Court: Observers' Notes, Article by Article*, 2008, p. 589. Darryl Robinson, "The Draft Convention on Crimes Against Humanity: What to Do With the Definition?," in: Morten Bergsmo and Tianying Song (eds.): *On the Proposed Crimes Against Humanity Convention*, 2014, p. 112.

282 Situation in the *Republic of Cote d'Ivoire*, ICC-02/11, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation into the Situation in the Republic of Cote d'Ivoire (ICC Pre-Trial Chamber III, October 3, 2011), paras. 23-25. In this respect, a "reasonable basis" standard is similar to the "reasonable grounds" standard applied by United Nations fact-finding bodies, meaning that, "on the basis of reliable and consistent information … 'a reasonable and ordinarily prudent person would have reason to believe that such an incident or pattern of conduct had occurred.'" See: "Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1," A/HRC/29/CRP.4, June 22, 2015, para. 19.

283 See Article 212 of the National Criminal Procedure Code ("Deber de investigación penal: Cuando el Ministerio Público tenga conocimiento de la existencia de un hecho que la ley señale como delito, dirigirá la investigación penal, sin que pueda suspender, interrumpir o hacer cesar su curso, salvo en los casos autorizados en la misma."). The threshold under Mexico's previous criminal code was substantially the same; see Article 2, section I of the Federal Criminal Procedure Code ("Compete al Ministerio Público Federal llevar a cabo la averiguación previa y ejercer, en su caso, la acción penal ante los tribunales. En la averiguación previa corresponderá al Ministerio Público: Recibir las denuncias o querellas que le presenten en forma oral o por escrito sobre hechos que puedan constituir delito.").

284 See Article 221 of the of the National Criminal Procedure Code ("Artículo 221. Formas de inicio. La investigación de los hechos que revistan características de un delito podrá iniciarse por denuncia, por querella o por su equivalente cuando la ley lo exija. El Ministerio Público y la *Policía están obligados a proceder sin mayores requisitos* a la investigación de los hechos de los que tengan noticia…") (emphasis added). While, after receiving a notice of a potential crime, the prosecutor can decide not to further pursue an investigation for various reasons (including case selection criteria and ab initio assessment of insufficient evidence), there is no clear evidentiary standard that must be met after a crime is reported in order to trigger the prosecution's obligation to investigate. This should not be confused with the requirements that must be met to indict a person under Mexican law.

285 See, e.g.: Héctor Carreón Perea and Édgar Eduardo Téllez Padrón, *Is there a domestic armed conflict in Mexico? Analysis in light of the International Criminal Law* (2012); Javier Dondé Matute, "¿Por qué considero que no hay crímenes de guerra en México?," in Donde Matute and Guevara Bermúdez (eds.), *México y la Corte Penal Internacional*, Tirant lo Blanch, 2014; "Can Mexico be in an "armed conflict" with criminal gangs?" (June 5, 2013), http://blog.chron.com/bakerblog/2013/06/can-mexico-be-in-an-armed-conflict-with-criminal-gangs/.

286 Kayishema and Ruzindana, (Trial Chamber), May 21, 1999, para. 171; see also: Musema (Trial Chamber), January 27, 2000,

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para. 248. "An 'armed conflict' is said to exist 'whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organised armed groups or between such groups within a State.'" *Prosecutor v. Kunarac, et al*., Case No. IT-96-23 & IT-96-23/1-A, para. 56 (ICTY Appeals Chamber, June 12, 2002). While a number of the articles contained in Protocol III of the Geneva Conventions are recognized as rules of customary international law, Mexico itself is not a party to the Protocol.

287 Rome Statute, Art. 7. Because the report specifically examines killings, disappearances, and torture, this excerpt of Article 7 omits other crimes that can also amount to crimes against humanity. They are: (b) extermination; (c) enslavement; (d) deportation or forcible transfer of population; (e) imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (g) rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; (h) persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender, or other grounds; (j) apartheid; and (k) other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

288 *Situation in Kenya*, Decision Pursuant to Article 15, para. 79. It should be noted that the Rome Statute defines crimes against humanity in a more restrictive manner than the crime has been defined under customary international law, by adding a requirement that crimes be committed as part of an attack undertaken "pursuant to or in furtherance of a State or organizational policy to commit such attack." While the analysis in this report applies the higher threshold of the Rome Statute, this element would not need to be established if the customary international law definition of crimes against humanity were applied. See, e.g.: *The Prosecutor v. Kunarac, et al*., para. 98.

289 Under ICC jurisprudence, the knowledge element requires that the perpetrator act with knowledge of the widespread or systematic attack against a civilian population and that his conduct was part of the attack, although this requirement "should not be interpreted as requiring proof that the perpetrator had knowledge of all characteristics of the attack or the precise details of the plan or policy of the State or organization." *The Prosecutor v. Germain & Mathieu Ngudjolo Chui*, ICC-01/04-01/07-717, Decision on the Confirmation of Charges, para. 401 (ICC Pre-Trial Chamber, September 30, 2008).

290 For instance, in the Gbagbo case, the ICC Pre-Trial Chamber held that the actions of "pro-Gbagbo forces," which included not only the then-president of Côte d'Ivoire, his "inner circle" and the Defence and Security Forces, but also "youth militia and mercenaries" acting under the leadership of Gbagbo, could be attributed to either a "State" or an "organizational" policy for purposes of Article 7(2) of the Statute. See, e.g.: *The Prosecutor v. Gbagbo*, ICC/01/11-01/11, Decision on the Confirmation of Charges against Laurent Gbagbo, paras. 219-20 (ICC Pre-Trial Chamber, June 12, 2014).

291 International Criminal Court, Elements of Crimes, ICC-ASP/1/3(part II-B), p. 5 (September 9, 2002).

292 *Situation in Kenya*, Decision Pursuant to Article 15, para. 84. See also Katanga Trial Judgment, para. 1108.

293 *The Prosecutor v. Ruto, et al*., ICC-01/09-01/11-373, Decision on the Confirmation of Charges Pursuant to Article 61(7)(a) and (b) of the Rome Statute, para. 213 (ICC Pre-Trial Chamber, January 23, 2012).

294 Katanga Trial Judgment, para. 1110.

295 Darryl Robinson, *Crimes Against Humanity: A Better Policy on 'Policy*,' Queen's University Legal Research Paper No. 2015-022, § 2.3, December 5, 2013.

296 *Situation in Kenya*, Decision Pursuant to Article 15 , para. 87.

297 *Situation in Kenya*, Decision Pursuant to Article 15, para. 87.

298 Elements of Crimes, p. 5, n. 6 (emphasis added).

299 See the following chapter for an analysis of government policy to deny and minimize atrocities, and policies that allow and lead to the distortion of crime data.

300 See chapter five of this report for more discussion of shortcomings at the CNDH.

301 Based on data from the federal statistics agency, INEGI, from 2007 (8,867 intentional killings) and 2009 (19,803 intentional killings). For further detail, see the previous chapter's section on "Scale of Crimes and Lack of Accountability."

302 Data from CNDH annual reports 2007-2012, available at: www.cndh.org.mx?Informes_Anuales_Actividades. For further detail on trends in homicides and disappearances, see the previous chapter's section on "Scale of Crimes and Lack of Accountability."

303 Between 1990 and 2006, the CNDH issued 1,838 recommendations. Of those, 30 were addressed to SEDENA, 8 to SEMAR, 171 to the PGR and 16 to the SSPF. Information provided by the Mexican NGO Comisión Mexicana para la Promoción y Defensa de los Derechos Humanos, with percentages calculated by the Open Society Justice Initiative. The CNDH issues a "recommendation" when a complaint received by the commission "relates to a serious violation, or when a complaint is not successfully resolved because the authority initially rejected reconciliation or failed to comply with the terms proposed." See: Daly, et al., *Armed with Impunity*, p. 13. A "formal recommendation serves as a way for the organization to credibly accuse an authority by delivering an extensive and thoroughly detailed account of the alleged human rights abuses in a particular case." Ibid. Note that these "recommendations represent a very small number of [the] complaints filed before the [CNDH]." José A. Guevara B., "México y La Corte Penal Internacional: una primera aproximación a los crímenes de lesa humanidad cometidos en el contexto de la estrategia de seguridad de la administración de Felipe Calderón Hinojosa (2006-2012)," in *Mexico y La Corte Penal Internacional* 112 (Javier Dondé Matute and José A. Guevara B., eds., 2014).

304 From January 2007 through 2015, the CNDH issued 657 recommendations. Of these, 114 were addressed to SEDENA, 30 to SEMAR, 33 to PGR and 74 to the SSPF. Information provided by the Mexican NGO Comisión Mexicana para la Promoción y Defensa de los Derechos Humanos, with percentages calculated by the Open Society Justice Initiative.

305 Data are taken from CNDH annual reports 2006-2015, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on March 10, 2016]. The chart includes data from 2006 for purposes of comparison, but the complaints for that year (19) are not included in the 294 sum. Because the CNDH is reluctant to classify complaints of extrajudicial killing as such, and commonly classifies them as "deprivation of life" or "violation of right to life," the data in this chart are based on aggregates of the three different kinds of complaint. (See chapter five for discussion of shortcomings in CNDH methodologies.) Deprivation of life, however, can include causes other than killings by security forces, and may include such things as loss of life through medical negligence by government actors. Though the data are imperfect, they do suggest a marked increase in complaints at a time when the government was implementing its security strategy, overall violent deaths in the country were also increasing (see data in chapter two), and there is no evident reason why other forms of deprivation of life would have accounted for the increase.

306 Calculation by the Open Society Justice Initiative based on CNDH recommendations compiled and analyzed by Comisión

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Mexicana de Defensa y Promoción de los Derechos Humanos. The calculation relates to the year of the underlying incidents, and omits data from recommendations related to the period before December 2006, as well as recommendations not made to federal authorities.

307 Human Rights Watch, *Neither Rights nor Security*, pp. 161-62. The report continues: "Force used by law enforcement is considered excessive when it contravenes the principles of absolute necessity or proportionality, as interpreted in the [United Nations] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the [United Nations] Code of Conduct for Law Enforcement Officials. In particular, security forces may only use lethal force where it is absolutely necessary to prevent loss of life and serious injury to themselves or others, provided the force is proportionate to the threat posed." Ibid. p. 162.

308 Ibid. p. 161.

309 See text box, "Order to Kill at Tlatlaya," in chapter three. See also: CNDH Recommendation 51/2014, on the extrajudicial killing of 22 civilians, in Tlatlaya, State of Mexico, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2014/Rec_2014_051.pdf.

310 See also: CNDH Recommendation 3VG/2015 on grave human rights violations and the extrajudicial killing of 6 victims by the Federal Police in Apatzingán, Michoacán in a context of excessive use of force, is available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/ViolacionesGraves/RecVG_003.pdf.

311 *Mexico: Police Killings in Michoacán. Evidence of Extrajudicial Executions in Apatzingán and Tanhuato*, Human Rights Watch, October 28, 2015, available at: www.hrw.org/news/2015/10/28/mexico-police-killings-michoacan [accessed on January 1, 2016].

312 "Sí hay testigos en Tanhuato: 'no tuvieron oportunidad', la policía les disparó desde un helicóptero," *Animal Político*, May 25, 2015, available at: www.animalpolitico.com/2015/05/los-42-muertos-no-tuvieron-oportunidad-la-policia-disparo-desde-un-helicoptero-testigos.

313 Data are taken from CNDH annual reports 2006-2015, available at: http://www.cndh.org.mx/Informes_Anuales_Actividades [accessed on March 10, 2016].

314 See the disappearances section of the previous chapter.

315 See the section on the CNDH in chapter five of this report.

316 INEGI, *Encuestra Nacional de Victimización y Percepción sobre Seguridad Pública 2013*, p. 21, available at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2013/doc/envipe2013_09.pdf.

317 INEGI noted that its finding of 4,007 disappearences contrasted with the CNDH's report of only 718 complaints of enforced disappearance or missing persons in the same year. Ibid., p. 1, fn. 1. In its September 2012 press release, INEGI initially described the 4,007 cases as "enforced disappearance," but the following month changed them to "involuntary disappearance" due to the wording of the relevant survey question: survey respondents were asked about anyone in their household who disappeared "against their will by the action of an authority or criminal group." The latter category of "criminal group" would not count as a "forced disappearance" under Mexican law, nor under international law, unless the criminal group was acting on behalf of, or with the acquiescence of, the state. It is worth noting, however, that ENVIPE's definition of "involuntary disappearances" hews closely to the international definition of enforced disappearance.

318 See questionnaire, glossary, and results of ENVIPE 2014 at: www.inegi.org.mx/est/contenidos/proyectos/encuestas/hogares/regulares/envipe/envipe2014/default.aspx [accessed on January 4, 2016].

319 See Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored* (February 2013), pp. 3, 14, 17-25, 28-29.

320 Ibid. p. 17.

321 Ibid. p. 28.

322 PGR, *Third report of activities*, 2014-2015, pp. 113-114, available at: www.pgr.gob.mx/informesinstitucionales/Documents/INFORME%20DE%20LABORES/2015.pdf [accessed on February 15, 2016].

323 *Informe Ayotzinapa, Investigación y primeras conclusions de las desapariciones y homicidos de los normalistas de Ayotzinapa*, pp. 359-380, available at: http://prensagieiayotzi.wix.com/giei-ayotzinapa#!informe-/c1exv.

324 *Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Mexico*, Human Rights Council document A/HRC/19/58/Add.2 (December 20, 2011) ("WGEID Report"), para. 17, available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf.

325 Ibid, para. 7.

326 United Nations Committee Against Enforced Disappearances, *Observaciones finales sobre el informe presentado por México en virtud del artículo 29, párrafo 1, de la Convención*, para. 10 (advanced version; February 2015), http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_COB_MEX_19564_S.pdf.

327 Involvement of a government official is also an element of the crime according to the United Nations Convention Against Torture, although other definitions under international law are not restricted in this way.

328 These calculations are based on the human rights allegedly violated (*hechos presuntamente violatorios de derechos humanos*) as identified in the complaints (quejas) filed by victims before the CNDH and reported by the CNDH in its annual reports. Annual reports available at: www.cndh.org.mx/Informes_Anuales_Actividades. The number of complaints represents a more accurate portrayal of torture and ill-treatment cases as it is based on the victim's direct account to authorities and the most immediate record of the case. A torture case may not reach the final stage of a recommendation as CNDH can decide to refer the case to another authority, or conclude it through conciliation. Further, these calculations do not include the torture cases documented by the CNDH in prisons, acting as the "independent national preventive mechanisms for the prevention of torture at the domestic level" set forth in Article 17 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, to which Mexico is party. If those numbers were to be included, torture numbers would increase. See: www.cndh.org.mx/Mecanismo_Nacional_de_Prevencion_de_la_Tortura [accessed on February 28, 2016].

329 Based on data provided by the PGR to Amnesty International in response to a public information request. See Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p, 7, available at: www.amnesty.org/fr/documents/amr41/2676/2015/en/.

330 CNDH annual reports 2006-2015, available at: www.cndh.org.mx/Informes_Anuales_Actividades.

331 PGR data provided to Amnesty International in response to a public information request. See: Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p, 7, available at: www.amnesty.org/fr/

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documents/amr41/2676/2015/en/.

332 See the "Politicized Forensics" section of the following chapter.

333 See, for example: Programa Atalaya, *La tortura vista por la CNDH* (December 2005), p. 2, http://atalaya.itam.mx/Documentos_Atalaya/01.%20(2)/03.%20(25)/14.%20(39)/02.%20(90).PDF [accessed on January 4, 2016]. For further discussion of shortcomings at the CNDH, see chapter five.

334 Based on data from CNDH annual reports 2007-2015, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on February 28, 2016].

335 Based on data from CNDH annual reports 2001-2006, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on February 28, 2016].

336 Based on data from CNDH annual reports 2007-2012, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on February 28, 2016].

337 Based on data from CNDH annual reports 2013-2015, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on February 28, 2016].

338 See: Letter from the Special Rapporteur on Torture, April 1, 2015, http://antitorture.org/wp-content/uploads/2015/04/April_1_2105_Special_Rapporteur_Torture_Letter_EN_ES.pdf. Notably, Mexican law limits the definition of torture to acts carried out by persons acting under the color of the law.

339 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 23. This conclusion is supported by the fact that the CNDH received 1,148 complaints of torture attributable to the armed forces alone between December 2012 and July 2014. Ibid., para. 20.

340 Felipe Calderón Hinojosa, Los Retos Que Enfrentamos: *Los Problemas de México y Las Políticas Públicas Para Resolverlos* (2006-2012), pp. 27, 66 (2013).

341 See, e.g.: "Reconocen aumento explosivo de secuestros en el país," *El Universal*, August 28, 2010, http://archivo.eluniversal.com.mx/primera/35453.html. See also: Statement by President Calderón, May 15, 2009, http://calderon.presidencia.gob.mx/2009/01/el-presidente-calderon-en-la-sesion-almuerzo-individual-titulada-riders-on-the-storm-mexico-overcoming-the-crisis/. ("When we started we knew this war against organized crime would take time, money and that it would also cost human lives.")

342 "Reconocen aumento explosivo de secuestros en el país." See also: "Message to the Nation from the President of Mexico, Felipe Calderón Hinojosa, on the occasion of his first State of the Nation Report," available at: http://calderon.presidencia.gob.mx/informe/primer/mensajealanacion/index343f.html?contenido=314 ("It is my duty to remind the Mexican people that this will be a long and difficult war. That it will take a long time, and will not only entail great economic resources, but unfortunately, will also cost human lives.").

343 See, e.g.: "Plan Nacional de Desarrollo 2007-2012," Section 1.4, published in the *Federal Official Gazette* on May 31, 2007, available at: www.dof.gob.mx/nota_detalle.php?codigo=4989401&fecha=31/05/2007 [accessed on January 5, 2016].

344 Publication of the Ministry of Defense, "La Secretaría de la Defensa Nacional en el esfuerzo de México en contra del crimen organizado," 2012, p. 57, available at: www.sedena.gob.mx/images/stories/LIBROS/Libro_sedena.pdf [accessed on January 5, 2016].

345 "Si agarro a un zeta lo mato; ¿para qué interrogarlo?: jefe policiaco," *La Jornada*, March 13, 2011, available at: www.jornada.unam.mx/2011/03/13/politica/007n1pol [accessed on December 29, 2015].

346 Sanjuana Martínez, "Operación Limpieza O Tirar a Matar," *Sin Embargo*, May 28, 2013, available at: www.sinembargo.mx/28-05-2013/630401 [accessed on December 29, 2015].

347 Interview with General Francisco Gallardo in José Reveles, *Levantones, Narcofosas y Falsos Positivos* (2011), p. 119. Indeed, before and after 2006, successive Mexican governments have increasingly structured federal police as reactive, militarized forces, while deemphasizing criminal investigations. As the new security policy of December 2006 deployed tens of thousands of additional military troops and police to strongholds of criminal cartels, where they detained suspects in much greater numbers, it was rational for those forces to believe that the criminal justice system would not be able to effectively prosecute so many perceived criminals. See the "Militarized Policing" section of the following chapter for further detail.

348 The case arose when a soldier charged with the enforced disappearance of two persons in November 2008 in Chihuahua filed an *amparo* challenge to his arrest, claiming in essence that he had only followed orders, and that his arrest warrant was unconstitutional. Judicial docket 650/2014, Collegiate Court of the 17th Judicial Circuit, available in the Federal Judiciary Database at: http://sise.cjf.gob.mx/consultasvp/default.aspx.

349 Ibid, pp. 36-38.

350 Ibid, pp. 38-40.

351 See chapter one of this report and also Daly, et al., *Armed with Impunity*, p. 6.

352 George W. Grayson, *The Impact of President Felipe Calderón's War on Drugs on the Armed Forces: The Prospects for Mexico's "Militarization" and Bilateral Relations*, Strategic Studies Institute, January 2013, p. 3.

353 The case of Ciudad Juarez is paradigmatic: between March 2009 and April 2010 the Army took total operational control of the police. See: "The militarization process of the public Security in Mexico (2006-2012)," Marcos Pablo Moloeznik, María Eugenia Suarez de Garay, *Frontera Norte*, Vol. 24, Núm. 48, Julio-Diciembre de 2012, pp. 134-135, available at: www.colef.mx/fronteranorte/articulos/FN48/5-f48.pdf.

354 Eduardo Guerrero Gutiérrez, *La estrategia fallida*, Nexos, December 1, 2012.

355 See also: Report of the Working Group on Enforced or Involuntary Disappearances, UN Human Rights Council, A/HRC/19/58/Add.2, para. 24, December 20, 2011, available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf [accessed on April 23, 2015].

356 Calderón, *Los Retos Que Enfrentamos*, p. 49.

357 The chart was taken from the following source: Eduardo Guerrero Gutiérrez, *La estrategia fallida*, Nexos, December 1, 2012.

358 Ibid.

359 There has been no decrease in the budget of the federal security forces since Peña Nieto took office. See, e.g.: "Presupuesto 2014 para dependencias y otros rubros," *El Universal*, September 9, 2013, available at: www.eluniversal.com.mx/nacion-mexico/2013/impreso/presupuesto-2014-para-dependencias-y-otros-rubros--208967.html [accessed on January 5, 2016].

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360 See the "Militarized Policing" section of the following chapter.

361 See, e.g.: Decreto por el que se crea la Comisión para la Seguridad y el Desarrollo Integral en el Estado de Michoacán, January 15, 2014, available at: http://dof.gob.mx/nota_detalle.php?codigo=5329743&fecha=15/01/2014 (establishing, by presidential decree, the Commission for the Security and Comprehensive Development of the Mexican State of Michoacán, which involves the deployment of 6,000 federal security forces for the purpose of reestablishing order and security in Michoacán). See also: "Castillo se despide del estado: 'Aunque pregonen lo contrario, Michoacán ya no es como antes,'" *Animal Político*, January 22, 2015, available at: www.animalpolitico.com/2015/01/comisionado-seguridad-alfredo-castillo-se-va-de-michoacan.

362 Alberto Morales y Marcos Muedano, "SEDENA assume la seguridad en Tierra Caliente," *El Universal*, December 4, 2014, available at: www.eluniversal.com.mx/nacion-mexico/2014/sedena-asume-la-seguridad-en-tierra-caliente-1059304.html [accessed on January 5, 2016].

363 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 22.

364 See: "General Cienfuegos: 'El Ejército debe salir de las calles; fue un error entrar en esa guerra,'" *Sin Embargo*, March 16, 2016, available at: www.sinembargo.mx/16-03-2016/1636596.

365 Elements of Crimes, p. 5, n. 6.

366 The directives for the Federal Ministerial Police, Federal Police, and SEDENA on the use of force were adopted only on April 23, 2012. PGR Agreement A/080/12, available at: http://dof.gob.mx/nota_detalle.php?codigo=5244768&fecha=23/04/2012; SSP, Agreement 04/2012 available at: the www.dof.gob.mx/nota_detalle.php?codigo=5244759&fecha=23/04/2012; SEDENA, available at: http://dof.gob.mx/nota_detalle.php?codigo=5244755&fecha=23/04/2012. In 2014, armed forces issued a "unified" handbook on the use of force: www.sedena.gob.mx/pdf/normateca/3.doctrina_y_edu_mil/USO_FUERZA_UNIFICADO.pdf.

367 Human Rights Watch documented "more than" 20 cases of enforced disappearance attributed to members of the Mexican Navy alone between June and July 2011. See: *Mexico's Disappeared*, p.18. See also: *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, para. 30 ("The Special Rapporteur received a strong impression of the absence on the federal and most state levels of a coherent and widely recognized legal framework for law enforcement officials on the use of force, including in arrest and demonstrations."). The 2009 Navy directive on the use of force 003/09 is available at: www.dof.gob.mx/nota_detalle.php?codigo=5114505&fecha=15/10/2009.

368 General Recommendation 12/2006, "On the illegitimate use of force and fire weapons by law enforcement officials," page 9-11, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/generales/RecGral_012.pdf. The recommendation was addressed to the Federal Ministry of Public Security, military authorities, as well as the governors of Mexico's federated states and national prosecutors.

369 Instituto Mexicano de Derecos Humanos y Democracia, *Evaluacion desde los derechos humanos de los protocolos sobre uso de la fuerza y detencion de personas presentados por el President Felipe Calderón*, p. 3, May 23, 2012, available at: http://imdhd.org/doctos/d_Analisis_protocolos_DH.pdf. The institute further concluded that the 2012 directives failed to comply with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

370 See: *Pacto por México, Acuerdos para una Sociedad de Derechos y Libertades*, Apartado 1.5, "Defender los derechos humanos como política de Estado," compromiso 28, available at http://pactopormexico.org/PACTO-POR-MEXICO-25.pdf. The Pacto por México is an agreement signed on December 2, 2012—a day after President Enrique Peña Nieto's inauguration—consisting of 95 initiatives agreed upon by the governing Institutional Revolutionary Party (PRI), the National Action Party (PAN), and the Party of the Democratic Revolution (PRD). See, e.g.: Andres Sada, *Explainer: What Is the Pacto por México?*, Americas Society / Council of the Americas, Mar. 11, 2013, www.as-coa.org/articles/explainer-what-pacto-por-m%C3%A9xico.

371 *Manual del Uso de la Fuerza, de aplicación común a las tres Fuerzas Armadas*, May 30, 2014, available at: http://dof.gob.mx/nota_detalle.php?codigo=5346857&fecha=30/05/2014 [accessed on January 5, 2016].

372 In the 2014 report on his mission to Mexico, Christof Heyns notes that, "[he]…was informed that a bill had been drafted by the Federal Government, but stresses that a comprehensive and authoritative law is required. Setting out the criteria and limits on the legitimate use of force is key to ensuring the right to life." *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add, April 28, 2014, para. 30. In the state's comments on the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Mexico claimed that the "federal government had prepared a draft law on the use of public force," para. 8, A/HRC/26/36/Add.3. In October 2015, the Special Rapporteur stated that there have not been significative achievements in the fight against impunity in Mexico. See: "México no ha avanzado en la lucha contra la impunidad: ONU," *Proceso*, October 30, 2015, available at: http://www.proceso.com.mx/?p=419569 [accessed on January 5, 2016].

373 In relation to the Atenco incident, the National Human Rights Commission issued recommendation No. 38/2006 to Governor Peña Nieto and the Federal Minister of Public Security, Eduardo Medina-Mora Icaza, whom Peña Nieto has since appointed to the federal Supreme Court of Justice. Recommendation available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2006/Rec_2006_038.pdf [accessed on April 23, 2015].

374 See the Supreme Court of Justice resolution *"Dictamen que valora la investigación constitucional realizada por la comisión designada en el expediente 3/2006, integrado con motivo de la solicitud formulada por el ministro genaro david góngora pimentel, para investigar violaciones graves de garantías individuales",* available at: http://200.38.163.178/sjfsist/Paginas/DetalleGeneralScroll.aspx?id=21782&Clase=DetalleTesisEjecutorias.

375 These include the Tlatlaya massacre, the January 2015 killings in Apatzingán, Michoacán, and the May 2015 police actions in Tanhuato, Michoacán, all described in the section on "An Attack Directed Against Any Civilian Population" (below).

376 The Fatality Index measures the correlation between killings and injuries of civilians and security agents (Navy, Army and Federal Police) in the implementation of the National Security Strategy and the use of lethal force. See: Rodrigo Gutiérrez, Carlos Silva, and Catalina Pérez Correa, "Índice de Letalidad. Menos enfrentamientos, más opacidad," Nexos, July 2015, and working paper at http://www.juridicas.unam.mx/novedades/letalidad.pdf. See also: infographics of the Mexican NGO Centro Pro on the Fatality Index: http://www.centroprodh.org.mx/index.php?option=com_content&view=article&id=1674%3A2015-10-20-22-00-06&catid=209%3Afront-rokstories&lang=es.

377 See Valeria Espinosa and Donald B. Rubin, "Did the Military Interventions in the Mexican Drug War Increase Violence?," *The American Statistician* (69)1, February 2015, pp. 17-27.

378 Human Rights Watch, *Neither Rights Nor Security*, November 20112, p. 179. It is not clear whether all of the investigations were of military members, or also included civilians.

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379 Ibid, citing a June 16, 2011 SEDENA response to information request 0000700066811 submitted by Human Rights Watch on April 25, 2011. This response indicated had been a conviction for manslaughter (*homicidio culposo*) in one of the cases, a conviction for "violence against persons resulting in homicide" (*violencia contra las personas causando homicidio*) in a second case, and a conviction in a third case that had been overturned on appeal. According to this response, those convicted received sentences of 23 months, nine months, and three years (the latter thrown out on appeal).

380 "Respuesta de SEDENA a Solicitud de Información sobre daños colaterales." Respuesta Folio 0000700100812, September 2012. A copy of the document, accessed on March 15, 2013, is on file with the Open Society Justice Initiative. This data only includes cases of "violence against persons leading to homicide," the definition under which military courts investigate and prosecute homicides and/or killings. Within this category, homicide can be grave (*calificado*), non-grave, intentional and non-intentional. Numbers used in this section include all of these categories.

381 According to SEDENA's response, it was the PGR that categorized the victims in these cases as "innocent civilians," as there was no indication of their involvement in criminal activity. Ibid.

382 *Personal militar involucrado en conductas ilícitcas consideradas como violaciones a derechos humanos derivadas de las 155 recomendacions emitidas por la C.N.D.H. en contra de esta Secretaría*, SEDENA, available at http://www.sedena.gob.mx/images/stories/archivos/derechos_humanos/quejasyrecom/2013/octubre/PNAL_MIL_SENTENCIADO.pdf. In 2012, a former SEDENA general was charged for ordering seven extrajudicial killings between 2007 and 2008. See: U.S. Department of State, "Mexican Political Highlights January 28—February 3, 2012," para. 7, Unclassified Cable, Case No. F-2012-41315, Doc. No. C05348130. The last publicly available information on this case indicates that the Supreme Court ordered it referred from military to civil jurisdiction; it remains in progress. See: "Procesos contra 22 militares de Ojinaga, a juzgado civil: SCJN," www.telefonorojo.mx/2012/9/3/Procesos-contra-22-militares-de-Ojinaga%2c-a-juzgado-civil:-SCJN.

383 Military crimes perpetrated by members of he Army 2013-2015, available at: www.gob.mx/cms/uploads/attachment/file/42897/delitos_del_orden_militar.pdf. With regard to decisions of the Supreme Court of Justice on military jurisdiction, see the "Judiciary" section of chapter five.

384 CNDH recommendation 3VG/2015 for grave human rights violations perpetrated in Apatzingán, Michoacán. The recommendation is addressed to the Army, the National Comission of Security, to the governor of Michoacán and to the municipal president of Apatzingán. Full text of the recommendation is available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/ViolacionesGraves/RecVG_003.pdf.

385 *Mexico: Police Killings in Michoacán. Evidence of Extrajudicial Executions in Apatzingán and Tanhuato*, Human Rights Watch, October 28, 2015, available at: www.hrw.org/news/2015/10/28/mexico-police-killings-michoacan [accessed on January 1, 2016]. See also: "Sí hay testigos en Tanhuato: 'no tuvieron oportunidad', la policía les disparó desde un helicóptero," *Animal Político*, May 25, 2015, available at: www.animalpolitico.com/2015/05/los-42-muertos-no-tuvieron-oportunidad-la-policia-disparo-desde-un-helicoptero-testigos.

386 *La liberación de cuatro militares involucrados en los hechos de Tlatlaya muestra que la PGR y el poder judicial de la federación no han garantizado el acceso a la justicia de las víctimas y no exonera al ejército de su responsabilidad en la masacre*, Centro PRODH, press relase, October 6, 2015, available at: http://centroprodh.org.mx/index.php?option=com_content&view=article&id=1664%3A2015-10-06-18-45-01&catid=209%3Afront-rokstories&lang=es.

387 See text box on Tlatlaya, above.

388 For example, after Human Rights Watch released a report in 2013 that included documention of 149 enforced disappearances—including more than 20 involving the Navy and 13 involving Federal Police—Mexico's attorney general pledged to investigate them. Almost two years later, there had been no convictions in relation to the disappearances. See: "The Disappearance Of 43 Mexican Students Is An Atrocity. But It's No Isolated Incident," The Huffington Post, November 22, 2014, available at www.huffingtonpost.com/2014/11/22/mexico-missing-students_n_6200842.html [accessed on January 6, 2016]. The disappearances were documented in the Human Rights Watch report *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, available at: www.hrw.org/sites/default/files/reports/mexico0213_ForUpload_0_0.pdf [accessed on January 6, 2016].

389 "Mexico Sees First Conviction of Soldier in Disappearance," Associated Press, August 18, 2015, available at: http://bigstory.ap.org/article/3744d01c4e5245c79e1cbd4a6ce4a711/mexico-sees-first-conviction-soldier-disappearance [accessed on January 6, 2016]. The soldier, a second lieutenant, was sentenced to just over 31 years for illegally detaining and causing the disappearance of the victim in the northern state of Nuevo León in 2012. Final judgment of criminal procedure 104/2013, First District Court on Criminal Matters of the State of Nuevo León. A summary of the case from the Federal Judicial Council is available at: www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2015/notaInformativa88.pdf.

390 Response to right to information request 0000700112514 (August 23, 2014).

391 Three of the victims disappeared in 1994, two in 2011, six in 2013, and six in 2014. Federal Police were implicated in seven cases, SEDENA in six, municipal police in three, and state-level police in one. See: PGR, *Third report of activities, 2014-2015*, pp. 113-114, available at: www.pgr.gob.mx/informesinstitucionales/Documents/INFORME%20DE%20LABORES/2015.pdf [accessed on February 15, 2016].

392 Summary records of the 8th session of the UN Committee on Enforced Disappearances, document CED/C/SR.120, para. 7, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FSR.120&Lang=en.

393 PGR data obtained by Comisión Mexicana in response to right-to-information requests 0001700286614 and 0001700286714, November 25, 2014. The data do not specify the years in which the disappearances occurred.

394 Based on PGR data provided to Amnesty International in response to a public information request in June 2015. See: *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 7, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 6, 2016].

395 Ibid.

396 Ibid.

397 See the "Politicized Forensics" section of the following chapter.

398 PGR data provided to Amnesty International in response to right-to-information requests. See: Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 4, 2014, p. 46.

399 The PGR replied to Amnesty International through a response to a right-to-information request and in an August 2015 interview with the deputy attorney general for federal crimes. See: Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 7, available at: www.amnesty.org/en/documents/amr41/2676/2015/en

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[accessed on January 6, 2016].

400 In April 2015, Mexico reported to the Inter-American Commission on Human Rights that there had been a total of 15 torture convictions at federal level; of these only six related to case files dated after 2006. See: Inter-American Commission on Human Rights, *The Human Rights Situation in Mexico*, Doc. 44/15, December 31, 2015, para. 212 and footnote 293, available at: www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf.

401 Undated SEDENA Response Sheets in response to inquiries No. 0000700121412, No. 0000700121612, No. 0000700121512, and No. 0000070121012 (all cited in Tlachinollan's "Addendum 1" to its October 2012 submission to the UN Committee Against Torture, pp. 1-2). Some cases may have subsequently been transferred to civilian courts, but the government has not publicly explained if that is the case, and if so, how many cases have been transferred and what has become of them.

402 Calderón, *Los Retos Que Enfrentamos*, pp. 36, 39 and 67. Along the same lines, Guillermo Valdés, the former director of the Centro de Investigación y Seguridad Nacional, stated in a 2013 interview that, at the time the Calderón administration was developing its security strategy, the state was weak, slow, bureaucratic, and lacking in the necessary tools to counter organized crime. See: "El Chapo es un genio de los negocios," *El Pais*, December 11, 2013, available at: http://internacional.elpais.com/internacional/2013/12/11/actualidad/1386718386_361181.html.

403 For instance, in 2008 a General Directorate for Human Rights was created within SEDENA to handle human rights complaints against the institution. U.S. Department of State, "New Military Human Rights Directorate Still a Work in Progress," Unclassified Cable, Case No. F-2013-13607, Doc. No. C05422462.

404 Eduardo Guerrero Gutiérrez, *La estrategia fallida*, Nexos, December 1, 2012 ("In contrast [to the increase in resources to security sector agencies], the stagnation observed in the evolution of the budget of the Attorney General's Office reveals that [Calderon's] strategy was not comprehensive: the capabilities of arrest or abatement of criminal suspects increased, and no similar effort was made to develop investigation or charging capacities.").

405 Gutiérrez (arguing that one side effect of the lack of investment in the justice sector was "that the police and military action had no checks and balances, increasing the probability that they would commit human rights abuses.").

406 Elements of Crimes, p. 5.

407 *Gbagbo*, Confirmation of Charges Decision, para. 210.

408 *Gbagbo* Confirmation of Charges Decision, para. 210.

409 *Gbagbo* Confirmation of Charges Decision, para. 210. For instance, in the case against former Ivorian president Laurent Gbagbo, the ICC Pre-Trial Chamber cited to evidence that "a series of multiple acts of violence (including killings, attempted killings, rapes, severe injuries, and arbitrary arrests) was carried out by the pro-Gbagbo forces" against perceived supporters of Gbagbo's political rival, Alassane Ouattara, in support of its finding that there was an "attack." Ibid., para. 211. However, the chamber also found that the "nature of these acts, the population that was targeted, the identity of the perpetrators and the chronology of the relevant events" established that those multiple acts together expressed a "course of conduct" within the meaning of Article 7 of the Statute. Ibid., para. 212.

410 Elements of Crimes, p. 5.

411 *Ruto* Confirmation of Charges Decision, para. 164.

412 *Ruto* Confirmation of Charges Decision, paras. 164-71. Specifically, the Pre-Trial Chamber found that the "attack" element was satisfied based on evidence that members of one ethnic group "armed with, *inter alia*, machetes, pangas, bows, arrows, petrol cans and firearms," carried out raids involving "acts of burning, destruction, looting and killing" against members of another ethnic group in four different locations over the course of more than two weeks. Ibid.

413 CNDH Recommendation 57/2013, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2013/Rec_2013_057.pdf [accessed on January 9, 2016]. Comisión Mexicana represents the Parral family and produced a video on the case, April 30, 2014, available at: www.youtube.com/watch?v=Z0Je7MWxqbM [accessed on January 9, 2016]. See also: Daniel Hernandez, "Mexican Soldiers Kill a Kidnapping Victim, Then Label Him a Cartel Hitman to Cover it Up," *Vice News*, October 17, 2015, available at: https://news.vice.com/article/mexican-soldiers-kill-a-kidnapping-victim-then-label-him-a-cartel-hitman-to-cover-it-up [accessed on January 9, 2016].

414 CNDH Recommendation 57/2013, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2013/Rec_2013_057.pdf [accessed on January 9, 2016].

415 Daniel Hernandez, "Mexican Soldiers Kill a Kidnapping Victim, Then Label Him a Cartel Hitman to Cover it Up," *Vice News*, October 17, 2015, available at: https://news.vice.com/article/mexican-soldiers-kill-a-kidnapping-victim-then-label-him-a-cartel-hitman-to-cover-it-up [accessed on January 9, 2016].

416 Centro para el Desarrollo de la Justicia Internacional, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos A.C., y Federación Internacional de Derechos Humanos, Comunicación con base en el artículo 15 del Estatuto de Roma respecto de la presunta comisión de crímenes de lesa humanidad en México de diciembre de 2006 a septiembre 2012, p. 10 (October 25, 2012). In response to right-to-information requests from the Open Society Justice Initiative to SEDENA and SEMAR in 2014, asking for information on deaths in military custody, both institutions replied that the information is "non-existent." Responses to right-to-information requests from the Army, public communication 0000700099114, July 29, 2014; and from the Navy, public communication UE/0762/14, August 6, 2014, both on file with the Open Society Justice Initiative.

417 See the "Scale" section, above.

418 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add.1., April 28, 2014, para. 22.

419 Human Rights Watch, *Neither Rights Nor Security*, p. 170. While Human Rights Watch does not indicate whether the use of the term "security forces" is limited to federal forces, each of the examples it provides in support of this claim involves actions by the military. Ibid. pp. 170-73.

420 Ibid, p. 180.

421 The following account relies on a journalistic investigation based on judicial dockets (including criminal investigation 1982/2009) and testimonies, "El 'pelotón de la muerte', soldados con licencia para matar," *Proceso*, January 12, 2013, available at: www.proceso.com.mx/330488/el-peloton-de-la-muerte-soldados-con-licencia-para-matar.

422 Human Rights Watch, *Neither Rights nor Security*, p. 176.

423 The following account relies on Tlachinollan, *Ficha Informativa: Bonfilio Rubio Villegas*, December 1, 2011, available at: www.tlachinollan.org/ficha-informativa-bonfilio-rubio-villegas, and CNDH Recommendation 8/2011 to SEDENA in relation to the

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case, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_008.pdf.

424 Human Rights Watch, *Neither Rights nor Security*, pp. 176-177.

425 National Human Rights Commission, Recommendation 38/2011, June 27, 2011, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_038.pdf.

426 The following account relies on Human Rights Watch, *Neither Rights nor Security*, pp. 171-172.

427 Ibid, pp. 173-174.

428 National Human Rights Commission, Recommendation 34/ 2011, June 7, 2011, available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2011/034.pdf [accessed on January 10, 2016].

429 Human Rights Watch, Neither Rights nor Security, p. 171.

430 National Human Rights Commission, Recommendation 36/ 2010, June 16, 2010, available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2010/036.pdf [accessed on January 10, 2016].

431 The following account relies on Human Rights Watch, Neither Rights nor Security, p.174.

432 Human Rights Watch, *Neither Rights nor Security*, p.168.

433 Ibid, p. 169.

434 The following account relies on CNDH Recommendation 43/2013, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2013/Rec_2013_043.pdf, and CADHAC, "A 4 años: impunidad para la familia de Gustavo Acosta Luján," press release 1509/28, September 2, 2015, available at: www.cadhac.org/comunicado/a-4-anos-impunidad-para-la-familia-de-gustavo-acosta-lujan.

435 The following account relies on Human Rights Watch, *Mexico: Police Killings in Michoacán. Evidence of Extrajudicial Executions in Apatzingán and Tanhuato*, October 28, 2015, available at: www.hrw.org/news/2015/10/28/mexico-police-killings-michoacan [accessed on January 1, 2016], and "Sí hay testigos en Tanhuato: 'no tuvieron oportunida'", la policía les disparó desde un helicóptero," Animal Político, May 25, 2015, available at: www.animalpolitico.com/2015/05/los-42-muertos-no-tuvieron-oportunidad-la-policia-disparo-desde-un-helicoptero-testigos.

436 Except where otherwise noted, the following account relies on: Recommendation No. 51/2014 of the National Human Rights Commission, available at www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2014/REC_2014_051.pdf and "Witness Confirms Cover-up of Mexican Army Killings," Associated Press, December 31, 2014, available at www.nydailynews.com/news/world/witness-confirms-cover-up-mexican-army-killings-article-1.2062289.

437 According to one survivor, only one gang member was killed in the violence, and 21 were summarily executed following their surrender. The same survivor, who went to the warehouse to seek the release of her daughter from the gang, described witnessing a soldier execute the 15-year-old following the shootout. A doctor who viewed the body of Erika Gómez confirmed to media that the bullet that killed her had been a "coup de grace." "Veintiuno de los 'delincuentes' abatidos en Tlatlaya fueron 'fusilados' por el Ejército," *Esquire Mexico*, September 17, 2014, available at: www.proceso.com.mx/?p=382335. [accessed on April 3, 2015] See also: "Mexico's Peña Nieto says that alleged army massacre will be fully investigated," Associated Press, September 23, 2014, available at: http://latino.foxnews.com/latino/news/2014/09/23/mexico-pena-nieto-says-that-alleged-army-massacre-to-get-full-investigation [accessed on April 3, 2015].

438 Recommendation No. 51/2014 of the Human Rights Commission, para. 117.

439 Recommendation No. 51/2014 of the Human Rights Commission, paras. 373-75.

440 Ibid.

441 First press release of the Army on the Tlatlaya case, September 19, 2014, at: www.gob.mx/sedena/prensa/incidente-ocurrido-en-el-municipio-de-tlatlaya-mex-el-30-de-junio-de-2014 [accessed on February 28, 2016].

442 "Eruviel reconoce labor de Ejército en Tlatlaya," *El Universal*, July 1, 2015, available at: www.eluniversal.com.mx/nacion-mexico/2014/eruviel-reconoce-labor-de-ejercito-en-tlatlaya-1020368.html [accessed on April 20, 2015].

443 Recomendación No. 51/2014, paras. 313-15.

444 Informative note 166/2014 from the Federal Council of the Judiciary, dated December 15, 2014, available at: www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2014/notaInformativa166.pdf. See also: "Mexican Judge Frees 2 Witnesses to Army Killings," Associated Press, December 15, 2014, available at: http://wbay.com/ap/mexican-judge-frees-2-witnesses-to-army-killings [accessed on April 3, 2015].

445 The order was a "General Operating Order for the San Antonio del Rosario Operating Base and a subsequent Relief and Command Designation Order for Infantry Lieutenant Ezequiel Rodríguez Martínez, both dated June 11, 2014." Centro Prodh, *One Year after Tlatlaya: The Order was to Kill*, English Summary, July 2, 2015, p. 3, available at: http://centroprodh.org.mx/en/?wpdmpro=one-year-after-tlatlaya-the-order-was-to-kill [accessed on January 5, 2016].

446 Government officials, including a senior official of the Interior Ministry, publicly disputed that the word "abatir" means "kill." See: "Abatir no significa matar: Segob," *Aristegui Noticias*, July 3, 2015, available at: http://aristeguinoticias.com/0307/mexico/abatir-no-significa-matar-roberto-campa-sobre-orden-militar-previo-a-tlatlaya [accessed on January 5, 2016]. However, the military's own statement on the deaths of 22 individuals, issued in the immediate aftermath of the incident, clearly used the word abatir to mean "taken out" or "killed," stating that "21 men and one woman have been taken out." See: "Enfrentamiento en Edomex deja 22 muertos y un militar herido," *Proceso*, June 30, 2014, at: www.proceso.com.mx/376084/balacera-en-edomex-deja-22-muertos. When asked about the meaning of the word abatir, retired Army General José Francisco Gallardo said that in military parlance, it only had one meaning: "What would you think if you are sent on a mission where they said that they do not want detainees. They will not say directly 'kill him'; they are not stupid. But *abatir* means kill." See: "Para un militar, 'abatir' es matar, confirma el general Gallardo," *La Jornada*, July 9, 2015, available at: www.jornada.unam.mx/ultimas/2015/07/09/201cabatir201d-es-matar-para-un-militar-confirma-el-general-gallardo-2858.html [accessed on January 5, 2016].

447 Centro Prodh, "La liberación de cuatro militares involucrados en los hechos de Tlatlaya muestra que la PGR y el poder judicial de la federación no han garantizado el acceso a la justicia de las víctimas y no exonera al ejército de su responsabilidad en la massacre," press release, October 6, 2015, available at: http://centroprodh.org.mx/index.php?option=com_content&view=article&id=1664%3A2015-10-06-18-45-01&catid=209%3Afront-rokstories&lang=en.

448 Centro Prodh, *One Year after Tlatlaya: The Order was to Kill*, English Summary, July 2, 2015, p. 2, available at: http://centroprodh.org.mx/en/?wpdmpro=one-year-after-tlatlaya-the-order-was-to-kill [accessed on January 5, 2016].

449 Video interview by Carmen Aristegui with General Gallardo, July 24, 2015, available at: www.youtube.com/

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watch?v=QXGaNrdpM-A [accessed on January 5, 2016].

450 Recomendación No. 51/2014, para. 129.

451 Recomendación No. 51/2014, para. 240.

452 Recomendación No. 51/2014, paras. 276, 368, 371.

453 Recomendación No. 51/2014, para. 337.

454 Rome Statute, Article 7.2, (e).

455 See "Mexico: Soldiers Face Charges, But Not Officials Who Tried to Hide Massacre," McClatchy, November 15, 2014, available at: www.mcclatchydc.com/news/nation-world/world/article24776200.html, and Federal Judiciary Information Note 150/2014, available at www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2014/notaInformativa150.pdf [accessed on January 5, 2016].

456 Press release of the Chamber of Deputies, "Gobierno mexiquense ha atendido y aceptado las 8 recomendaciones de la CNDH: Manzur Quiroga," available at www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2015/Abril/16/5470-Diputados-revisaron-con-funcionarios-del-Estado-de-Mexico-el-caso-Tlatlaya-y-violencia-de-genero; "Mexican officials say survivors of army slaying to be paid," ABC News, April 17, 2015, available at http://abcnews.go.com/International/wireStory/mexican-prosecutor-survivors-army-slaying-paid-30380108.

457 See: Lauren Villagran, "The Victims' Movement in Mexico," Working Paper Series on Civic Engagement and Public Security in Mexico, Wilson Center and University of San Diego, p. 10, 2014; Human Rights Watch, *Neither Rights nor Security*, p. 170.

458 Human Rights Watch, *Neither Rights nor Security*, p. 170.

459 Villagran, p. 10.

460 Human Rights Watch, *Neither Rights nor Security*, p. 170.

461 Comisión Nacional de los Derechos Humanos México, Synopsis of Recommendation 45/2011, p. 2, August 12, 2011, available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2010/REC_2010_045_SYN.pdf.

462 See: *Los Operativos Conjuntos*, May 16, 2011, available at: http://calderon.presidencia.gob.mx/tag/operativos-conjuntos [accessed on March 11, 2016].

463 ICC Elements of Crimes, p. 5.

464 *Situation in Kenya*, Decision Pursuant to Article 15, para. 94.

465 This paragraph relies on accounts in Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 19-25.

466 Ibid, p. 38.

467 Ibid, p. 25. Or, as described elsewhere in the report, "[t]he concentration of the cases within a short time period, the similar tactics described by victims' families and other witnesses, corroborated by photographic and video evidence, and the fact that the abductions were spread across three northern states strongly suggest [...] that these were not isolated cases, but rather points to a clear *modus operandi* by the Navy." Ibid, p. 18. At the time of the attacks, the federal government was engaged in joint security operation (*operativo conjunto*) "Noreste Nuevo León-Tamaulipas" in Nuevo León, with the stated aim of countering organized crime and providing public security. See: "Los Operativos Conjuntos," May 16, 2011, available at: http://calderon.presidencia.gob.mx/tag/operativos-conjuntos [accessed on March 11, 2016].

468 Some incidents allegedly involved more than one of these institutions. Data are taken from CNDH annual reports 2006-2014 and CNDH document CNDH/PDS/124/2013, dated October 14, 2013, issued by the CNDH in response to right-to-information request 00048013, available at http://infomex.cndh.org.mx/apps [accessed on January 4, 2016].

469 PGR, *Third report of activities, 2014-2015*, pp. 113-114, available at: www.pgr.gob.mx/informesinstitucionales/Documents/INFORME%20DE%20LABORES/2015.pdf.

470 Human Rights Watch, *Neither Rights nor Security*, p. 125. The report goes on: "Too often, government officials reflexively dismiss cases of disappearances as *levantones*, or abductions perpetrated by cartels, and in many cases accuse victims of having been targeted because they were involved in illicit activities. That such statements are regularly made before cases are investigated reveals an inherent bias." Ibid.

471 The alleged incident occurred on November 14, 2008. The following account relies on the public version of an amparo appeal (*amparo en revisión*) 650/2014 of the Collegiate Court of the 17th Judicial Circuit, pp 54-66 and 102-109. Document on file with the Open Society Justice Initiative and available at: http://sise.cjf.gob.mx/consultasvp/default.aspx. Evidence in the hearings featured testimony from military officers about the handling of detainees that were suggestive of procedures for enforced disappearance. See the "Origins of State Policy" section earlier in this chapter.

472 The following account relies on *Amparo* Judgment 18/2014 of the Second Unitary Court of the 17th Judicial Circuit (July 15, 2014). The unit in question was the Third Specialized Infantry Platoon (*Tercera Compañía de Infantería No Encuadrada*) of the Army, which the federal government deployed to Chihuahua in 2008 as part of *Operativo Conjunto Chihuahua*, one of many "joint security operations" (operativos conjuntos) conducted as part of the national security strategy. See also: "El 'pelotón de la muerte,' soldados con licencia para matar," *Proceso*, January 12, 2013, available at: www.proceso.com.mx/?p=330488; Las rémoras del Operativo Chihuahua, Proceso, January 15, 2013, available at: www.proceso.com.mx/?p=330700; and "Comienza segunda fase del Operativo Conjunto Chihuahua," *El Universal*, available at: www.eluniversal.com.mx/notas/626969.html.

473 This account relies on Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 47-51.

474 This account relies on Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 36-38.

475 National Human Rights Commission, Recommendation 043/2011, June 30, 2011, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_043.pdf.

476 This account relies on Human Rights Watch, *Neither Rights nor Security*, pp. 153-156.

477 This account relies on Human Rights Watch, *Neither Rights nor Security*, pp. 144-149.

478 This account relies on Human Rights Watch, *Neither Rights nor Security*, pp. 141-144.

479 This account relies on Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 28-29.

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480 The following account relies on: Final judgment of criminal procedure 104/2013, First District Court on Criminal Matters of the State of Nuevo León. See: Information note of the Federal Judicial Council, August 18, 2015, available at: www.cjf.gob.mx/documentos/notasInformativas/docsNotasInformativas/2015/notaInformativa88.pdf, and "Mexico Sees First Conviction of Soldier in Disappearance," Associated Press, August 18, 2015, available at: http://bigstory.ap.org/article/3744d01c4e5245c79e1cbd4a6ce4a711/mexico-sees-first-conviction-soldier-disappearance [accessed on January 6, 2016].

481 The following account relies on an action alert from Amnesty International: "Body of Disappeared Man Found in Mexico," December 3, 2013, available at: www.amnesty.org/en/documents/amr41/076/2013/en.

482 Amnesty International, "Mexico: Prosecution of marines over enforced disappearance must signal policy change," press release, March 10, 2016, available at: www.amnesty.org/en/latest/news/2016/03/mexico-prosecution-of-marines-over-enforced-disappearance-must-signal-policy-change.

483 The following account relies on "Víctor salió a trabajar, y se lo llevaron soldados: testigos; en Veracruz su familia reclama el cadaver," *Sin Embargo*, March 6, 2016, available at: www.sinembargo.mx/07-03-2016/1632316. The family filed a complaint with state prosecutors (case 181/2016), as well as a complaint with the CNDH (18433/2016).

484 The following account relies on CNDH Recommendation 34/2012, July 11, 2012, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2012/Rec_2012_034.pdf [accessed on January 17, 2016].

485 Ibid.

486 Rome Statute, Art. 7(2)(i).

487 ICC Elements of Crimes, p. 11.

488 CNDH Recommendation 34/2012, July 11, 2012, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2012/Rec_2012_034.pdf [accessed on January 17, 2016].

489 See: *Caso Israel Arzate*, Centro de Derechos Humanos Miguel Agustín Pro Juárez, http://centroprodh.org.mx/sididh_2_0_alfa/?tag=caso-israel-arzate [accessed April 20, 2015].

490 See: "Matan a 14 en fiesta estudiantil de Juárez," *El Universal*, February 1, 2010, available at: http://archivo.eluniversal.com.mx/estados/74607.html.

491 CNDH Recommendation 49/2011, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_049.pdf.

492 Open Society Justice Initiative interview with Simón Hernández León, lawyer of Israel Arzate, Centro de Derechos Humanos Miguel Agustín Pro Juárez, Mexico City, December 26, 2013.

493 See judicial precedents of case A.R. 703/2012, available at: www.sitios.scjn.gob.mx/curso/down.php?ruta=docs/talleres/Tesis-derivadas-del-Amparo-en-Revision-(Arzate).pdf. See also: "Caso Israel Arzate y los criterios de la Corte sobre la tortura," El Juego de la Corte, May 26, 2014, at: http://eljuegodelacorte.nexos.com.mx/?p=3835.

494 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 26.

495 See the "Scale" section, above. The UN Special Rapporteur remarked on the links between torture and the security strategy in his December 2014 report. See: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 23. International human rights organizations documenting cases of torture in Mexico have made similar observations. See: Amnesty International, *Known Abusers, but Victims Ignored: Torture and Ill-Treatment in Mexico*, October 2012, p.2; and Human Rights Watch, Neither Rights nor Security, p. 32.

496 See CNDH Recommendations 28/09, 31/09, 33/09, 38/09, 41/09, 44/09, 53/09, 54/09, 55/09, 59/09, 61/09, 63/09, 66/09, 70/09, 73/09, 77/09 29/08, 30/08, 31/08, 32/08, 33/08, 55/08, 56/08, 60/08, 67/08, 13/09, 18/09, 28/09, 31/09, 33/09, 34/09, 37/09, 38/09, 41/09, 44/09, 48/09, 52/09, 53/09, 54/09, 55/09, 59/09, 61/09, 63/09, 66/09, 70/09, 71/09, 73/09, 77/09.

497 Daly, et al., Armed with Impunity, p. 17. See also: Alejandro Anaya Muñoz, "Violaciones a los derechos humanos en el marco de la estrategia militarizada de lucha contra el narcotráfico en México 2007 a 2012,"available at http://ppd.cide.edu/violaciones-a-los-dh. Muñoz concludes that 57 percent of all CNDH recommendations addressed to SEDENA between 2007 and 2012 are related to torture, whereas 56 percent of the recommendations addressed to SEMAR during the same period related to torture.

498 Open Society Justice Initiative calculation based on data in CNDH annual reports from 2006-2014, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on January 11, 2016].

499 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 26.

500 Human Rights Watch, *Neither Rights nor Security*, pp. 58-63. A flagrancia arrest refers to an arrest when the criminal is caught in the act of committing a crime, in which case Mexican law permits an exception to the general rule that only specific authorities (prosecution police and security police) can detain a person. Ibid. p. 59.

501 The recommendation was addressed to the Interior Ministry, National Defense Ministry (SEDENA), the Navy, the Public Security Ministry, federal Attorney General's Office, the Military Prosecution, state governors, State Public Security Ministries, and state Attorney Generals' Offices. See: National Human Rights Commission, General Recommendation No. 19 on the illegal practice of searches (cateos), August 5, 2011, available at: www.dof.gob.mx/nota_detalle.php?codigo=5204643&fecha=12/08/2011. The recommendation was addressed to the Interior Ministry, National Defense Ministry (SEDENA), the Navy, the Public Security Ministry, federal Attorney General's Office, the Military Prosecution, state governors, State Public Security Ministries, and state Attorney Generals' Offices.

502 Human Rights Watch, *Neither Rights nor Security*. p. 63.

503 The percentage of arrests with warrants climbed from 7.1% in 2011 to 8.5% in 2012, to 11.6% in 2013; while the absolute number of arrests with warrants remained flat, and even fell in 2013, the increasing percentage was due to an overall drop in detentions for federal offenses, from 94,695 in 2011 to 47,619 in 2013. Open Society Justice Initiative calculation of percentages based on PGR data provided to Amnesty International: Folio 0001700145914, PGR reply 18 June 2014, Instituto Federal de Acceso a Informacion, (IFAI), available at www.infomex.org.mx/gobiernofederal/home.action; cited in: Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 2014, p. 28.

504 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 26.

505 Under Mexico's outgoing federal criminal procedure code, after a suspect's arrest he must be brought before a judge

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"without any delay." Notably, in cases involving organized crime, a person arrested pursuant to the *flagrancia* exception is supposed to be "registered" with a prosecutor "immediately," but authorities have 96 hours before they must bring the suspect before a judge. Ibid., pp. 59-60. According to Human Rights Watch, this has led to a pattern in which an individual is arbitrarily detained and held incommunicado for a period of hours or days before being handed over to prosecutors, and that it is during this period that "detainees are often tortured to obtain information and forced confessions which often serve to justify their arbitrary arrests." Ibid., p. 59. Articles 146 to 152 of the new National Code on Criminal Proceedings set forth the applicable rules for *flagrancia* and detentions in urgent cases. See: http://dof.gob.mx/nota_detalle.php?codigo=5334903&fecha=05/03/2014.

506 See: United Nations Committee Against Torture, *Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session*, CAT/C/MEX/CO/5-6, para. 11. See also: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, paras. 23 and 47.

507 Data on *arraigo* use for the years 2009 through 2012 is taken from Mexico's report to the Committee on Enforced Disappearances, April 17, 2014, p. 36, fn. 42, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en. Data for 2013 is taken from reported comments of a PGR official to the Inter-American Commission of Human Rights. See: "Disminuye número de arraigos: PGR," *Crónica*, March 27, 2014, available at: www.cronica.com.mx/notas/2014/824456.html [accessed on January 11, 2016].

508 CNDH annual reports 2006-2014, available at: www.cndh.org.mx/Informes_Anuales_Actividades.

509 Data on *arraigo* use for the years 2009 through 2012 is taken from Mexico's report to the Committee on Enforced Disappearances, April 17, 2014, p. 36, fn. 42, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en. Data for 2013 is taken from reported comments of a PGR official to the Inter-American Commission of Human Rights. See: "Disminuye número de arraigos: PGR," *Crónica*, March 27, 2014, available at: www.cronica.com.mx/notas/2014/824456.html [accessed on January 11, 2016].

510 In most jurisdictions around the world it is during the pretrial phase of the criminal justice process where torture and related abuses are disproportionately used. See: University of Bristol, Ludwig Boltzmann Institute, Open Society Justice Initiative, *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, New York, 2011, available at: www.opensocietyfoundations.org/reports/pretrial-detention-and-torture-why-pretrial-detainees-face-greatest-risk. The UN Subcommittee on Prevention of Torture has also found that the greatest risk to detainees occurred in the first 48 hours of detention. *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico*, CAT/OP/MEX/1 (31 May 2010), para. 144, www.un.org/Docs/journal/asp/ws.asp?m=CAT/OP/MEX/1.

511 *Arraigo* was established by statute in 1996. The 2008 reform "raised the *arraigo* procedure to the level of a constitutional provision, thereby eliminating charges of unconstitutionality." David Shirk, *Judicial Reform in Mexico: Change & Challenges in the Justice Sector*, University of San Diego Trans-Border Institute, May 2010, p. 22. Other amendments adopted in 2008 allow prosecutors to arrest persons in urgent cases without a judicial arrest warrant, authorize the issuance of search warrants (orden de cateo) orally, and permit the police to investigate crimes. *Constitución Política de los Estados Unidos Mexicanos*, Arts. 16, 21.

512 In February 2014, Mexico's Supreme Court of Justice held that the organized crime act only allowed for *arraigo* at the federal level, and not in states that had incorporated the practice or similar ones into their own criminal procedure codes. See: "Suprema Corte declara inconstitucional el arraigo en Hidalgo," *Milenio*, February 27, 2014, www.milenio.com/hidalgo/Suprema-Corte-declara-inconstitucional-Hidalgo_0_253174885.html. See also: the "Judiciary" section of chapter five for more detail on the decision.

513 *Mexico Denies UNHCR Recommendation to Eliminate Arraigo*, Justice in Mexico Project, March 30, 2014, available at: https://justiceinmexico.org/mexico-denies-unhrc-recommendation-to-eliminate-arraigo/ [accessed on January 11, 2016]. See also: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, A/HRC/28/68/Add.3, Mission to Mexico, paras. 49-53.

514 Statement of Juan Manuel Gómez Robledo, Under Secretary for Multilateral Affairs and Human Rights of the Ministry of Foreign Affairs, on the first periodic review of Committee on Enforced Disappearances to Mexico, February 2 and 3, 2015, Geneva.

515 In 2014, Assistant Interior Minister Lía Limón acknowledged that over 4,000 uses of *arraigo* in recent years had resulted in only 129 convictions. See: *Mexico Denies UNHCR Recommendation to Eliminate Arraigo,* Justice in Mexico Project, March 30, 2014, available at: http://justiceinmexico.org/2014/03/30/mexico-denies-unhrc-recommendation-to-eliminate-arraigo [accessed on June 6, 2014].

516 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 23.

517 Human Rights Watch, *Neither Rights nor Security*. p. 30.

518 See: CNDH Recommendations 29/08, 30/08, 31/08, 32/08, 33/08, 55/08, 56/08, 60/08, 67/08, 13/09, 18/09, 28/09, 31/09, 33/09, 34/09, 37/09, 38/09, 41/09, 44/09, 48/09, 52/09, 53/09, 54/09, 55/09, 59/09, 61/09, 63/09, 66/09, 70/09, 71/09, 73/09, 77/09.

519 See: FIDH, CMDPDH and CCDH, *Mexico, Informe sobre presunta commisión de crímenes de lesa humanidad en Baja California entre 2006 y 2012*, October 2014, p. 17, available at: www.fidh.org/IMG/pdf/rapport_mexique-ld2-1-2.pdf. See also: Human Rights Watch, *Neither Rights nor Security*, p. 6. See also: CIDE, "Resultados de la Primera Encuesta realizada a Población Interna e en Centros Federales de Readaptación Social," 2012, available at: https://publiceconomics.files.wordpress.com/2013/01/encuesta_internos_cefereso_2012.pdf. The UN Special Rapporteur on Torture has also remarked on the similarity of torture methods used across Mexico: "[…] a combination of: punches, kicks and beatings with sticks; electrical shocks through the application of electrical devices such as cattle prods to their bodies, usually their genitals; asphyxiation with plastic bags; waterboarding; forced nudity; suspension by their limbs; threats and insults." See: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, para. 26.

520 Human Rights Watch, *Neither Rights nor Security*, p. 30.

521 The following account relies on Amnesty International, *Out of Control, Torture and Other Ill-Treatment in Mexico*, September 2014, pp. 34-35, available at: www.amnesty.org/download/Documents/4000/amr410202014en.pdf [accessed on January 16, 2016].

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522 CNDH Recommendation 33/2015, October 7, 2015, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2015/Rec_2015_033.pdf.

523 The following account relies on Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *México es condenado por torturas en decisión histórica de la ONU: Una gran victoria para las víctimas*, October 9, 2015, available at: http://cmdpdh.org/2015/10/mexico-es-condenado-por-torturas-en-decision-historica-de-la-onu-una-gran-victoria-para-las-victimas-2.

524 CAT resolution G/SO 229/31 MEX (1), September 24, 2015, available at: http://cmdpdh.org/wp-content/uploads/2015/10/500_2012_CAT_notification_counsel.pdf.

525 The following account relies on Human Rights Watch, *Neither Rights Nor Security: Killings, Torture and Disappearances in Mexico's War on Drugs*, p. 114-121.

526 The following account relies on Amnesty International, *Out of Control, Torture and Other Ill-Treatment in Mexico*, September 2014, pp. 40-41, available at: www.amnesty.org/download/Documents/4000/amr410202014en.pdf [accessed on January 16, 2016].

527 CNDH recommendation 75/2011, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_075.pdf.

528 The following account relies on Amnesty International, *Out of Control, Torture and Other Ill-Treatment in Mexico*, September 2014, pp. 47-48, available at: www.amnesty.org/download/Documents/4000/amr410202014en.pdf [accessed on January 18, 2016].

529 CNDH Recommendation 52/2012, September 29, 2012, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2012/Rec_2012_052.pdf.

530 The following account relies on Amnesty International, *Out of Control, Torture and Other Ill-Treatment in Mexico*, September 2014, pp. 9-10, available at: www.amnesty.org/download/Documents/4000/amr410202014en.pdf [accessed on January 18, 2016].

531 This account relies on Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 10, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 10, 2016].

532 This account relies on Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 14, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 10, 2016].

533 "El pelotón de la muerte, soldados con licencia para matar," *Proceso*, January 12, 2013, available at: www.proceso.com.mx/?p=330488. Note that the journalist's account is "based on court records and testimonies of the parties."

534 Ibid.

535 Ibid.

536 Ibid.

537 Ibid.

538 Ibid.

539 Ibid.

540 CNDH Recomendation 88/2011, pp. 15-24, December 16, 2011, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/2011/Rec_2011_088.pdf.

541 CNDH Recommendations 88/201, pp. 1, 14 (translation by author).

542 Ibid. p. 16.

543 Ibid.

544 Ibid.

545 Ibid. pp. 1, 14.

546 Rome Statute, Art. 7(2)(e). Note that, unlike the definition of torture in the Torture Convention, the Rome Statute definition of torture as a crime against humanity does not require that the perpetrator act with a "specific purpose." See: ICC Elements of Crimes, p. 7, n. 14 ("It is understood that no specific purpose need be proved for this crime.").

547 *Prosecutor v. Brđanin*, Judgment, IT-99-36, ¶ 484 (ICTY Trial Chamber, September 1, 2004).

548 *Prosecutor v. Ntagerura*, et al., Trial Judgement, Case No. ICTR-99-46-T, ¶ 758 (ICTR Trial Chamber, July 7, 2006).

549 ICC Elements of Crimes, p. 7.

550 *The Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, paras. 199-204 (ICC Pre-Trial Chamber, June 15, 2009).

551 CNDH Recommendation 88/201, pp. 1, 14 (translation by author).

552 Rome Statute, Art. 7(1).

553 *The Prosecutor v. Bemba*, ICC-01/05-01/08-424, Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean-Pierre Bemba Gombo, para. 78 (ICC Pre-Trial Chamber, June 15, 2009). This distinction is necessary because crimes against humanity may be committed "inside or outside the context of an armed conflict," meaning a court may have to distinguish between an attack on a predominately civilian population and one against opposing forces in an armed conflict. *The Prosecutor v. Kayishema & Ruzindana*, Case No. ICTR-95-1-T, Judgement, paras. 127-29 (ICTR Trial Chamber, May 21, 1999).

554 *Situation in Kenya*, Decision Pursuant to Article 15, para. 79.

555 *Bemba* Confirmation of Charges Decision, para. 76 (emphasis added).

556 *The Prosecutor v. Bagilishema*, No. ICTR-95-1A-T, Judgement, para. 80 (ICTR Trial Chamber, June 7, 2001) (emphasis added).

557 The following account relies on five articles: "Golpea y veja Policía Federal a 70 personas en Carrizalillo, Guerrero," Agencia Quadratín, October 21, 2014, available at http://mexico.quadratin.com.mx/Golpea-y-veja-Policia-Federal-70-personas-en-Carrizalillo-Guerrero; "Insiste el comisario de Carrizalillo en que los detenidos por la Policía federal no son delincuentes," *El Sur*, October 23, 2014, available at http://suracapulco.mx/archivos/218894; "Federales realizan detenciones en Carrizalillo, refugio de Guerreros Unidos," *Proceso*, October 21, 2014, available at www.proceso.com.mx/?p=385431; "Town complains of police aggression," *Mexico Daily News*, October 25, 2014, http://mexiconewsdaily.com/news/town-complains-police-aggression/; and "Pobladores de Carrizalillo, Guerrero, denuncian tortura y detenciones por parte de federales," *Animal Politico*, October 24,

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2014, http://www.animalpolitico.com/2014/10/pobladores-de-carrizalillo-guerrero-denuncian-tortura-y-detenciones-por-parte-de-federales/.

558 "Comando secuestra a cuatro empleados de minera en Guerrero," *Proceso*, March 5, 2015, available at: www.proceso.com.mx/?p=397729; "Identifican a mineros hallados en fosa en Guerrero," *El Universal*, March 14, 2015, available at http://m.eluniversal.com.mx/notas/estados/2015/identifican-a-mineros-hallados-en-fosa-en-guerrero-1084660.html; "Huyen habitantes de Carrizalillo por la violencia desatada entre narcotraficantes," La Jornada (April 5, 2014) available at www.jornada.unam.mx/2015/04/05/politica/008n1pol.

559 "Denuncian que PF golpea a habitants de Guerrero y secuestra a 8 personas," *El Financiero*, October 21, 2014, available at: www.elfinanciero.com.mx/sociedad/federales-golpean-a-habitantes-de-guerrero-y-secuestran-a-personas.html

560 Dockets CNDH/1/2014/7383/Q and CNDH/2/2014/7972/Q. Information from official document CNDH/DGSR/UE/245/2015, February 6, 2015, obtained in response to right-to-information request 65114.

561 Official document No. PF/OCG/DGE/0018/2015 dated January 5, 2015 from the Federal Police, in response to a right to information request number 0413100101414, filed by the Open Society Justice Initiative.

562 *Prosecutor v. Brđanin*, Judgment, IT-99-36, ¶ 484 (ICTY Trial Chamber, September 1, 2004).

563 See, e.g.: *Report of 2012 of the Mexican State to the Committee on the Rights of the Child*, p. 56, n. 56.

564 See: Mexico, *40 y 50 Informe Consolidado sobre el Cumplimiento de la Convención sobre los Derechos del Niño*, 2012, para. 296 and corresponding footnote 56, available at: www2.ohchr.org/english/bodies/crc/docs/CRC.C.MEX.4-5_sp.docx.

565 With regard to Tlatlaya, see the text box "Order to Kill at Tlatlaya," in chapter three. With regard to Tanhuato, see Human Rights Watch, *Mexico: Police Killings in Michoacán. Evidence of Extrajudicial Executions in Apatzingán and Tanhuato*, October 28, 2015, available at: www.hrw.org/news/2015/10/28/mexico-police-killings-michoacan [accessed on January 1, 2016].

566 One survivor went to the warehouse to seek the release of her daughter from the gang, described witnessing a soldier execute 15-year-old Erika Gómez following the shootout. A doctor who viewed Gómez's body told reporters that the bullet that killed her had been a "coup de grace." "Veintiuno de los 'delincuentes' abatidos en Tlatlaya fueron 'fusilados' por el Ejército," *Esquire Mexico*, September 17, 2014, available at: www.proceso.com.mx/?p=382335 [accessed on April 3, 2015]. See also: "Mexico's Peña Nieto Says that Alleged Army Massacre Will Be Fully Investigated," Associated Press, September 23, 2014, available at: http://latino.foxnews.com/latino/news/2014/09/23/mexico-pena-nieto-says-that-alleged-army-massacre-to-get-full-investigation [accessed on April 3, 2015].

567 See the text box "Order to Kill at Tlatlaya," in chapter 3.

568 *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Christof Heyns*, A/HRC/26/36, para. 35.

569 See CNDH/2/2010/1508/Q. After its investigation, the national ombudsman issued Recommendation 45/2010, addressed to the Ministry of Defense, the PGR, and the government of the state of Nuevo León. For another example, see the letter of Janet Figueroa to the UN Special Rapporteur on Extrajudicial Killings, regarding the case of her father, Joaquín Figueroa, April 2013, http://cmdpdh.org/2013/04/nosotros-los-inconformes/?utm_source=comunicados&utm_campaign=cb01d57bca-carta_abierta_relator_especial4_21_2013&utm_medium=email%20.

570 A 2011 report from the UN Working Group on Enforced and Involuntary Disappearances (WGEID) states that: "According to several sources, the authorities—particularly the prosecution services—try to discredit disappeared persons by claiming that they have been involved with criminal groups, without providing any evidence or conducting any investigation to prove otherwise." WGEID, *Report of the Working Group on Enforced or Involuntary Disappearances Addendum Mission to Mexico*, Document A/HRC/19/58/Add.2, para. 33, December 20, 2011, available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf.

571 "35 Corpses Dumped on Busy Street in Mexican Tourist Town," *The Washington Post*, September 21, 2011, available at: www.washingtonpost.com/world/mexicos-dueling-images-35-dead-in-tourist-town/2011/09/21/gIQAkHjZlK_story.html?hpid=z4 [accessed on March 22, 2015].

572 Eleven additional bodies were dumped near the same location on the day the prosecutors' conference began. "Veracruz, Mexico: 11 Bodies Found In Port City," Associated Press, September 23, 2011, available at: www.huffingtonpost.com/2011/09/23/veracruz-mexico-drug-violence_n_977676.html [accessed on March 22, 2015].

573 "35 Corpses Dumped on Busy Street in Mexican Tourist Town," *The Washington Post*, September 21, 2011.

574 Ibid.

575 "Bodies of Innocents Used as Props in Mexico's Drug War," InSight Crime, July 19, 2012, available at www.insightcrime.com/news-analysis/bodies-of-innocents-used-as-props-in-mexicos-drug-war.

576 In 2010, Calderón stated that 90 percent of those killed in Mexico's drug conflict were victims of inter-cartel violence, while only two percent were "innocent civilians." CNN, *The Situation Room: Interview with President Calderón*, May 19, 2010, transcript available at http://transcripts.cnn.com/TRANSCRIPTS/1005/19/sitroom.01.html.

577 This is discussed at greater length in the following chapter, which includes more extensive evidence of government officials falsely labelling victims as criminals during both the Calderón and Peña Nieto administrations.

578 "Criminalizar a las víctimas," *Proceso*, November 30, 2011, available at: www.proceso.com.mx/?p=289778; and "Masacres en México: recuento de la violencia," CNN Mexico, November 18, 2013, available at: http://mexico.cnn.com/nacional/2011/11/24/villas-de-salvarcar [accessed on March 22, 2015].

579 "Gómez Mont ofrece disculpas por palabras equivocadas de Calderón," *La Jornada*, February 9, 2010, available at www.jornada.unam.mx/2010/02/09/politica/003n1pol; "Segob se disculpa por llamara 'pandilleros' a masacrados," *El Universal*, February 9, 2010, available at www.eluniversal.com.mx/nacion/175530.html. The minister explained that this mistake was due to a "lack of communication." When President Calderón visited Ciudad Juárez on February 11, 2010, the mother of two of the massacre victims confronted him for labeling her sons "members of a gang." See: "Madre de joven asesinado en Villas de Salvárcar reclama a Calderón," YouTube, available at www.youtube.com/watch?v=8RZlli4QpmM.

580 The case is described in greater detail in the "Attack and Course of Conduct" section, above.

581 "Muertes de civiles en el combate al crimen, 'daños colaterales': Galván," *La Jornada*, April 13, 2010, available at www.jornada.unam.mx/2010/04/13/politica/005n1pol.

582 See: "General Cienfuegos: 'El Ejército debe salir de las calles; fue un error entrar en esa guerra,'" *Sin Embargo*, March 16, 2016, available at: www.sinembargo.mx/16-03-2016/1636596.

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583 SEDENA document 5049, July 11, 2012, issued in response to right-to-information request 0000700100812 filed by the Open Society Justice Initiative.

584 Human Rights Watch, *Neither Rights nor Security*, p. 171.

585 UN Committee on the Rights of the Child, *Concluding observations on the combined fourth and fifth periodic reports of Mexico*, CRC/C/MEX/CO/4-5, para. 21, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fMEX%2fCO%2f4-5&Lang=en [accessed on January 7, 2016]. ("The Committee is seriously concerned that the situation of armed violence, drug trafficking and the fight against organized crime has resulted in the killing of numerous children, including in cases of extrajudicial killings, such as the Tlatlaya case, and continue to threaten the right to life, survival and development of many children.")

586 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add, April 28, 2014, para. 71.

587 This language comes from the Ruto, et al. case before the ICC, in which the ICC Pre-Trial Chamber determined that there was an attack directed at a civilian population in light of evidence that the perpetrators of violence "did not act randomly and in a disconnected manner," but rather "carried out the attack against [a] specific subset of the civilian population," namely perceived supporters of the opposing political party, "following a unified, concerted and pre determined strategy." *Ruto, et al*. Confirmation of Charges Decision, para. 168.

588 Notably, in the context of its evaluation of potential crimes against humanity in Colombia, the ICC Office of the Prosecutor has noted that civilians have "been targeted based on their suspected or perceived affiliation with other armed groups or the State authorities; *their suspected involvement in the narcotics industry*; or for their refusal to cooperate with and/or opposition to particular armed groups." International Criminal Court Office of the Prosecutor, *Situation in Colombia - Interim Report*, para. 39, November 14, 2012 (emphasis added). Similarly, the Truth Commission of the State of Guerrero recently concluded that crimes against humanity were committed during the so-called Dirty War in Mexico based, in part, on a finding of "a state policy to counter guerilla activities and subdue and control *those suspected of supporting guerrilla or subversive movements* in rural and urban areas alike." Comisión de la Verdad del Estado de Guerrero, *Informe Final de Actividades*, p. 22 (October 15, 2014) (translation by author). Furthermore, although discussed in a different context, the ICTY has made clear that, for purposes of establishing the crime of persecution as a crime against humanity, it is the *perception of the perpetrator* that matters, not whether the targeted individual actually bears the characteristic for which he or she is being targeted. *The Prosecutor v. NaletiliĐ & MartinoviĐ*, IT-98-34, Judgment, para. 636 (ICTY Trial Chamber, March 31, 2003).

589 *Situation in Kenya*, Decision Pursuant to Article 15, para. 94.

590 *Situation in Kenya*, Decision Pursuant to Article 15, para. 94.

591 *Situation in Kenya*, Decision Pursuant to Article 15, para. 95.

592 *Situation in Kenya*, Decision Pursuant to Article 15, para. 95.

593 *Situation in Kenya*, Decision Pursuant to Article 15, para. 95. In the Gbagbo case, the Pre-Trial Chamber presiding over the confirmation of charges held that the cumulative effect of the alleged acts amounted to a "widespread" attack, as the attack "(i) involved a large number of acts; (ii) targeted and victimized a significant number of individuals; (iii) extended over a time period of more than four months; and (iv) affected the entire city of Abidjan, a metropolis of more than three million inhabitants." *Gbagbo* Confirmation of Charges Decision, para. 224. The Chamber also noted that approximately 40 people had died as a result of the attack and some 50 additional victims were wounded. Ibid. n. 122. Similarly, in the Ruto, et al. case, the Pre-Trial Chamber found substantial evidence that the attack was widespread, noting that, "[v]iewed as a whole, the evidence shows that the attack was massive, frequent, carried out collectively with considerable seriousness and directed against a large number of civilian victims." *Ruto, et al*. Confirmation of Charges Decision, para. 176.

594 As the ICC explained in the *Bemba* case, the term "widespread" connotes "an attack carried out over a large geographical area or an attack in a small geographical area directed against a large number of civilians." *Bemba* Confirmation of Charges Decision, para. 83 (emphasis added).

595 *Situation in Kenya*, Decision Pursuant to Article 15, para. 96.

596 *Situation in Kenya*, Decision Pursuant to Article 15, para. 96.

597 While not bound by the decisions of the *ad hoc* tribunals, the ICC frequently looks to the jurisprudence of the other international criminal bodies in determining how to interpret the elements of crimes. See, e.g.: *The Prosecutor v. Lubanga*, ICC-01/04-01/06-2842, Judgment Pursuant to Article 74 of the Statute, para. 533 (ICC Trial Chamber, March 14, 2012).

598 *Situation in Kenya*, Decision Pursuant to Article 15, para. 96. Applying similar considerations, the Pre-Trial Chamber in Gbagbo found substantial grounds to believe the attack in that case was "systematic," stressing "evidence demonstrating that preparations for the attack were undertaken in advance, and that the attack was planned and coordinated." *Gbagbo* Confirmation of Charges Decision, para. 225. The Chamber also noted that the relevant acts revealed "a clear pattern of violence directed at pro-Ouattara demonstrators or activists, and more generally against areas whose inhabitants were perceived to be supporters of Alassane Ouattara." Ibid.

599 See, e.g.: *Katanga* Trial Judgment, para. 1101 ("The Chamber further underscores that the proof required to establish the existence of an attack cannot be confused with the proof required to demonstrate the widespread nature of the attack, lest the alternative possibilities foreseen, viz. that the attack may be widespread or systematic, be rendered meaningless. This first step consists of proving only that the course of conduct involved the multiple commission of acts referred to in article 7(1). In this connection, where established that it involved such multiple commission of acts, a single event may well constitute an attack within the meaning of article 7(2)(a), provided that the other elements of that article are met.").

600 See, e.g.: *Katanga* Trial Judgment, paras. 1113 ("In the Chamber's opinion, the adjective 'systematic' allows the nature of the attack, understood in a broad sense, to be characterised and to bring to the fore the existence of a pattern of repeated conduct or the recurring or continuous perpetration of interlinked, non-random acts of violence that establish the existence of a crime against humanity. To establish a 'policy', it need be demonstrated only that the State or organisation meant to commit an attack against a civilian population. An analysis of the systematic nature of the attack therefore goes beyond the existence of any policy seeking to eliminate, persecute or undermine a community.").

601 *Gbagbo* Confirmation of Charges Decision, para. 208.

602 See: Daly, et al., *Armed with Impunity*, p. 21 (noting, with respect to instances of alleged human rights abuses carried out by the Mexican military between 2005 and 2011, the majority were committed over twelve different states and the Federal District).

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603 In May 2011, the interior minister wrote that there were joint operations in Baja California (Tijuana), Chihuahua (Juárez), *Frontera Sur* (Istmo), Guerrero, Michoacán, Sinaloa (Culiacán-Navolato), the *Triángulo Dorado* (Chihuahua-Sinaloa-Durango), and the northeast (Nuevo León—Tamaulipas). Alejandro Poiré Romero, *Los Operativos Conjuntos*, Blog de la Presidencia, May 16, 2011, available at: http://calderon.presidencia.gob.mx/el-blog/los-operativos-conjuntos/#more-66269. According to media reports, there have also been joint operations in the states of Morelos and Veracruz. See, for example: "Mapa conjuntos en el pais," *El Universal*, October 6, 2011, available at: http://archivo.eluniversal.com.mx/notas/798990.html. According to the Mexican statistics office, INEGI, these states make up 46.7% of Mexican territory.

604 United Nations Committee Against Enforced Disappearances, *Observaciones finales sobre el informe presentado por México en virtud del artículo 29, párrafo 1, de la Convención*, para. 10 (emphasis added) (advanced version; February 2015), http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_COB_MEX_19564_S.pdf.

605 If a group constitutes "an organization" for purposes of crimes against humanity, it does not necessarily mean that the group would be considered an "organized armed group" for purposes of a war crimes analysis. For instance, in the *Ruto*, et al. case before the ICC, which involves crimes allegedly committed during the 2008 post-election violence in Kenya, the Pre-Trial Chamber determined that a network of politicians, members of the media, and local tribal leaders amounted to "an organization" acting pursuant to a policy to carry out an attack against a civilian population, and thus that certain of its members may be tried for crimes against humanity, even though there is no allegation of an armed conflict in Kenya at the relevant time. See: *Ruto*, et al. Confirmation of Charges Decision, para. 182.

606 This report does not analyze the status of the Zetas beyond 2011. Some observers argue that more recently, the cartel has fragmented. See: Alejandro Hope, "What Happened to the Zetas?," *El Daily Post*, March 3, 2016, available at http://www.eldailypost.com/opinion/2016/03/what-happened-to-the-zetas-2/.

607 See, e.g.: *Katanga & Ngudjolo* Confirmation of Charges Decision, paras. 392-417.

608 Bemba Confirmation of Charges Decision, paras. 109-14.

609 *Situation in Kenya*, Decision Pursuant to Article 15, para. 93.

610 *Situation in Kenya*, Decision Pursuant to Article 15, para. 90. Judge Hans Peter Kaul dissented on the ground that the relevant "organization" referred in Article 7(2) must have "state-like" characteristics, such as "(a) a collectivity of persons; (b) which was established and acts for a common purpose; (c) over a prolonged period of time; (d) which is under responsible command or adopted a certain degree of hierarchical structure, including, as a minimum, some kind of policy level; (e) with the capacity to impose the policy on its members and to sanction them; and (f) which has the capacity and means available to attack any civilian population on a large scale." Ibid. Dissenting Opinion of Judge Kaul, para. 51. According to Judge Kaul, "violence-prone groups of persons formed on an *ad hoc* basis, randomly, spontaneously, for a passing occasion, with fluctuating membership and without a structure and level to set up a policy are not within the ambit of the Statute, even if they engage in numerous serious and organized crimes." Ibid. para. 52. The ICC Appeals Chamber has not addressed this split.

611 It is also arguable that the Zetas would satisfy the stricter definition of "organization" contained in Judge Kaul's dissent.

612 Protocol Additional to the Geneva Conventions of 12 August 1949 and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) art. 1(1), June 8, 1977, 1125 U.N.T.S. 609. While it is unclear whether the situation in Mexico between 2008 and 2011 amounts to an armed conflict, and although Mexico is not a party to Additional Protocol II, we look to the criteria in that treaty—which applies to armed conflicts of a non-international character—solely for the purpose of determining whether the Zetas satisfy one of the factors that the ICC would consider when assessing whether a group is capable of committing crimes against humanity.

613 Jean Pictet Commentary of AP II, www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=93F022B3010AA404C12563CD0051E738.

614 Jean Pictet Commentary of AP II, www.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?viewComments=LookUpCOMART&articleUNID=93F022B3010AA404C12563CD0051E738.

615 More recently, in light of significant losses of their top leadership at the hands of the government and rival cartels, the Zetas have adopted a cell-like structure to limit the information that any one member of the organization knows about his associates, which is very similar to other modern insurgent groups. See: Ioan Grillo, "Analysis: Zetas Cartel Feud Augurs More Blood, Fear in Mexico," Reuters, September 6, 2012, available at: www.reuters.com/article/2012/09/06/us-mexico-drugs-zetas-idUSBRE8850UB20120906.

616 See: Diego Osorno, *La Guerra de los Zetas*, (DeBolsillo) Mexico, 2014, chapter 7. See also: John P. Sullivan and Samuel Logan, "Los Zetas: Massacres, Assassinations and Infantry Tactics," *The Counter Terrorist*, November 24, 2010, available at: www.homeland1.com/domestic-international-terrorism/articles/913612-Los-Zetas-Massacres-Assassinations-and-Infantry-Tactics. See also: Spencer Thomas, "A Complementarity Conundrum: International Criminal Enforcement in the Mexican Drug War," *Vanderbilt Journal of Transnational Law*, Vo.l 45, pp. 599-638 (2012).

617 See: Grillo.

618 George Grayson, "Los Zetas: the Ruthless Army Spawned by a Mexican Drug Cartel," Foreign Policy Research Institute, May 2008, http://www.fpri.org/articles/2008/05/los-zetas-ruthless-army-spawned-mexican-drug-cartel.

619 Guillermo Vazquez Del Mercado, Los Zetas, (undated), available at: http://research.ridgway.pitt.edu/wp-content/uploads/2012/05/LosZetasPROFILEFINAL.pdf.

620 Samuel Logan, "A Profile of Los Zetas: Mexico's Second Most Powerful Drug Cartel," Combating Terrorism Center at West Point, February 16, 2012, available at: www.ctc.usma.edu/posts/a-profile-of-los-zetas-mexicos-second-most-powerful-drug-cartel.

621 Paola Hurtado, "For Zetas, Guatemala is the New Mexico," Global Investigative Journalism Network, October 2, 2011, http://gijn.org/for-zetas-guatemala-is-the-new-mexico/.

622 See: Hurtado.

623 Samuel Logan, "The Future of Los Zetas After the Death of Heriberto Lazcano," Combating Terrorism Center, October. 29, 2012, available at: www.ctc.usma.edu/posts/the-future-of-los-zetas-after-the-death-of-heriberto-lazcano.

624 Logan.

625 Logan.

626 Max. G. Manwaring, "A New Dynamic in the Western Hemisphere Security Environment: The Mexican Zetas and Other Private Armies," Strategic Studies Institute, September 2009, p. 28.

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627 See: Diego Osorno, *La Guerra de los Zetas* (DeBolsillo), Mexico, 2014, pp. 15.

628 Michael Evans, "Mexico's Recurring Nightmare," *The Nation*, January 29, 2015, www.thenation.com/article/196305/mexicos-recurring-nightmare.

629 See: Sullivan and Logan.

630 Sullivan and Logan.

631 See: Antonio Sampaio, "Los Zetas, Way of Combat," Kings of War, July 19, 2013, http://kingsofwar.org.uk/2013/07/los-zetas-way-of-combat/ (explaining that "Treviño Morales… applied the typical terror tactics of the Kaibiles [Guatemalan Special Forces, many of whom have been recruited by the Zetas], such as decapitations and burning people alive, quite effectively and kept the group cohesive after an internal struggle last year.").

632 See, e.g.: Jason Buch, "Snitch Tells of Spying on Zetas," *San Antonio Express News*, January 28, 2012, available at: www.borderlandbeat.com/2012/01/snitch-tells-of-spying-on-zetas.html; Will Grant, "Facebook beheading video: Who was Mexico's Jane Doe?," BBC News, November 4, 2013, available at: www.bbc.com/news/magazine-24772724.

633 *Situation in Kenya*, Decision Pursuant to Article 15, para. 93.

634 Marcelo Di Filippo, "Terrorist Crimes and International Co-operation: Critical Remarks on the Definition and Inclusion of Terrorism in the Category of International Crimes," *The European Journal of International Law*, Vol. 19, no. 3, p. 566.

635 Filippo, p. 567.

636 Marguerite Cawley, "Mexico Fuel Theft: Big Earner for the Zetas?," Insight Crime, August 4, 2014, available at: www.insightcrime.org/news-briefs/mexico-fuel-theft-big-earner-zetas.

637 Ibid.

638 Michael Evans, "Mexico's Recurring Nightmare," *The Nation*, January 29, 2015.

639 Ibid. Similarly, information received by the Centro Diocesano para los Derechos Humanos Fray Juan de Larios suggests that members of the municipal police in Coahuila have illegally detained individuals for purposes of delivering them to the Zetas, and that these individuals have not been heard from since. Information on file with the Open Society Justice Initiative.

640 See: *Prosecutor v. TadiĐ*, Case No. IT-94-1-T, Judgement, para. 654, ICTY Trial Chamber, May 7, 1997. Ultimately, the ICTY determined that there is no policy requirement in crimes against humanity under customary international law. See: The *Prosecutor v. JelisiĐ*, IT-95-10 –A, Judgement, para. 48, ICTY Appeals Chamber, July 5, 2001. However, the tribunal stated "in the context of proving specific intent, the existence of a plan or policy may become an important factor in most cases." Ibid.

641 Evans.

642 Steven Dudley and Viridiana Rios, "Why Mexico's Zetas Expanded Faster than their Rivals," Insight Crime, April 21, 2013, available at: www.insightcrime.org/news-analysis/why-mexicos-zetas-expanded-faster-rivals. See also: Diego Osorno, who describes the methodical approach the Zetas pursued in implementing their expansion strategy. Diego Osorno, *La Guerra de los Zetas* (DeBolsillo), Mexico, 2014, chapter 10.

643 "Zetas Now Mexico's Biggest Cartel, Report Says," Fox News, January 26, 2012, available at: http://latino.foxnews.com/latino/news/2012/01/26/zetas-now-mexicos-biggest-cartel-report-says/. See also: www.stratfor.com/sample/analysis/polarization-and-sustained-violence-mexicos-cartel-war.

644 Angelica Leicht, "Los Zetas, Mexico's Largest, Deadliest and Most Sophisticated Drug Cartel," *Latino Post*, July 18, 2014, www.latinopost.com/articles/6901/20140718/los-zetas-mexicos-largest-deadliest-sophisticated-drug-cartel.htm.

645 "Los Zetas Cartel," Borderland Beat, May 11, 2009, available at: borderlandbeat.com/2009/05/los-zetas-cartel-is-criminal.html.

646 See: Grayson.

647 "Mexican cartel blockades streets in Monterrey," BBC News, August 14, 2010, available at: www.bbc.com/news/world-latin-america-10977501. For example, on August 14, 2010, members of the Zetas blocked off at least 13 major roads in Monterrey, preventing access to the city's international airport and major highways entering and exiting the northern industrial city. See: Sullivan and Logan. *Narcobloqueos* were also deployed in the aftermath of a shootout between the military and the Zetas that killed reputed Monterrey Zeta leader "El Sonrics." Ibid. Specifically, drivers were carjacked and their cars were used to close the roads. Ibid.

648 See: Sullivan and Logan.

649 Dudley and Rios.

650 Arron Daugherty and Steven Dudley, "How the US Govt Gets It Wrong with the Zetas," Insight Crime, March 20, 2015, available at: www.insightcrime.org/news-analysis/us-govt-gets-it-wrong-mexico-zetas-leaders. See also: Diego Osorno, *La Guerra de los Zetas* (DeBolsillo), Mexico, 2014, prologue.

651 Dudley and Rios.

652 Jerry Seper, "Ruthless Mexican drug cartel recruiting in U.S.; Los Zetas looks to prisons, street gangs," *The Washington Times*, July, 7, 2013, available at www.washingtontimes.com/news/2013/jul/7/ruthless-mexican-drug-cartel-recruiting-in-the-us/?page=all.

653 Diego Enrique Osorno, "How a Mexican Cartel Demolished a Town, Incinerated Hundreds of Victims, and Got Away With It," *Vice News*, December 31, 2014, available at: https://news.vice.com/article/how-a-mexican-cartel-demolished-a-town-incinerated-hundreds-of-victims-and-got-away-with-it.

654 "Mexico arrests 'mastermind' of Monterrey casino fire," BBC News, January 6, 2012, available at: www.bbc.com/news/world-latin-america-16449962.

655 "52 killed in attack at Mexican casino," CNN, August 26, 2011, available at: www.cnn.com/2011/WORLD/americas/08/26/mexico.attack.

656 See generally: Burns.

657 See: Burns, p. 11.

658 Gordon James Knowles, "Threat Analysis: Organized Crime and Narco Terrorism in Mexico," *Military Review*, January 2008, p. 73, available at: http://usacac.army.mil/CAC2/MilitaryReview/Archives/English/MilitaryReview_20080228_art012.pdf.

659 See: Dudley and Rios; "El gobierno presume baja de la violencia vinculada con crimen organizado," CNN Mexico, February 24, 2015, available at: http://mexico.cnn.com/nacional/2015/02/24/el-gobierno-presume-baja-de-la-violencia-vinculada-con-crimen-organizado. In 2010, "municipalities where Zetas operate experienced 10,169 drug-related homicides, whereas

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municipalities where the Gulf Cartel operated had only 6,388." Dudley and Rios.

660 George Friedman, "Mexico Plagued by Narcomantas and Body Dumps," *Stratfor*, May 24, 2012, available at: www.thecuttingedgenews.com/index.php?article=73739.

661 "Mexico Security Memo: A Zetas Challenge to the Mexican Government," *Stratfor*, December 8, 2011, www.stratfor.com/analysis/mexico-security-memo-zetas-challenge-mexican-government.

662 Ibid.

663 See: Michael Evans and Jesse Franzblau, *Mexico's San Fernando Massacres: A Declassified History*, George Washington University National Security Archives, November 6, 2013, available at: www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445.

664 See also: Arron Daugherty and Steven Dudley, "How the US Govt Gets It Wrong with the Zetas," Insight Crime, March 20, 2015, available at: www.insightcrime.org/news-analysis/us-govt-gets-it-wrong-mexico-zetas-leaders (emphasis added).

665 Michael Evans and Jesse Franzblau, *Mexico's San Fernando Massacres: A Declassified History*, George Washington University National Security Archives, November 6, 2013, available at: www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/.

666 See: "The Zetas Profile," Insight Crime, www.insightcrime.org/mexico-organized-crime-news/zetas-profile.

667 Burns.

668 *Gbagbo* Confirmation of Charges Decision, paras. 219-20.

669 *Gbagbo* Confirmation of Charges Decision, para. 210.

670 Robin Emmot, "Drug Hitmen Dump 72 Bodies at Mexican Ranch," Reuters, August 25, 2010, http://www.reuters.com/article/2010/08/26/us-mexico-drugs-idUSTRE67O2NF20100826.

671 See: "Zetas Profile."

672 Jerry Seper, "Ruthless Mexican drug cartel recruiting in U.S.; Los Zetas looks to prisons, street gangs," *The Washington Times*, July, 7, 2013, available at: www.washingtontimes.com/news/2013/jul/7/ruthless-mexican-drug-cartel-recruiting-in-the-us/?page=all.

673 Grayson continues: "Many of Mexico's existing drug cartels will kill their enemies, but not go out of their way to do it. The Zetas look forward to inflicting fear on their targets. They won't just cut off your ear; they'll cut off your head and think nothing of it."

674 *Situation in Kenya*, Decision Pursuant to Article 15, para. 95.

675 For instance, the events in Iraq under consideration by the ICC Office of the Prosecutor involved just eight killings, whereas the events in Guinea involved an estimated 156 civilian deaths. See: International Criminal Court Office of the Prosecutor, *Report on Preliminary Examination Activities 2014*, paras. 53, 158 (December 2, 2014).

676 "Murdered bodies found in Mexico 'were migrants,'" BBC News, August 25, 2010, available at: www.bbc.com/news/world-latin-america-11090563. Generally, with regard to the San Fernando Massacres, see: Michael Evans and Jesse Franzblau, *Mexico's San Fernando Massacres: A Declassified History*, George Washington University National Security Archives, November 6, 2013, available at: www2.gwu.edu/~nsarchiv/NSAEBB/NSAEBB445/. The organization "Periodistas de Pie" maintains a website with extensive information on the cases. See: www.masde72.periodistasdeapie.org.mx.

677 Francisco Gomez and Gerardo Mejia, "Se negaron a ser sicarios; 'Los Zetas' los fusilaron," *El Universal*, August 26, 2010, available at: www.eluniversal.com.mx/primera/35447.html.

678 Gomez and Mejia.

679 Gomez and Mejia.

680 Camilo Perez Bustillo and Azadeh N. Shahshahani, "San Fernando Migrant Massacre: How US, Mexican and Latin American Governments Share Responsibility," Truthout, October 7, 2014, available at: www.truth-out.org/news/item/26658-san-fernando-migrant-massacre-how-us-mexican-and-latin-american-governments-share-responsibility.

681 Bustillo and Shahshahani.

682 Bustillo and Shahshahani.

683 Bustillo and Shahshahani.

684 Elizabeth Malkin, "Mexican Authorities, Investigating Hijacking, Find 59 Bodies," *New York Times*, April 7, 2011, available at: www.nytimes.com/2011/04/08/world/americas/08mexico.html.

685 Steven Dudley, "Zeta Testimony Solves Mystery of Mexico Bus Massacres," Insight Crime, June 27, 2011, available at: www.insightcrime.org/news-analysis/zeta-testimony-solves-mystery-of-mexico-bus-massacres.

686 "Mexican Police Helped Cartel Massacre 193 Migrants, Documents Show," NPR, Dec. 22, 2014, available at: www.npr.org/2014/12/22/372579429/mexican-police-helped-cartel-massacre-193-migrants-documents-show.

687 Ibid.

688 Malkin.

689 *Ruto, et al*. Confirmation of Charges Decision, para. 213.

690 See: the "Applicable Law" section at the beginning of this chapter.

691 "Mexico Police Helped Gang Kill 17 Students, Prosecutor Says," Bloomberg News, October 6, 2014, available at: www.businessweek.com/news/2014-10-06/mexico-gang-killed-17-with-help-from-police-prosecutor-says. [Accessed on October 7, 2014].

692 Navy medical certificate (*certificado médico*) number 14, October 15, 2014, on file with the Open Society Justice Initiative. In October 2015, following publication of a damning report on the investigation by the Interdisciplinary Group of Independent Experts from the Inter-American Commission on Human Rights, the PGR uploaded to its website a redacted version of the criminal investigation file of the Ayotzinapa case, available at: www.gob.mx/pgr/acciones-y-programas/expediente-caso-iguala.

693 Navy's written account (*puesta a disposición*) of the detention and presentation of Raúl Nuñez before the Federal Prosecution, October 15, 2015, on file with the Open Society Justice Initiative.

694 Certificate of Physical Integrity (*dictamen de integridad física*, SEIDO/UEIDMS/FED/9584/2014, October 15, 2014 on file with the Open Society Justice Initiative. There are additional reasons to question the Navy's account of Raúl Nuñez's detention. Mr. Nuñez was detained in Acapulco on October 14, at 21:30 and presented to the prosecution 12 hours later, at 08:50 on October 15. A drive that normally takes 4-5 hours took members of the Navy over 12 hours. According to the official explanation, they

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were "driving slowly because their vehicle had mechanical failures; they had to repair a flat tire, and then certify the injuries that Mr. Nuñez was inflicting on himself." Navy's written account (*Puesta a disposición*) of the detention and presentation of Raúl Nuñez before the Federal Prosecution, October 15, 2015, pages 3 and 4, on file with the Open Society Justice Initiative.

695 PGR 2014-2015 report of activities, available at: www.pgr.gob.mx/informesinstitucionales/Documents/INFORME%20DE%20LABORES/2015.pdf.

696 Experts with the Inter-American Commission on Human Rights stated at a press conference that there were allegations of torture in at least 40 cases. See: "Torturados, la mitad de los procesados por caso Ayotzinapa: expertos del GIEI," *Proceso*, June 29, 2015, at: www.proceso.com.mx/?p=409143 [accessed on February 5, 2016].

697 The redacted version of the Ayotzinapa investigation file is available at: www.gob.mx/pgr/acciones-y-programas/expediente-caso-iguala. Detainees had bruised faces, marks on their necks, and bruised ribs. One had signs of electric shocks to his testicles, and another had red dots covering his body, suggesting electrocution. See: "Declaraciones a base de tortura," *Proceso*, December 14, 2014, issue 1989. The full report was only available in the print version of the magazine. The two reporters of the article, whose work was backed by the Investigative Reporting Program at the University of California, Berkeley, published a shorter version of their findings through the Apro news agency. See: Anabel Hernandez and Steve Fisher, "La historia no oficial," Apro, December 14, 2014, available at: www.eldiariodecoahuila.com.mx/notas/2014/12/14/historia-oficial-475018.asp [accessed on March 26, 2015]. See also: "Damning Report Claims Mexican Federal Police Participated In Disappearance Of 43 Students," *Huffington Post*, December 14, 2014, available at: www.huffingtonpost.com/2014/12/14/missing-students-mexico_n_6321866.html [accessed on March 25, 2015]; and "Mexico Struggles to Clear Up 2014 Death of 43 Students," *The Wall Street Journal*, January 5, 2016, available at: www.wsj.com/articles/mexico-struggles-to-clear-up-2014-death-of-43-students-1452041038 [accessed on January 14, 2016].

698 The allegations are discussed in greater detail in chapter three of this report. The Open Society Justice Initiative has learned that in relation to the events in Carrizalillo, the National Human Rights Commission has opened two investigations into alleged abuses perpetrated by the Federal Police, including arbitrary detention, inhuman treatment, trespassing, and arbitrary use of force. Dockets CNDH/1/2014/7383/Q and CNDH/2/2014/7972/Q. Information from official document CNDH/DGSR/UE/245/2015, February 6, 2015, obtained in response to right-to-information request 65114. See also: "Golpea y veja Policía Federal a 70 personas en Carrizalillo, Guerrero," Agencia Quadratín, October 21, 2014, available at: http://mexico.quadratin.com.mx/Golpea-y-veja-Policia-Federal-70-personas-en-Carrizalillo-Guerrero [accessed on March 26, 2015]; "Insiste el comisario de Carrizalillo en que los detenidos por la Policía federal no son delincuentes," *El Sur*, October 23, 2014, available at: http://suracapulco.mx/archivos/218894 [accessed on April 2, 2015] and "Federales realizan detenciones en Carrizalillo, refugio de Guerreros Unidos," *Proceso*, October 21, 2014, available at: www.proceso.com.mx/?p=385431 [accessed on April 2, 2015].

699 "Ayotzinapa: las aberraciones de la investigación," *Proceso*, May 16, 2015, available at: www.proceso.com.mx/404492/ayotzinapa-prefabricada-la-verdad-historica-de-la-pgr [accessed on February 5, 2016].

700 Navy forces arrested Savador Reza and Benito Vazquez Martinez early on the morning of October 27, 2014 in Cuernavaca, Morelos. Later that same day, Federal Police detained Patricio Reyes Landa and Jonathan Osorio Cortez in Apetlanca, Guerrero. See: "Expediente Ayotzinapa: ¿Cómo cayeron los detenidos clave de la 'verdad histórica' de la PGR?," *Animal Politico*, September 30, 2015, available at: www.animalpolitico.com/2015/09/expediente-ayotzinapa-como-cayeron-los-detenidos-clave-de-la-verdad-historica-de-la-pgr [accessed on November 17, 2015].

701 "Ayotzinapa: los 'sicarios', sólo albañiles torturados," *Proceso*, September 12, 2015, available at: www.proceso.com.mx/?p=415204. PGR medical reports, received in response to right-to-information requests filed by the Investigative Reporting Program at the University of California, Berkeley, determined that the four men—Patricio Reyes Landa Salgado, Jonathan Osorio Cortez, Agustin Garcia Reyes, and Felipe Rodriguez Salgado—suffered between 42 and 94 wounds each. The documents are available in PDF format at: www.huffingtonpost.com/entry/mexico-missing-students-killers_55f87b5ae4b0d6492d63484e [accessed on November 25, 2015].

702 Transcript (official bulletin 005/15) of the press conference of the Head of the Federal Agency of Investigation, January 13, 2015, available at: http://pgr.gob.mx/Prensa/2007/bol15/Ene/b00515.shtm, and video of the press conference available at: www.youtube.com/watch?v=yZoNCzhp9wk [both accessed April 15, 2015].

703 Video of Murillo Karam's January 27, 2015 press conference is available at: www.youtube.com/watch?v=pwYMmh2V6nE. See also, "Expediente Ayotzinapa: ¿Cómo cayeron los detenidos clave de la 'verdad histórica' de la PGR?," *Animal Politico*, September 30, 2015, available at: www.animalpolitico.com/2015/09/expediente-ayotzinapa-como-cayeron-los-detenidos-clave-de-la-verdad-historica-de-la-pgr [accessed on November 17, 2015].

704 Transcript (official bulletin 017/15) of the press conference of the Prosecutor on January 27, 2015, available at: www.pgr.gob.mx/prensa/2007/bol15/Ene/b01715.shtm.

705 Transcript (official bulletin 017/15) of the press conference of the Federal Prosecutor and of the Federal Agency of Investigation, January 27, 2015, available at: http://pgr.gob.mx/prensa/2007/bol15/Ene/b01715.shtm, and video of the press conference, available at: www.youtube.com/watch?x-yt-cl=84924572&feature=player_embedded&x-yt-ts=1422411861&v=rDiPRlOgwt8 [both accessed April 15, 2015].

706 Transcript (official bulletin 240/14) of the press conference of the Prosecutor on December 7, 2014, available at: www.pgr.gob.mx/prensa/2007/bol14/Dic/b24014.shtm. In September 2015, the Austrian forensic experts announced the likelihood of a second DNA match for one of the missing students, Jhosivani Guerrero de la Cruz, although they could not make that determination with 100% certainty. See: "Successful DNA analyses on missing Mexican remains," press release, Institut für Gerichtliche Medizin, Medizinische Universität Innsbruck, September 17, 2015, available at: http://gerichtsmedizin.at/successful-dna-analyses-mexican-remains.html [accessed on November 29, 2015]. See also: "Resultados de Innsbruck son insuficientes para identificación de Jhosivani: peritos argentines," SDPnoticias, September 18, 2015, available at: www.sdpnoticias.com/nacional/2015/09/17/resultados-de-innsbruck-son-insuficientes-para-identificacion-de-jhosivani-peritos-argentinos [accessed on November 29, 2015].

707 The same day of the press conference, the families issued a letter listing ten reasons why the PGR should not close the case, with the lack of reliable investigations at the core of all their arguments. See: "Familiares de los 43 estudiantes de Ayotzinapa desaparecidos lamentan que la PGR pretenda cerrar la investigación," January 27, 2015, available at: http://centroprodh.org.mx/index.php?option=com_content&view=article&id=1430:familiares-de-los-43-estudiantes-de-ayotzinapa-desaparecidos-lamentan-que-la-pgr-pretenda-cerrar-la-investigacion&catid=209:front-rokstories&lang=es [accessed April 15, 2015]. Amnesty International, Human Rights Watch, and the Washington Office on Latin America issued press releases, letters or statements criticizing the PGR's attempt to declare the case "closed and solved." See: Centro Prodh, "Ayotzinapa: Organizaciones nacionales e internacionales de derechos humanos cuestionan 'verdad histórica' de PGR," January 29, 2015, available at:

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http://centroprodh.org.mx/sididh_2_0_alfa/?p=38910. For some in Mexican society, indications of torture in the investigation underscored suspicions that PGR findings could not be trusted. See: "Montaje contradictorio, versión de la PGR sobre caso Ayotzinapa: Colmex," *Proceso*, November 14, 2015, available at: www.proceso.com.mx/?p=387625 [accessed on March 25, 2015].

708 The government entered into the agreement together with the IACHR and representatives of the Ayotzinapa victims' families. The agreement mandated the GIEI to create a plan to search for the 43 students alive; develop lines of investigation; provide attention to the victims; and address broader issues related to enforced disappearances in Mexico. The agreement is available at: www.oas.org/es/cidh/mandato/docs/Acuerdo-Addendum-Mexico-CIDH.pdf [accessed on April 23, 2015].

709 Carlos Martin Beristain (from Spain), Angela Buitrago (from Colombia), Francisco Cox Vial (from Chile), Claudia Paz y Paz (from Guatemala), and Alejandro Valencia Villa (from Colombia).

710 *Ayotzinapa report: research and initial conclusions of the disappearance and homicides of the normalistas from Ayotzinapa*, available at: http://media.wix.com/ugd/3a9f6f_e1df5a84680a4a8a969bd45453da1e31.pdf.

711 Later it would also emerge that the PGR possessed, but failed to disclose, a weather report that there was heavy rain in Cocula on the night in question, making claims of such a fire all the more improbable. See: "OAS experts: The bodies of the 43 were not incinerated," *El Daily Post*, September 7, 2015, available at: www.eldailypost.com/news/2015/09/oas-experts-the-bodies-of-the-43-were-not-incinerated.

712 The Argentine Forensic Athropology Team (*Equipo Argentino de Antropología Forense*, EEAF), examined the Cocula dump for over a year, examining the remains of at least 19 humans (none of them matching the missing students), vegetation, bullet casings, and satellite imagery. The EEAF determined that there had been multiple fires at the Cocula dump over the years, but none of them capable of burning 43 bodies. See: Executive Summary of the EEAF's final report, February 6, 2016, available at: www.eaaf.org/files/informe_resumen_ejecutivo_08-02-2016.pdf.

713 On February 27, President Peña Nieto removed Attorney General Murillo Karam and appointed him to head another ministry. See: "El Presidente Enrique Peña Nieto tomó protesta a Jesús Murillo Karam como titular de la SEDATU," press release, February 27, 2015, available at: www.presidencia.gob.mx/articulos-prensa/el-presidente-enrique-pena-nieto-tomo-protesta-a-jesus-murillo-karam-como-titular-de-la-sedatu [accessed April 15, 2015].

714 For information on the Senate's ratification of the Gomez appointment in March 2015, see: www.senado.gob.mx/comisiones/justicia/designaciones.php [accessed April 15, 2015].

715 These are discussed later in this chapter.

716 Human Rights Watch, *Neither Rights Nor Security*, November 2011, pp. 14-15.

717 Even as the Ministry of the Interior (SEGOB) announced significant declines in organized crime killings, it stopped trying to distinguish between such killings and other intentional homicides in August 2013, after an attempt lasting only eight months. See: Justice in Mexico Project, *Homicides drop in 2013 amidst uncertainty*, January 29, 2014, available at: https://justiceinmexico.org/homicides-drop-in-2013-amidst-uncertainty. [accessed on March 19, 2015]. In the presentation of the 2014 annual report of the National Human Rights Commission, President Peña Nieto claimed there had been a decrease of 22% in complaints (*quejas*) before the National Human Rights Commission. This was incorrect. A journalistic investigation concluded there had been a modest decrease of six percent. See: "El Sabueso: Peña Nieto dice que las quejas ante CNDH se redujeron 22%, ¿es cierto?," *Animal Político*, March 27, 2015, available at: www.animalpolitico.com/elsabueso/quejas-ante-cndh. Finally, when the government announced a decrease of 17% in abductions in 2013, a non-governmental organization specialized in kidnapping contested those numbers with its own, according to which kidnapping had increased 30% between 2013 and 2014. See: "Is the Government Manipulating Kidnap Statistics in Mexico?," Insight Crime, February 5, 2015, available at: www.insightcrime.org/news-analysis/is-government-manipulating-kidnap-statistics-in-mexico. [accessed April 20, 2015].

718 See chapter two of this report. See also: "Nuevas coordenadas de la violencia," Nexos, July 1, 2013, available at: www.nexos.com.mx/?p=15374. [accessed on March 19, 2015]; and Alejandro Hope, "Is Mexico Seeing Fewer Homicides Under Peña Nieto?," InSight Crime, December 18, 2013, available at: www.insightcrime.com/news-analysis/is-mexico-seeing-less-homicides-under-pena-nieto?. [accessed on March 19, 2015]. Some analysts remained unconvinced that there was any real drop-off in killings. See Molly Molloy, "Mexico's national crime statistics show no significant decline in homicides and disappearances," October 24, 2014, available at: http://blog.chron.com/bakerblog/2013/10/is-drug-related-violence-in-mexico-on-the-decline/. [accessed on March 19, 2015]

719 Specifically, in 2013 the state reported to CAT that there had been 119 "convictions for torture" since 2005. But when the Human Rights Center Miguel Agustín Pro Juárez (*Centro de Derechos Humanos Miguel Agustín Pro Juárez*) filed a request for information with the judiciary, it discovered that 119 was the number of indictments for torture, not criminal convictions. In reality there had been only four convictions in a period stretching over seven years. See: "México falsea ante la ONU las sentencias por tortura," *Animal Politico*, July 7, 2014, available at: www.animalpolitico.com/2014/07/mexico-falsea-ante-la-onu-las-sentencias-por-tortura [accessed on March 23, 2015].

720 See chapter two of this report with regard to trends in disappearance data. According to the National Registry of Information on Missing or Disappeared Persons (*Registro Nacional de Datos de Personas Extraviadas o Desaparecidas*—RENPED), which is managed by the Executive Secretariat of the National System of Public Security (*Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública*) there were 4,140 disappearances in 2013 and 4,980 in 2014 overall in the country, including numbers from federal and state-level. See RENPED database, available at: http://secretariadoejecutivo.gob.mx/rnped/consulta-publica.php [accessed on February 29, 2016].

721 Mexico filed a report to the UN Committee on Enforced Disappearances (CED) in 2014 on the implementation of the International Convention for the Protection of All Persons from Enforced Disappearances and another in 2015, in reply to the list of issues for its first periodic review before CED. The state reports are available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en and http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fMEX%2f19337&Lang=en [accessed April 15, 2015].

722 Specifically, the government reported that federal and state governments had opened a total of 291 investigations (*averguaciones previas*) of enforced disappearances between 2006 and 2013—99 at federal level and a further 192 at state level. Ibid, paras 73-74. Upon further inquiry by the Open Society Justice Initiative, however, the government clarified these were not investigations but criminal complaints (*denuncias*) filed before the PGR by victims or authorities. Furthermore, the statistics on criminal complaints of torture provided to the UN omitted data from most of the country (23 states), including federal and state-level statistics from Tamaulipas, Jalisco, and Mexico State, the three states that, according to a government database, had the highest rates of missing persons in the country. Information obtained by the Open Society Justice Initiative from the Ministry of Foreign Affairs and the PGR through right-to-information requests 1700172814 and 1700139914 filed on

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May 13, 2014. See also: RENPED, Statistics on disappearances at federal and local level. Federal cases available at: http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerofederal.php [accessed January 9, 2015]; local cases available at: http://secretariadoejecutivo.gob.mx/rnped/estadisticas-fuerocomun.php. [accessed January 9, 2015]

723 For example, as discussed in chapter three, government officials initially denied any criminal wrongdoing by soldiers in the June 30, 2014 shooting deaths at Tlatlaya, in the State of Mexico. See: "Reconoce Eruviel Ávila labor del ejército mexicano por rescatar a víctimas de secuestro en Tlatlaya," *El Edoméx Informa*, July 1, 2014, available at: http://edomexinforma.com/seguridadyjusticia/eavreconocelabordelejercito [accessed on February 5, 2016]. Following the publication of investigative reports indicating that the military had extrajudicially killed suspected members of organized crime, government officials modified their public statements to acknowledge limited culpability by some of the soldiers involved. See: "Incidente ocurrido en el municipio de Tlatlaya, Méx, el 30 de junio de 2014," SEDENA press release, September 19, 2014, available at: http://www.gob.mx/sedena/prensa/incidente-ocurrido-en-el-municipio-de-tlatlaya-mex-el-30-de-junio-de-2014 [accessed on February 5, 2016].

724 For example, at an event with victim families to unveil the Federal Victims' Law in January 2013, President Peña Nieto acknowledged that there were many victims of crime in Mexico, but made no mention of crimes committed by state agents. See "'¡Que se cumpla!', el gran desafío con la Ley de Víctimas," *Proceso*, January 14, 2013, available at: www.proceso.com.mx/?p=330582 [accessed on May 19, 2015]. In the "Diálogo por la Paz" between President Calderón and the victim advocate organization Movimiento por la Paz con Justicia y Dignidad on June 23, 2011, President Calderón similarly downplayed indications of atrocities committed by state actors other than at the municipal level, where he conceded there was much corruption and collusion with organized crime. A summary and video of the dialogues is available at: http://calderon.presidencia.gob.mx/2011/06/dialogo-entre-el-presidente-y-el-movimiento-por-la-paz-nota.

725 See, for example, Mexico's report to the Human Rights Council for its Universal Periodic Review in 2009, November 10, 2008, A/HRC/WG.6/4/MEX/1, para. 2, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_WG6_4_MEX_1_E.PDF. [accessed on March 22, 2015].

726 "El Presidente Calderón en la Entrega del Premio Nacional de Derechos Humanos 2011," December 9, 2011, available at: http://calderon.presidencia.gob.mx/2011/12/el-presidente-calderon-en-la-entrega-del-premio-nacional-de-derechos-humanos-2011. [accessed on March 22, 2015]. In his remarks, President Calderón noted that "[T]here have human rights been abuses [...] but they are not widespread or the result of a state policy."

727 "Mexico's president-elect Enrique Peña Nieto on human rights," *Washington Post*, July 6, 2012, available at: www.washingtonpost.com/world/mexicos-president-elect-enrique-pena-nieto-on-human-rights/2012/07/06/gJQA90eiRW_video.html. Peña Nieto stated: "[...]and in cases where there has been evidence of a (human rights) violation, which are isolated cases, they would have to be adjudicated by our courts."

728 See the previous chapter of this report.

729 Article 14 of the Federal Law on Transparency and Access to Government Public Information sets forth that "information on the investigation of grave human rights violations or crimes against humanity cannot be reserved." Law available at: www.diputados.gob.mx/LeyesBiblio/pdf/244_140714.pdf.

730 In 2015, following the release of the GIEI report on Ayotzinapa, the PGR changed course and made a redacted version of the investigation file public. See: "Ayotzinapa report: research and initial conclusions of the disappearance and homicides of the normalistas from Ayotzinapa," available at: http://media.wix.com/ugd/3a9f6f_e1df5a84680a4a8a969bd45453da1e31.pdf. However, in late 2014, in response to right-to-information request 1700301414 filed with the PGR by the Open Society Justice Initiative regarding the investigation of the 2014 attack against Ayotzinapa students, the PGR refused to provide answers on the grounds that it was a case of kidnapping and organized crime, and not one of grave human rights violations or crimes against humanity. PGR document SJAI/DGAJ/12057/2014, December 8, 2014. This is discussed in greater detail below.

731 This version of events relies on an Open Society Justice Initiative interview with Brenda Rangel, her mother, and husband, Querétaro, September 24, 2014.

732 A video about Hector Rangel's disappearance and his sister's persistent attempts to engage the authorities, including an attempt to meet with Governor Calzada, is available at: www.youtube.com/watch?v=KFwa56zN-Pw. [accessed on March 23, 2015] Further information on the case and the search for justice is available at: *Geografía del Dolor*, available at: www.geografiadeldolor.com/espacio/queretaro; *Casos ilustrativos de desapariciones*, available at: www.es.amnesty.org/paises/mexico/personas-desaparecidas/casos-ilustrativos; and *Preocupa a Aministía Internacional la seguridad de familiar de una victim de desaparición*, available at: http://amnistia.org.mx/nuevo/2013/11/06/preocupa-a-ai-la-seguridad-de-familiar-de-una-victima-de-desaparicion [all of them accessed on April 20, 2015]

733 In the presentation of his fifth annual report, Calzada Rovirosa emphasized some of the signs of prosperity in Querétaro: its status as the third most secure state in Mexico, its good infrastructure, and its attractiveness for investment. See: "Calzada Rovirosa entrega Quinto Informe de Gobierno," *El Universal*, July 27, 2014, available at: www.eluniversal.com.mx/estados/2014/calzada-rovirosa-entrega-quinto-informe-de-gobierno-1026129.html. The full version of his fifth annual report (*quinto informe de gobierno*) is available at: www.queretaro.gob.mx/documentos_interna1.aspx?q=vUYGbsxLnliU/Xw6geFk9pRSUs9S5z2V [accessed on April 20, 2015]

734 One of the most ambitious projects of President Peña Nieto was the construction of a high-speed train between Mexico City and Querétaro. Amidst accusations of corruption and influence peddling, the federal government suspended the project. See: "EPN frena el tren México-Querétaro; revoca licitación, por 'dudas e inquietudes'," *Aristegui Noticias*, November 7, 2014, available at: http://aristeguinoticias.com/0711/mexico/epn-para-el-tren-mexico-queretaro-revoca-licitacion-por-dudas-e-inquietudes [accessed on April 20, 2015]. President Peña Nieto has referred to Querétaro as an examplar of economic growth. See: "Pone Peña Nieto de ejemplo a Querétaro," *Quadratín Querétaro*, March 3, 2014, available at: http://queretaro.quadratin.com.mx/Pone-Pena-Nieto-de-ejemplo-Queretaro [accessed on April 20, 2015].

735 Others interviewed for this report all said that the state government has denied the problems of disappearance, torture, killings, and other atrocity crimes in order to support a narrative of economic growth and opportunity. Open Society Justice Initiative interviews in Querétaro with Eric Pacheco, a journalist with local newspaper *Libertad de Palabra*, September 24, 2014; Alejandro Cano (president of the Human Rights Commission and Access to Public Information in the state congress) and Bernardo Nava (president of the Justice Commission in the state congress), September 23, 2014; and two researchers at the University of Querétaro, September 24, 2014.

736 "Reserva Querétaro información sobre desaparecidas," *Proceso*, November 20, 2012, available at: www.proceso.com.mx/?p=325723 [accessed on April 7, 2014].

737 "Desaparecidas en Querétaro 'no representan una problemática importante': procurador," *Proceso*, September 17, 2012,

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available at: www.proceso.com.mx/?p=320133 [accessed on April 7, 2014].

738 "Para el gobierno de Querétaro no hay un sólo desparecido en 6 años," *Libertad de Palabra*, February 24, 2015, available at: www.libertaddepalabra.com/2015/02/para-el-gobierno-de-queretaro-no-hay-un-solo-desparecido-en-6-anos-2 [accessed on April 20, 2015].

739 Response from the Prosecution of Querétaro, August 15, 2014, to right to information request number 00085514 filed by the Open Society Justice Initiative.

740 The governor of Querétaro has the authority to appoint and dismiss the state's prosecutor at will. Observers cite extensive executive control over the judiciary, exercised through appointments, budget authority, the assignment of active judges to take temporary leave for assignments within the executive, and the absence of any independence (or professional standards) in the Council of the Judiciary. The head of the state Human Rights Commission is a former federal prosecutor, who has joined in the denial of atrocity crimes in the state. Open Society Justice Initiative interviews in Querétaro with Alejandro Cano (president of the congressional Human Rights and Access to Public Information Commission) and Bernardo Nava (president of the congressional Justice Commission), September 23, 2014, and with two researchers at the University of Querétaro, September 24, 2014. With regard to denial of atrocity crimes by the current president of the human rights commission, see: "DDH descarta desapariciones forzadas en Querétaro," *Códice Informativo*, December 30, 2014, available at: http://codiceinformativo.com/2014/12/ddh-descarta-desapariciones-forzadas-en-queretaro; and "A las autoridades queretanas no les interesan los desaparecidos: Miguel Nava," *Nuevo Periodismo*, March 15, 2015, available at: http://nuevoperiodismo.mx/?p=415 [accessed April 20, 2015]. In an interview with the Open Society Justice Initiative, Commission President Miguel Nava Alvarado downplayed the incidence of torture in the state. While he said he referred allegations to the prosecutor, he claimed that torture in the state is "more psychological than physical," and noted that "in many cases, criminals allege torture." Further, he claimed that any investigation of crime, including through performance of the Istanbul Protocol, would be beyond his mandate and the resources available to the commission. Not surprisingly, as of April 2015, during Nava's tenure, the local human rights commission had not issued one recommendation for torture. Justice Initiative interview, Querétaro, September 24, 2014. In interviews in several states, the Open Society Justice Initiative has confirmed that when local human rights commissions lack human or monetary resources to conduct Istanbul Protocols, they often ask the support of the National Human Rights Commission or the Human Rights Commission of the Federal District to conduct them. As of February 2015, Mr. Nava had never made such a request to the National Human Rights Commission. National Commission of Human Rights response to right-to-information request 69014, February 27, 2015, filed by the Open Society Justice Initiative.

741 Notably, Article 309 of the Criminal Code of Querétaro has a limited definition of torture and fails to acknowledge torture as any "physical or mental pain or suffering inflicted on a person for purposes of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose" in alignment with the Inter-American Convention to Prevent and Punish Torture. Criminal code of Querétaro available at: http://www.legislaturaqueretaro.gob.mx/repositorios/14.pdf.

742 Open Society Justice Initiative interview with two members of the local congress: Alejandro Cano (president of the congressional Human Rights Commission) and Bernardo Nava (president of the congressional Justice Commission), September 23, 2014. See: "Calzada veta iniciativa para sancionar desaparición forzada en Querétaro," *La Jornada*, April 16, 2014, available at: www.jornada.unam.mx/2014/04/16/estados/030n2est. [accessed on April 20, 2015]. Of all Mexican states, Querétaro has the only definition of disappearance that includes perpetration by non-state actors. *Ley para Prevenir, Investigar, Sancionar y Reparar la Desaparición de Personas en el Estado de Querétaro*, available at: www.legislaturaqueretaro.gob.mx/repositorios/2059.pdf.

743 Open Society Justice Initiative interview with Brenda Rangel, her mother, and husband, Querétaro, September 24, 2014.

744 Brenda Rangel recorded video of the latter incident, available at: www.youtube.com/watch?v=KFwa56zN-Pw. [accessed on March 23, 2015]. See also: the related advocacy alert from Amnesty International, July 31, 2014, available at: www.amnesty.se/engagera-dig/agera/aktuella-blixtaktioner/further-information-on-ua-30413-mexico-relatives-of-the-disappeared-intimidated [accessed on March 23, 2015], and http://amnistia.org.mx/nuevo/2013/11/06/preocupa-a-ai-la-seguridad-de-familiar-de-una-victima-de-desaparicion [all accessed on April 20, 2015].

745 Open Society Justice Initiative interview with two researchers at the University of Querétaro, September 24, 2014. See also: "Noticia Triste," *El Universal Querétaro*, available at: www.eluniversalqueretaro.mx/content/noticia-triste [accessed on April 20, 2015].

746 See the previous chapter of this report, which includes examples of senior government officials baselessly accusing victims of being members of organized crime.

747 "Pide Gómez Mont a ombudsman no ser tontos útiles de criminales," *La Jornada*, June 26, 2010, available at: www.jornada.unam.mx/2010/06/26/politica/005n1pol [accessed on February 15, 2016].

748 "Manipulan grupos a padres de los 43: Marina," *El Universal*, December 11, 2014, available at: http://archivo.eluniversal.com.mx/primera-plana/2014/impreso/manipulan-grupos-a-padres-de-los-43-marina-47868.html.

749 Amnesty International, *Treated with Indolence: The State's Response to Disappearances in Mexico*, January 16, 2016, available at: www.amnesty.org/en/documents/amr41/3150/2016/en.

750 "El informe de AI, mal hecho; sólo busca confundir: Campa," *La Jornada*, January 16, 2015, available at: www.jornada.unam.mx/2016/01/16/politica/007n1pol [accessed on February 16, 2016].

751 Open Society Justice Initiative interview with Hipólito Lugo, general inspector of the Human Rights Commission of Guerrero, September 24, 2014.

752 "Experts question Mexican investigation of 43 students' disappearance," Associated Press, February 8, 2015, available at: www.theguardian.com/world/2015/feb/08/experts-question-mexican-investigation-of-43-students-disappearance. [accessed on March 19, 2015]

753 "PGR: los argentinos no son autoridad, 'los habilitamos'," *Milenio*, February 2, 2015, available at: www.milenio.com/policia/PGR-argentinos_no_son_autoridad-especulaciones_de_argentinos-ayotzinapa_0_461953836.html. [accessed on March 19, 2015] See also: "Descalifica PGR "especulaciones" del equipo de forenses argentinos," *La Jornada*, February 10, 2015, available at: www.jornada.unam.mx/2015/02/10/politica/003n1pol [accessed on March 19, 2015].

754 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, A/HRC/28/68/Add.3,Mission to Mexico, summary, para. 23 and 76, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session28/Pages/ListReports.aspx.

755 Ambassador Jorge Lomónaco, cited in: "Rechaza México informe sobre práctica generalizada de tortura," *La Jornada*, March

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9, 2015, available at: www.jornada.unam.mx/ultimas/2015/03/09/rechaza-mexico-practica-generalizada-de-tortura-4367.html. [accessed on March 20, 2015]

756 "Relator contra la tortura de la ONU no fue profesional, ni ético; no vendrá de nuevo: SRE," *SDPnoticias*, March 26, 2015, available at: www.sdpnoticias.com/nacional/2015/03/26/relator-contra-la-tortura-de-la-onu-no-fue-profesional-ni-etico-no-vendra-de-nuevo-sre. [accessed on April 2, 2015]

757 "Relator de la ONU, irresponsable por dichos sobre tortura en México: SER," CNN Mexico, March 28, 2015, available at: http://mexico.cnn.com/nacional/2015/03/28/relator-de-la-onu-irresponsable-por-dichos-sobre-tortura-en-mexico-sre. [accessed on April 2, 2015]. Mendez sent a five-page letter of response, rebutting the ministry's characterization of his work. "Letter from Special Rapporteur Juan Mendez to Ambassador Jorge Lomónaco," April 1, 2015, available at: http://antitorture.org/wp-content/uploads/2015/04/April_1_2105_Special_Rapporteur_Torture_Letter_EN_ES.pdf. [accessed on April 2, 2015]

758 "Juicio a Calderón," press release, 2 December 2011, available at: http://juicioacalderon.blogspot.mx/2011/12/boletin-de-prensa-mexico-en-la-corte.html [accessed on February 22, 2014].

759 The statement dated November 27, 2011 showed the presidency's poor understanding of international crimes by confusing the terms "crimes against humanity" and "genocide." The statement declared that it would be absurd to compare the government's security strategy with crimes against humanity that are crimes "perpetrated by authoritarian states with intent to destroy an ethnic, religious or political group." Further, it qualified the information sent to the ICC as "authentic slander" and "reckless accusations" that damage persons and institutions; therefore, government would "examine all the possibilities to take legal action against those pursuing them in national and international forums." Press release available at: http://calderon.presidencia.gob.mx/2011/11/comunicado-sobre-imputaciones-que-se-han-realizado [accessed on April 21, 2015]. Government advisors also demonstrated poor knowledge of international criminal law: according to their inaccurate understanding of the Rome Statute's principle of complementarity, the ICC could only have jurisdiction once domestic remedies were exhausted. See: "La 'defensa' de Calderón," Proceso, December 3, 2011, available at: www.proceso.com.mx/?p=290140 [accessed on April 20, 2015]. Senators and deputies in Congress took out a full-page advertisement in a newspaper to condemn President Calderón's threat. See: "Inadmisibles las Amenazas a Denunciantes ante la CPI," La Jornada, December 16, 2011, p. 25, available at: www.juicioacalderon.blogspot.mx/2011/12/inadmisibles-las-amenazas-denunciantes.html [accessed on March 22, 2015].

760 "Human Rights Groups Call on the ICC to Proceed with the Preliminary Examination into the Situation in Mexico," September 12, 2014, FIDH, available at: www.fidh.org/International-Federation-for-Human-Rights/americas/mexico/human-rights-groups-call-on-the-icc-to-proceed-with-the-preliminary [accessed on April 20, 2015].

761 Intervention of Mexico in the General Debate of the 13th Session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, December 10, 2014, available at: www.icc-cpi.int/iccdocs/asp_docs/ASP13/GenDeba/ICC-ASP13-GenDeba-Mexico-SPA.PDF [accessed on March 22, 2015]. Until this time there had been broad consensus within the ASP that the body and its member states should encourage the building of political will and technical capacity to conduct genuine investigations and prosecutions of Rome Statute crimes at the national level. Indeed, two states (Sweden and Botswana) are co-focal points on complementarity within the Bureau of the ASP, with the aim of coordinating and encouraging just such assistance. Mexico has objected to the notion that the OTP can use the implicit threat of opening a preliminary examination or investigation in order to encourage progress on genuine domestic investigations for the same crimes.

762 "Cabildeo peñista en favor de Calderón," *Proceso*, February 4, 2015, available at: www.proceso.com.mx/?p=394982 [accessed on March 22, 2015].

763 "México suscribe acuerdo de asistencia técnica con la Comisión Interamericana de Derechos Humanos para el caso de los estudiantes de la Escuela Normal Rural 'Raúl Isidro Burgos', de Ayotzinapa, Guerrero," press release from the Presidency, November 12, 2014, available at: www.presidencia.gob.mx/articulos-prensa/mexico-suscribe-acuerdo-de-asistencia-tecnica-con-la-comision-interamericana-de-derechos-humanos-para-el-caso-de-los-estudiantes-de-la-escuela-normal-rural-raul-isidro-burgos-de-ayo-2 [accessed on March 20, 2015].

764 "Presenta el Presidente Enrique Peña Nieto, diez medidas para mejorar la Seguridad, la Justicia y el Estado de Derecho," press release from the Presidency, dated November 27, 2014, available at: www.presidencia.gob.mx/articulos-prensa/presenta-el-presidente-enrique-pena-nieto-diez-medidas-para-mejorar-la-seguridad-la-justicia-y-el-estado-de-derecho [accessed on March 20, 2015].

765 "Incumplido, 40 por ciento de las recomendaciones de derechos humanos a las Fuerzas Armadas," *Contralínea*, March 29, 2015, available at: http://contralinea.info/archivo-revista/index.php/2015/03/29/incumplido-40-por-ciento-de-las-recomendaciones-de-derechos-humanos-las-fuerzas-armadas [accessed on April 20, 2014]. The National Human Rights Commission has contributed to this situation by closing several cases despite a lack of full compliance with its recommendations. See: "Unilateral e irresponsable la decisión de la CNDH de cerrar el caso de Miriam," available at:http://cmdpdh.org/2013/12/unilateral-e-irresponsable-la-decision-de-la-cndh-de-cerrar-el-caso-de-miriam [accessed on April 20, 2014].

766 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 109-114.

767 Ibid.

768 The "Diálogo por la Paz" (Peace Dialogue) between President Calderón and the *Movimiento por la Paz con Justicia y Dignidad* took place on June 23, 2011. Mexican poet Javier Sicilia, whose son had been abducted and killed, headed this movement. The dialogue between Calderón and civil society gave new visibility to thousands of victims of violence, and also strengthened local civil society movements such as CADHAC in Nuevo León and FUUNDEM-C in Coahuila. *Movimiento por la Paz* crossed the country and parts of the U.S., collecting testimonies and cases of victims of violence. It was during this dialogue that President Calderón committed to approving a Victims' Law. The *Diálogo por la Paz* is available at: http://calderon.presidencia.gob.mx/2011/06/dialogo-entre-el-presidente-y-el-movimiento-por-la-paz-nota [accesed on March 20, 2015]. See also: Lauren Villagran, "The Victims' Movement in Mexico," (Wilson Center Working Paper Series on Civic Engagement and Public Security in Mexico), August 2013, pp. 15-16, available at: http://wilsoncenter.org/sites/default/files/victims_mexico_villagran.pdf [accessed on March 20, 2015].

769 A dispute over the timeliness of the executive's comments to the bill on the Victims' Law as approved by Congress and the executive's reluctance to publish the law the *Federal Official Gazette* reached the Supreme Court of Justice at the end of Calderón's tenure. One of President Peña Nieto's first actions after taking office was to withdraw the constitutional challenge (*controversia constitucional*).

770 The problematic implementation of the Victims' Law is addressed below.

771 Before it relented and made the case file public in October 2015, following the release of the GIEI report, the PGR officially

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stated that it would withhold information on its investigation for 12 years. PGR document SJAI/DGAJ/12057/2014, December 8, 2014, issued in response to right to information request 1700301414 filed by the Open Society Justice Initiative for the public version of relevant documents on investigations of the case. The PGR provided the same response to the newspaper *La Jornada* in March 2015. See: "Desapariciones en Iguala no son delitos de lesa humanidad: PGR," *La Jornada*, March 22, 2015, available at: www.jornada.unam.mx/2015/03/22/politica/005n1pol [accessed on April 1, 2015].

772 Article 14 of the Transparency Law.

773 Ibid. Killings, disappearances, and other atrocity crimes, when perpetrated by municipal police—also state actors under Mexican and international law—would also be grave violations of human rights. Pursuant to Article 108 of the Federal Constitution, members of municipal police are public officers, namely, state actors. In its response, the PGR asserts that only a formal finding of the National Human Rights Commission can qualify a case as a grave violation of human rights for purposes of the transparency and access to public to information law. As discussed later in this section, this does not accord with a ruling in another case by the autonomous commission governing that law (IFAI).

774 Ibid.

775 In the recommendation No.51/2014 and in the press release CGCP/007/15, the National Human Rights Commission declared this a case of extrajudicial killing and of grave human rights violations. Recommendation available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2014/REC_2014_051.pdf. Press release available at: www.cndh.org.mx/sites/all/fuentes/documentos/Comunicados/2015/COM_2015_007.pdf [both accessed on April 20, 2015].

776 "PGR viola el derecho a la verdad al negarse a abrir investigación sobre la masacre de Tlatlaya," Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, December 8, 2014, available at: http://cmdpdh.org/2014/12/pgr-viola-el-derecho-a-la-verdad-al-negarse-a-abrir-investigacion-sobre-la-masacre-de-tlatlaya [accessed on April 20, 2015]. In denying access to the information, the PGR explained that the Tlatlaya case was of "murder" and that the National Human Rights Commission recommendation was not for grave human rights violations. Three months later, the CNDH classified the Tlatlaya case as such.

777 Non-governmental organizations *Fundación para la Justicia y el Estado Democrático de Derechos* and *Article 19-Mexico* filed the right to information requests related to these cases. In its response, the PGR essentially argued that prosecutorial investigations into the cases are confidential pursuant to Article 16 of the Federal Criminal Procedure Code and Article 14(I) of the transparency law. Another area of dispute before the court revolves around the question of who must determine that a case amounts to a grave violation of human rights. In the San Fernando cases, after earlier upholding the federal prosecutors' refusal to disclose case files, IFAI unanimously ruled that certain information related to the investigation must be disclosed. In doing so, IFAI publicly refused to support the prosecutors' legal challenge seeking continued secrecy of the case files. The government could not reserve the information because of the human rights exemption in the right-to-information law, and IFAI commissioners ruled themselves competent to determine that acts constitute *prima facie* grave human rights violations, even in the absence of such a finding by another legal authority. It is notable that in the subsequent Tlatlaya and Ayotzinapa cases, the government still insists that any exemption must rely on a formal CNDH finding. With regard to the IFAI ruling in the San Fernando cases, see: Jesse Franzblau and Emi MacLean, "Mexico's Federal Prosecutor Must End Secrecy over San Fernando Massacres," Open Society Foundations, September 25, 2014, available at: www.opensocietyfoundations.org/voices/mexicos-federal-prosecutor-must-end-secrecy-over-san-fernando-massacres [accessed on March 31, 2015].

778 According to a press account, in Guerrero the PGR has confirmed that between October 2014 and February 2015, one group of families of the disappeared probing the hills around Iguala in the wake of the Ayotzinapa disappearances had located 48 bodies; the group says the number is "many times" higher. See: "The Search for Mexico's Missing Children," *The Daily Beast*, March 30, 2015, available at: www.thedailybeast.com/articles/2015/03/30/the-search-for-mexico-s-missing-children.html [accessed on April 2, 2015]. See also: "Grim Searchers: How Everyday Mexicans Find Hidden Graves," Associated Press, December 4, 2015, available at: www.eldailypost.com/news/2015/12/grim-searchers-how-everyday-mexicans-find-hidden-graves [accessed on December 21, 2015].

779 Open Society Justice Initiative interview with a PGR official, Mexico City, January 2016.

780 "Mensaje a medios de la subprocuradora Jurídica y de Asuntos Internacionales de la Procuraduría General de la República," Mariana Benítez Tiburcio, Agust 21, 2014, at: http://secretariadoejecutivo.gob.mx/docs/pdfs/rnped/MensajeaMediosPersonasNoLocalizadas21082014.pdf and "26,121 personas desaparecidas en el gobierno de Calderón, reporta Segob," CNN Mexico, February 26, 2013, available at: http://mexico.cnn.com/nacional/2013/02/26/26121-personas-desaparecidas-en-el-gobierno-de-calderon-reporta-segob [accessed on March 31, 2015].

781 Open Society Justice Initiative interview with a senior PGR official, Mexico City, September 25, 2014.

782 Transcript of the appearance of the Ministry of Interior before the Joint Commissions of Interior and Public Security of the Senate on May 22, 2014, available at: http://www.senado.gob.mx/comisiones/gobernacion/reu/docs/version_220514.pdf. Chong said that 8,000 people remained missing, 14,688 people had been found alive, and 748 had been found dead—for a total of 23,436. "Destaca Osorio que cifra de desaparecidos se redujo 70%," *El Universal*, May 23, 2014, available at: www.eluniversal.com.mx/nacion-mexico/2014/destaca-osorio-que-cifra-de-desaparecidos-se-redujo-70-1012369.html [accessed on March 31, 2015], cited in: Human Rights Watch letter to Interior Minister Angel Osorio Chong, October 8, 2014, available at: www.hrw.org/node/129711 [accessed on March 31, 2015].

783 For example, the headline in El Universal: "Osorio Stresses that the Number of Disappeared has dropped 70%" (*"Destaca Osorio que cifra de desaparecidos se redujo 70%"*), Ibid.

784 On June 16, 2014, Chong announced that there were 16,000 mising persons, dating from the beginning of the Calderón presidency in December 2006, and that this was based on reports from state prosecutors. "La Segob 'corrige' la cifra de 'personas no localizadas': son 16,000," CNN Mexico, June 16, 2014, available at: http://mexico.cnn.com/nacional/2014/06/16/la-segob-corrige-la-cifra-de-personas-no-localizadas-son-16000 [accessed on March 31, 2015], cited in: Human Rights Watch letter to Interior Minister Angel Osorio Chong, October 8, 2014, available at: www.hrw.org/node/129711 [accessed on March 31, 2015].

785 This figure came from Mariana Benítez Tiburcio, Undersecretary of Juridical and International Affairs at the PGR. Benítez said that 22,322 was a total of persons remaining missing from the Calderón era (12,532) and those missing from the beginning of the Peña Nieto administration to that date (9,790). "Autoridades de México contabilizan más de 22,000 personas 'no localizadas'," CNN Mexico, August 21, 2014, available at: http://mexico.cnn.com/nacional/2014/08/21/autoridades-de-mexico-contabilizan-mas-de-22000-personas-no-localizadas [accessed on March 31, 2015].

786 Article 18 of the Convention for the Protection of All Persons from Enforced Disappearance obligates parties to provide information on enforced disappearances.

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787 These are discussed in greater detail in chapter two.

788 See chapter five for discussion of a proposed general law on torture.

789 This was the case with Interior Minister Chong's statement on disappearances in May 2014, discussed above. Another example came in March 2015, when President Peña Nieto touted a reduction in the number of complaints (*quejas*) of human rights violations before the National Human Rights Commission of 22% from 2013 to 2014, which proved false. See: "Palabras del Presidente de los Estados Unidos Mexicanos, licenciado Enrique Peña Nieto, durante el Informe de Actividades 2014 del Presidente de la Comisión Nacional de los Derechos Humanos," March 25, 2014, available at: www.presidencia.gob.mx/articulos-prensa/palabras-del-presidente-de-los-estados-unidos-mexicanos-licenciado-enrique-pena-nieto-durante-el-informe-de-actividades-2014-del-presidente-de-la-comision-nacional-de-los-derechos-humanos. [accessed on April 20, 2015]. For an examination of the claim, see: "El Sabueso: Peña Nieto dice que las quejas ante CNDH se redujeron 22%, ¿es cierto?," *Animal Político*, March 27, 2015, at: www.animalpolitico.com/elsabueso/quejas-ante-cndh [accessed April 20, 2015].

790 Open Society Justice Initiative interview with Simón Hernández León, lawyer of Israel Arzate, Centro de Derechos Humanos Miguel Agustín Pro Juárez, December 26, 2013, Mexico City.

791 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Human Rights Council, December 29, 2014, A/HRC/28/68/Add.3, para.76.

792 *Resultados de la Primera Encuesta realizada a Población Interna en Centros Federales de Readaptación Social*, Centro de Investigación y Docencia Económicas, 2012, pp. 63 and 133 available at: https://publiceconomics.files.wordpress.com/2013/01/encuesta_internos_cefereso_2012.pdf. See also "*Were You Mistreated?": Interrogation in Mexico*, Wilson Center, available at: www.wilsoncenter.org/article/were-you-mistreated-interrogation-mexico [accessed on April 20, 2015].

793 The Mexican government reported to the Inter-American Commission on Human Rights (IACHR) that, as of April 2015, the PGR had 2,420 torture-related investigations underway and that there had only been 15 convictions for torture at the federal level. Only six of the convictions were in relation to cases from 2007 onwards. See: "The Human Rights Situation in Mexico," IACHR, March 2015, paragraph 212 and footnote 293. See also: "Diez años sin un solo culpable por el delito de tortura," Animal Político, April 24, 2014, available at: www.animalpolitico.com/2014/04/diez-anos-sin-un-solo-culpable-por-el-delito-de-tortura/#ixzz33qXzs7r8 [accessed on June 6, 2014].

794 Data from CNDH annual reports, 2007-2015, available at: www.cndh.org.mx/Informes_Actividades.

795 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Human Rights Council, December 29, 2014, A/HRC/28/68/Add.3, para. 24.

796 In response to right to information requests filed with the CNDH and Federal Police, the Open Society Justice Initiative has obtained information suggesting that no federal officers have been sanctioned for this case. CNDH response of April 10, 2015, official CNDH document CNDH/DGSR/UE/676/2015, April 10, 2015 in response to request 00019115. RTI request to the Federal Police. On February 24, 2015 Federal Police responded to request 0413100103114 that information on compliance with the CNDH recommendation was confidential. Federal Police document PF/OCG/DGE/0704/2015.

797 Other high-profile examples of torture-based federal investigations include that of five young men allegedly beaten and raped by Federal Police after being accused of planting a car bomb and killing two federal agents in Ciudad Juarez in 2010. See: "Corroboran tortura en caso de detenido por coche-bomba en Juárez," *Proceso*, January 22, 2014, available at: www.proceso.com.mx/?p=363058 [accessed on March 28, 2015]. See also CNDH recommendation 75/2011, available at: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2011/REC_2011_075.pdf. In the extrajudicial killing of 22 civilians by members of the Army, CNDH has also established that federal and local authorities of the State of Mexico tortured victims and witnesses. See recommendation 51/2014 at www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2014/REC_2014_051.pdf [accessed on April 20, 2015].

798 See chapter two.

799 Human Rights Watch reported in 2011 that "when suspects claim their confessions are forced, judges consistently put the burden of proof on them and their lawyers to demonstrate that they were abused, rather than obliging prosecutors and other justice officials to show they obtained testimony without violating victims' rights." Human Rights Watch, *Neither Rights Nor Security*, November 2011, p. 39, available at: www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0.

800 An opinion survey by Amnesty International in 2013-2014 found that 29% of Mexican society agrees that in some cases torture is necessary and acceptable to obtain information that may protect the population. See: "Actitudes respecto a la tortura," Amnesty International, available at: www.amnistia.org.ar/sites/default/files/encuestaT.pdf [accessed on April 20, 2015]. Further, in response to such high-profile torture cases as those of Israel Arzate and Martín del Campo Dodd, the main public discourse has focused more on the release of individuals portrayed by authorities as perpetrators of crime than on authorities' use of torture.

801 For example, according to U.S. Army Field Manual 2-22.3: "Use of torture is not only illegal but also it is a poor technique that yields unreliable results, may damage subsequent collection efforts, and can induce the source to say what he thinks the HUMINT [human intelligence] collector wants to hear," para. 5-74, available at: fas.org/irp/doddir/army/fm2-22-3.pdf [accessed on March 28, 2015]. To be sure, the United States has not always followed this guidance, as evidenced by the Central Intelligence Agency's extensive use of torture techniques following the terrorist attacks of September 11, 2001. The U.S. Senate investigation of those crimes—for which there has been no criminal investigation—found that the CIA's use of torture (euphemized as "enhanced interrogation") to extract information "[…]was not an effective means of acquiring intelligence or gaining cooperation from detainees. […] While being subjected to the CIA's enhanced interrogation techniques and afterwards, multiple CIA detainees fabricated information, resulting in faulty intelligence. Detainees provided fabricated information on critical intelligence issues, including the terrorist threats which the CIA identified as its highest priorities." Senate Select Committee on Intelligence, *Committee Study of the Central Intelligence Agency's Detention and Interrogation Program* (redacted, declassified version), December 3, 2014, p. 9, available at: www.usnews.com/news/articles/2014/12/09/here-is-the-cia-torture-report [accessed on March 28, 2015].

802 Israel Arzate was falsely accused of participating in the massacre of 15 students in the neighborhood of Villas de Salvárcar, in Ciudad Juárez, Chihuahua. He was arbitrarily detained and tortured by Mexican soldiers until he confessed to the crimes. In 2013, the Supreme Court of Justice ordered his release because his confession was obtained through torture. See: "WOLA Statement on Release of Israel Arzate, November 8, 2013," available at: www.wola.org/news/wola_statement_on_release_of_israel_arzate [accessed on April 20, 2015]. In March 2015, the Supreme Court of Justice ordered the immediate release of Alfonso Martín del Campo Dodd, who was imprisoned for over 20 years after confessing to the murder of his sister and brother-in-law under torture. See: "Mexico: Torture victim released after two decades behind bars," Amnesty International, March 19, 2015, available at: www.amnesty.org/en/articles/news/2015/03/mexico-torture-victim-released-after-two-decades-

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behind-bars [accessed on April 20, 2015].

803 Protection of the military from accountability for atrocity crimes is discussed at greater length below.

804 "Witness confirms cover-up of Mexican army killings," Associated Press, December 31, 2014.

805 The Tlatlaya case and cover-up are discussed at greater length in the previous chapter.

806 Open Society Justice Initiative interview with eight victim families from the *Movimiento para la Paz y Justicia con Dignidad*, Mexico City, February 15, 2013. See also: "Madres de desaparecidos en huelga de hambre logran respuesta del gobierno," Mexico CNN, November 13, 2012, available at: http://mexico.cnn.com/nacional/2012/11/13/madres-de-desaparecidos-en-huelga-de-hambre-logran-respuesta-del-gobierno [accessed on April 23, 2015].

807 For example, after the Supreme Court's decision to free Alfonso Martín del Campo Dodd, incarcerated for over 20 years, because it found that the evidence against him relied on torture, close on the heels of the UN Special Rapporteur Juan Mendez's criticism for "widespread" torture in Mexico, Samuel González—an advisor to noted kidnapping victim advocate Isabel de Wallace—issued a blistering statement. He asserted that national and international organizations, as well as human rights advocates involved in the case (Juan Méndez, Mariclaire Acosta, Juan Carlos Gutiérrez and the organizations CEJIL, ACAT and Comisión Mexicana de Defensa y Promocion de Derechos Humanos) were motivated by money; according to the television program "Todo Personal," González called them a "gang of human rights defenders." See video at Proyecto 40, Todo Personal, March 25, 2015, available at: www.proyecto40.com/videoteca/opinion/todo-personal/2015-03-25-21-00/todo-personal. See also: "Controversia por sentencia del caso Martín del Campo," Noticieros Televisa, March 27, 2015, available at: http://noticieros.televisa.com/mexico/1503/controversia-sentencia-caso-martin-campo [accessed on April 2, 2015].

808 Human Rights Watch, *Neither Rights Nor Security*, November 2011, p. 35, available at: www.hrw.org/reports/2011/11/09/neither-rights-nor-security-0

809 Open Society Justice Initiative interview with Ana Laura Magaloni Kerpel, director of the Division of Legal Studies at CIDE, Mexico City, June 26, 2013. See also: Ana Laura Magaloni, "Derecho a la defensa," *Zocalo Saltillo*, available at: http://www.zocalo.com.mx/seccion/opinion-articulo/derecho-a-la-defensa-1372484084 and Ana Laura Magaloni Kerpel, "Los humanos sin derechos," *Terra Mexico*, November 30, 2013, available at: http://noticias.terra.com.mx/mexico/ana-laura-magaloni-kerpel-los-humanos-sin-derechos,50bbaf343a9a2410VgnVCM5000009ccceb0aRCRD.html [accessed on March 18, 2015].

810 See chapter three of this report.

811 For a detailed critique of the military justice system, see: Human Rights Watch. *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations*, April 2009, available at: www.hrw.org/reports/2009/04/28/uniform-impunity [accessed on April 3, 2015].

812 Human Rights Watch, *Neither Rights Nor Security*, November 2011, p. 135.

813 Amnesty International, *Urgent Action: Intimidation from military accused of torture (intimidación por parte de militares acusados de tortura),* January 20, 2012, available at: http://amnistia.org.mx/nuevo/2012/01/24/intimidacion-por-parte-de-militares-acusados-de-tortura [accessed on April 23, 2015].

814 In the Tlatlaya case, SEDENA, PGR and authorities of the State of Mexico reserved information of the case for 12 years. See: "También PGR, como Eruviel y Sedena, reserva por 12 años dictámenes de Tlatlaya," *Sin Embargo*, December 9, 2014, available at: www.sinembargo.mx/09-12-2014/1188488 [accessed on April 26, 2015].

815 Amendments to the Military Code of Justice, published in the *Federal Official Gazatte* in June 13, 2014, available at: http://dof.gob.mx/nota_detalle.php?codigo=5348649&fecha=13/06/2014 [accessed on April 23, 2015]. See also: Tlachinollan Centro de Derechos Humanos de la Montaña, "Jurisdicción Militar y Derechos Humanos: elementos para reformas pendientes," August 2013, available at: www.tlachinollan.org/wp-content/uploads/2015/01/INFORME-jurisdiccion-militar-y-ddhh.pdf.

816 Among the orders of the Inter-American Court on Human Rights in the *Radilla Pacheco* case, it ordered Mexico to amend the military code to restrict military jurisdiction. See: http://fueromilitar.scjn.gob.mx/fm_sentenciasradilla.htm. See also: *La incompatibilidad del Código de Justicia Militar con el derecho internacional de los Derechos Humanos*, pp. 6 and 7, Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, November 2014, available at: http://cmdpdh.org/wp-content/uploads/2015/03/La-incompatibilidad-del-c%C3%B3digo-de-justicia-militar-con-el-derecho-internacional-de-los-derechos-humanos1.pdf [accesed on April 20, 2015], and Open Society Justice Initiative interview with the executive director of Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, Jose Antonio Guevara, Mexico City, September 26, 2014.

817 Database of military staff killed "in the enforcement of the permanent campaign against drug trafficking and the Federal Law on Firearms and explosives" between December 1, 2006 and April 16, 2015, available at: www.sedena.gob.mx/images/stories/archivos/derechos_humanos/rel_pnal_fallecido.pdf [accessed on April 26, 2015].

818 The Plenary ruled that article 57 of the military code of justice was not compatible with the constitution or international standards. See: http://fueromilitar.scjn.gob.mx/fm_cuadrosinop.htm [accessed on April 23, 2015].

819 For example, in October 2012, the PGR sent a case of alleged torture by Navy members to the Military Attorney General. See: "Denuncia médico que fue torturado por marinos durante una semana," *La Jornada*, April 13, 2015, available at: www.jornada.unam.mx/2015/04/13/politica/016n2pol [accessed on April 14, 2015].

820 This account is based on an Open Society Justice Initiative interview with the executive director of Comisión Mexicana, Jose Antonio Guevara, Mexico City, September 26, 2014.

821 "El fuero militar ante la SCJN, de nuevo: última llamada para restablecer los controles civiles sobre las Fuerzas Armadas en sede judicial," Tlachinollan, available at: www.tlachinollan.org/wp-content/uploads/2014/12/MEMO_Fuero-Militar-ante-la-SCJN-1.pdf [accesed on April 20, 2015].

822 "Defense Secretary: My Soldiers Will Not Be Interrogated," Associated Press, October 7, 2015, available at: www.eldailypost.com/news/2015/10/defense-secretary-my-soldiers-will-not-be-interrogated [accessed on December 27, 2015].

823 Informative notes of cases *Fernández Ortega y otros vs. México and Rosendo Cantú y otra Vs. México*, available at: www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=339&lang=es; and www.corteidh.or.cr/cf/Jurisprudencia2/ficha_tecnica.cfm?nId_Ficha=338&lang=es [both accessed on April 23, 2015].

824 "Comienzan procesos penales contra probables responsables de las violaciones graves de Derechos Humanos cometidas contra Inés Fernández y Valentina Rosendo," Tlachinollan, January 9, 2014, available at: http://www.tlachinollan.org/comunicado-comienzan-procesos-penales-contra-probables-responsables-de-las-violaciones-graves-de-derechos-humanos-cometidas-contra-ines-fernandez-y-valentina-rosendo [accessed on April 23, 2015].

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825 For additional information on the case, see Tlachinollan, "Inés y Valentina," available at: www.tlachinollan.org/category/defensa/ines-y-valentina-es; and Washington Office on Latin America, "Historic Achievement in Emblematic Human Rights Case in Mexico," January 11, 2014, available at: www.wola.org/news/historic_achievement_in_emblematic_human_rights_case_in_mexico [both accessed on March 27, 2014].

826 See the introduction to this chapter.

827 Ana Laura Magaloni Kerpel, "El Ministerio Público desde Adentro: Rutinas y Métodos de Trabajo en las Agencias del MP," CIDE, December 2009, esp. pp. 5-7, available at: www.cide.edu/publicaciones/status/dts/DTEJ%2042.pdf [accessed on April 4, 2015].

828 See Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, Washington Office on Latin America, May 2014, p.3, available at: www.wola.org/sites/default/files/Mexicos%20Police.pdf [accessed on April 4, 2015].

829 Arturo Alvarado and Diane Davis, "Cambio político, inseguridad pública y deterioro del estado de derecho en México: Algunas hipótesis en torno del proceso actual," in Arturo Alvarado and Sigrid Arzt, *El desafío democrático de México: Seguridad y estado de derecho*, Mexico: El Colegio de México, 2001, p. 130, cited in: Catherine Daly, Kimberly Heinle, and David A. Shirk, *Armed with Impunity: Curbing Military Human Rights Abuses in Mexico,* Trans-Border Institute, University of San Diego, July 2012, p. 5, available at: https://justiceinmexico.org/armed-with-impunity-curbing-military-human-rights-abuses-in-mexico [accessed on April 4, 2015].

830 Marcos Pablo Moloeznik, "The Militarization of Public Security and the Role of the Military in Mexico," in *Police and Public Security in Mexico*, edited by Robert A. Donnelly and David A. Shirk, 61-86, San Diego, Trans-Border Institute, 2009, p. 76, cited in: Daly, Heinle, and Shirk, *Armed with Impunity*, p. 5.

831 "Report of the Working Group on Enforced or Involuntary Disappearances," UN Human Rights Council, A/HRC/19/58/Add.2, para. 24, December 20, 2011, available at: www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf [accessed on April 23, 2015].

832 The Merida Initiative has shifted focus to such areas as police reform and training, with mixed results. See Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, Washington Office on Latin America, May 2014, pp. 18-19, available at: www.wola.org/sites/default/files/Mexicos%20Police.pdf [accessed on April 4, 2015].

833 Ibid, p. 2.

834 Open Society Justice Initiative interview with Lic. David Javier Baeza Tello, Federal Police, General Director of Legal Issues and President of the Committee of the Access to Information office of the Federal Police (Director General de Asuntos Jurídicos y Presidente del Comité de la Unidad de Enlace de la Policía Federal) and Alejandro Galvan Illanes, Ministry of Interior, Legal and Operational Director of the Transparency and access to information Unit of the Ministry of Interior (Director Jurídico y Operativo de la Unidad de Enlace de Transparencia y Acceso a la Información de la SEGOB), Mexico City, June 20, 2014. During the process of confirming quotes with interviewees for this report, the Office of the General Inspector of the Federal Police requested that the Justice Initiative amend the response to the question on membership of the Federal Police. Specifically, it requested that the report reference the Federal Police mandate to "safeguard the life, integrity, safety, and rights of individuals; preserve freedoms, public order and peace, as well as implement and operate the public security policy on the prevention and combating of crime." Further, the request asserted that the Federal Police carry out their mandate with regard for "the principles of legality, objectivity, efficiency, honesty, professionalism and respect for human rights." Email to the Open Society Justice Initiative from Inspector General Jacqueline Orozco Rebollar, February 24, 2016.

835 Based on government statistics analyzed in: Guillermo Zepeda Lecuona, "Mexican Police and the Criminal Justice System," in David Shirk (ed.), *Police and Public Security in Mexico*, 2009; cited in: Daniel Sabet, *Police Reform in Mexico: Advances and Persistent Obstacles*, Woodrow Wilson International Center for Scholars, Mexico Institute and University of San Diego, Transborder Institute, May 2010, p. 4, available at: www.wilsoncenter.org/sites/default/files/Chapter%208-Police%20Reform%20in%20Mexico,%20Advances%20and%20PErsistent%20Obstacles.pdf.

836 Eduardo Guerrero Gutiérrez, "La estrategia fallida," Nexos, December 1, 2012, available at: www.nexos.com.mx/?p=15083 [accessed on April 4, 2015].

837 Whereas previously the PGR directly administered the Federal Investigation Agency (*Agencia Federal de Investigación,* AFI), a force of approximately 8,500 investigators created during the Fox administration, from July 2012 the PGR only directly controlled a small successor force—the ministerial police (*Policía Federal Ministerial* - PFM). According to a PGR document obtained by Mexican media in February 2013, this force numbered 4,021, but of these, only 495 PFM officers were available for investigative tasks. It was reported that the remainder of the ministerial police officers were mainly fulfilling security tasks, such as providing close protection to officials. See: "88% de la Policía Ministerial es guardaespaldas," *Excélsior*, January 21, 2013, available at: www.excelsior.com.mx/2013/01/21/880347; and "PGR descalifica sus exámenes; Los controles de confianza no funcionan," *Excélsior*, February 7, 2013, available at: www.excelsior.com.mx/2013/02/07/nacional/883105 [accessed on April 26, 2015]. During its years of existence, AFI had touted its development of a valuable system of crime databases ("AFInet"). With the structural changes, AFInet became inoperative, and its data inherited not by the PFM, but transferred to the PF. See: Daniel Sabet, *Police Reform in Mexico: Advances and Persistent Obstacles*, Woodrow Wilson International Center for Scholars, Mexico Institute and University of San Diego, Transborder Institute, May 2010, pp. 10-12, available at: www.wilsoncenter.org/sites/default/files/Chapter%208-Police%20Reform%20in%20Mexico,%20Advances%20and%20PErsistent%20Obstacles.pdf [accessed on April 26, 2015].

838 Ibid, p. 10.

839 The use of force by police forces was unregulated until 2012, and then only through executive agreements or directives and not proper legislation. SEMAR was the only entity with a directive on the use of force adopted in 2009 (Directive 03/09 of 30 September 2009, amended by Agreement No. 27 of April 23, 2012, available at http://dof.gob.mx/nota_detalle.php?codigo=5244757&fecha=23/04/2012). The directives for the Federal Ministerial Police, Federal Police, and SEDENA on the use of force were adopted only on April 23, 2012. PGR Agreement A/080/12, available at http://dof.gob.mx/nota_detalle.php?codigo=5244768&fecha=23/04/2012, SSP, Agreement 04/2012 available at http://www.dof.gob.mx/nota_detalle.php?codigo=5244759&fecha=23/04/2012, SEDENA, no number, available at http://dof.gob.mx/nota_detalle.php?codigo=5244755&fecha=23/04/2012.

840 In June 2011, President Calderón expressed openness to create an independent, "even civilian" general inspector for the Federal Police, but suggested that it could be too difficult to find anyone to take the job because it would be "a dangerous position." See "Diálogo por la Paz" between President Calderón and Movimiento por la Paz con Justicia y Dignidad, June 23, 2011, video: 1h36mins, available at: http://calderon.presidencia.gob.mx/2011/06/dialogo-entre-el-presidente-y-el-movimiento-por-la-paz-nota [accessed on April 23, 2015]. When a multi-party coaltition of senators introduced legislation to create an

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independent police auditor in 2012, the initiative never reached a vote; in the face of resistence from the Federal Police, senators from Calderón's PAN party refused to support it. Open Society Justice Initiative interview with Ernesto Cardenas, researcher, Instituto para la Seguridad y la Democracia (Insyde), Mexico City, September 25, 2014. See also: *Mexico's Police. Many Reforms, Little Progress*, Washington Office on Latin America, p. 28, May 2014, available at: www.wola.org/sites/default/files/Mexicos%20Police.pdf [accessed on April 23, 2015].

841 Without investigative support, many of the detained suspects would have to be released. The predicament for forces deployed to defeat the cartels created incentives to mete out extrajudicial punishments, including extrajudicial killings, disappearances, and torture. See: Ana Laura Magaloni Kerpel, "Seguridad con justicia," *Reforma*, May 19, 2012, available at: http://calderon.presidencia.gob.mx/2009/06/diversas-intervenciones-en-la-inauguracion-del-foro-nacional-seguridad-con-justicia, cited in Eduardo Guerrero Gutiérrez, *La estrategia fallida*. Prospects for professional policing were further poisoned by lack of regulation on the use of force. In this political and security environment marked by impunity, police officers increasingly colluded with organised crime or otherwise engaged in corruption. Poor police pay across the different forces was a contributing factor to this. As of 2012, the average police officer earned 250–350 USD per month. See: María Cristina Rosas, "Las instituciones de seguridad pública frente a la delincuencia en México: Retrovisión y Perspectivas," in *El Nuevo Modelo de Policía En Mexico*, SSP - CIES, 2012, p. 58, available at: www.cies.gob.mx/pdf/01El_Nuevo_Modelo_PoliciaLOW.pdf [accessed on April 5, 2015].

842 See the text box "Arbitrary Use of Force at Atenco," in chapter three.

843 Daniel Sabet, *Police Reform in Mexico: Advances and Persistent Obstacles*, Woodrow Wilson International Center for Scholars, Mexico Institute and University of San Diego, Transborder Institute, May 2010, p. 19, available at: www.wilsoncenter.org/sites/default/files/Chapter%208-Police%20Reform%20in%20Mexico,%20Advances%20and%20PErsistent%20Obstacles.pdf [accessed on April 23, 2015].

844 See amendments to the Organic Law of the Federal Public Administration on the issue, published in the *Federal Official Gazette* January 2, 2013, available at: www.dof.gob.mx/nota_detalle.php?codigo=5283959&fecha=02/01/2013 [accessed on April 23, 2015].

845 See: "Peña Nieto ofrece incrementar el número de federales," *Cadena Tres*, April 25, 2012, available at: www.youtube.com/watch?v=MUbFF65bfJI [accessed on February 8, 2016].

846 For example, see: *Comunicado Conjunto Gendarmeria*, signed by Causa en Común, DHP, Instituto Mexicano de Derechos Humanos, Instituto Mexicano para la Competitividad, Instituto para la Seguridad y la Democracia, México Evalúa, México SOS, México Unido contra la Delincuencia, Red de Especialistas en Seguridad Pública, Alejandro Hope, and Javier Sicilia, March 26, 2013, available at http://es.scribd.com/doc/132554500/Comunicado-Conjunto-Gendarmeria. See also: Alejandro Hope, "Gendarmería: Sí al Debate, No al Decreto," *Animal Politico*, March 30, 2013, available at www.animalpolitico.com/blogueros-plata-o-plomo/2013/03/30/gendarmeria-si-al-debate-no-al-decreto [accessed March 31, 2013].

847 In March 2013, CNS chief Manuel Mondragon y Kalb resigned. For more on the creation of the Gendarmerie, see: Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, Washington Office on Latin America, May 2014, pp. 20-21, available at: www.wola.org/sites/default/files/Mexicos%20Police.pdf [accessed on April 4, 2015].

848 For more on Carazalillo, see the previous chapter. See also: "Golpe y veja Policía Federal a 70 personas en Carrizalillo, Guerrero," *Quadratín Veracruz*, October 22, 2014, available at: https://veracruz.quadratin.com.mx/Golpea-y-veja-Policia-Federal-70-personas-en-Carrizalillo-Guerrero.

849 The Ayotzinapa case of 2014 also lent new impetus to another of the president's policing priorities: stripping control of municipalities over their forces and unifying command at state level—the "Mando Unico"; additionally, now the president proposed changes to the Constitution that would allow the federal government to take over policing in troubled municipalities. But the proposal was not accompanied by evidence that federal or state-level policing was any better than municipal policing. See: Insyde, *Posición de Insyde sobre la iniciativa presidencial de reforma en seguridad y justicia*, December 8, 2014, available at: http://insyde.org.mx/portfolio/pronunciamiento-sobre-la-iniciativa-presidencial-de-reforma-en-seguridad-y-justicia [accessed on April 4, 2015].

850 Video of January 27 conference of Murillo Karam, available at: www.youtube.com/watch?v=pwYMmh2V6nE.

851 PGR press release 750/2015, November 10, 2015, available at: www.pgr.gob.mx/sala-de-prensa/Lists/Boletines%20tipo%20anuncios/DispForm.aspx?ID=678&ContentTypeId=0x0104002660D95F8868CC4F98516638CCD891EA. Abarca's wife, María de los Ángeles Pineda, was held in arraigo from October and was ultimately charged with organized crime-related offenses.

852 The charging of enforced disappearances would reflect a state's broader set of responsibilities under international law than merely charging kidnapping. Under international law, enforced disappearance is a crime of "extreme seriousness." Much of the crime's gravity derives from the fact that it involves state agents who deprive civilians of liberty, and place them beyond the protection of the law. See: International Convention for the Protection of All Persons from Enforced Disappearance, available at: www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx.

853 See the introduction to this chapter.

854 See the section below on politicized forensics.

855 *Informe Ayotzinapa, Investigación y primeras conclusions de las desapariciones y homicidos de los normalistas de Ayotzinapa*, available at: http://prensagieiayotzi.wix.com/giei-ayotzinapa#!informe-/c1exv. See also: Francisco Goldman, "Crisis in Mexico: Who is really responsible for the missing forty-three?," *The New Yorker*, February 7, 2015, available at: www.newyorker.com/news/news-desk/crisis-mexico-really-responsible-missing-forty-three. See also: "Mexico: Scientists challenge claim that 43 students burned at dump," McClatchy, January 19, 2015, available at: www.csmonitor.com/World/Americas/2015/0119/Mexico-Scientists-challenge-claim-that-43-students-burned-at-dump [accessed on April 8, 2015]. Another report, citing an unedited report of Guerrero state officials, implicates Federal Police forces as well as the military in the Iguala crimes. See: "Declaraciones a base de tortura," *Proceso*, December 14, 2014, issue 1989. The full report was only available in the print version of the magazine. For a shorter version of the report, see: Anabel Hernandez and Steve Fisher, "La historia no official," Apro, December 14, 2014, available at: www.eldiariodecoahuila.com.mx/notas/2014/12/14/historia-oficial-475018.asp [accessed on March 26, 2015].

856 "No hay evidencia de la intervención del Ejército en el caso Ayotzinapa: PGR" (nota y videos), *Aristegui Noticias*, January 27, 2015, available at: http://aristeguinoticias.com/2701/mexico/no-hay-una-sola-evidencia-de-que-haya-intervenido-el-ejercito-murillo-karam.

857 Daniel Wilkinson, "Law and Disorder in Mexico," Foreign Policy, November 18, 2014, available at: http://foreignpolicy.com/2014/11/18/law-and-disorder-in-mexico [accessed April 4, 2015].

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858 "La CIDH investigará el 'caso Iguala' como desapariciones forzadas," El Pais, available at: http://internacional.elpais.com/internacional/2015/02/12/actualidad/1423779646_981196.html [accessed on April 6, 2015].

859 Beyond making these recommendations specific to the case, the GIEI recommended that the government develop new protocols, laws, and databases to address enforced disappearances in Mexico. See: *Informe Ayotzinapa, Investigación y primeras conclusions de las desapariciones y homicidos de los normalistas de Ayotzinapa*, available at: http://prensagieiayotzi.wix.com/giei-ayotzinapa#!informe-/c1exv.

860 "Un fiasco la *Operación Limpieza* de Calderón; de 13 detenidos sólo uno permanece preso," *La Jornada*, February 27, 2014, available at: www.jornada.unam.mx/2014/02/27/politica/019n1pol.

861 "Another domino in Mexico's collapsing drug prosecutions," *Los Angeles Times*, April 20, 2013, available at: http://articles.latimes.com/2013/apr/20/world/la-fg-mexico-collapsed-justice-20130421 [accessed on April 7, 2015].

862 Security expert Samuel Gonzalez, quoted in: "Calderón politizó la justicia," *Siempre*, May 11, 2013, available at: www.siempre.com.mx/2013/05/calderon-politizo-la-justicia [accessed on April 7, 2015].

863 See the following chapter for further discussion of internal oversight mechanisms at the PGR.

864 See chapter two for statistics on the extent of justice for each of these three types of crime.

865 In its report to the Committee on Enforced Disappearance in March 2014, Mexico stated that it investigates and prosecutes "acts *of the nature of enforced disappearance*" (emphasis added) as kidnapping, unlawful deprivation of liberty, procuring prostitution, and human trafficking. Consideration of reports submitted by states parties under Article 29, paragraph 1, of the Convention, Reports of States Parties due in 2012: Mexico, CED/C/MEX/1, at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en.

866 See: CAT/C/MEX/CO/5-6, para. 16, available at: www.refworld.org/docid/3f8d13b1a.html. See also: A/HRC/28/68/Add.3, para. 34.

867 See sections below on the bureaucracy of federal investigations and jurisdictional issues between the federal and state governments.

868 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 46–53.

869 Amnesty International, *Confronting a Nightmare: Disappearances in Mexico*, page 9.

870 Informe sobre la visita a México del Subcomité para la Prevención de la Tortura y Otros Tratos o Penas Crueles, Inhumanos o Degradantes, CAT/OP/MEX/1, para. 87, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT%2FOP%2FMEX%2F1&Lang=en.

871 Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 2014, p. 47.

872 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 46–53.

873 See the section "Promise of the Fiscalía?" in chapter five.

874 There have been 14 officeholders over a 26-year span. See: "Sobre las ruinas de la PGR se proyecta la Fiscalía General," *Apro*, March 1, 2015, available at: www.eldiariodecoahuila.com.mx/notas/2015/3/1/sobre-ruinas-proyecta-fiscalia-general-490753.asp [accessed on April 24, 2015].

875 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns*, April 28, 2014, A/HRC/26/36/Add.1, paras. 53-55, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session26/Documents/A_HRC_26_36_Add.1_ENG.DOC [accessed on April 7, 2015].

876 *Report of the UN Special Rapporteur on the independence of judges and lawyers: Mission to Mexico*, document A/HRC/17/30/Add.3, para. 16, April 18, 2011, available at: www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.30.Add.3_en.pdf [accessed on April 26, 2015].

877 *Garantías para la independencia de las y los operadores de justicia: Hacia el fortalecimiento del acceso a la justicia y el estado de derecho en las Américas*, document OEA/Ser.L/V/II. Doc.44, para 40, available at: www.oas.org/es/cidh/defensores/docs/pdf/Operadores-de-Justicia-2013.pdf. See also: IACHR Report on the situation of human rights in Mexico, OEA/ Ser.L/II.100. Doc. 7 rev.1, Septiembre 24 de 1998, para. 372 [both accessed on April 26, 2015].

878 *Physicians for Human Rights, Forensic Documentation of Torture and Ill Treatment in Mexico: An Assessment of the Implementation Process of the Istanbul Protocol Standards*, 2008, p. 12, available at: https://s3.amazonaws.com/PHR_Reports/mexico-forensic-documentation-torture-2008.pdf [accessed on April 9, 2014].

879 UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to Mexico, CAT/OP/MEX/1, May 27, 2009, para. 91, available at: www2.ohchr.org/english/bodies/cat/opcat/docs/ReportMexico_en.doc [accessed on April 9, 2015].

880 Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), CAT/C/MEX/CO/5-6, para 17, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/CO/5-6&Lang=En.

881 Acuerdo número A/057/2003 del Procurador General de la República, mediante el cual se establecen las directrices institucionales que deberán seguir los Agentes del Ministerio Público de la Federación, los peritos médicos legistas y/o forenses y demás personal de la Procuraduría General de la República, para la aplicación del Dictamen Médico/Psicológico Especializado para Casos de Posible Tortura y/o Maltrato, published in the Federal Gazette on August 18, 2003, available at: www.pgr.gob.mx/normatec/Documentos/ACUERDO%20A-057-03%20_675_.pdf.

882 PGR response to right-to-information request 1700327214 filed by the Open Society Justice Initiative. PGR document SJAI/DGAJ/00984/2015, January 29, 2015.

883 Percentages calculated based on PGR data for 2006-2013 cited in: Amnesty International, Out of Control, p. 46, and PGR data for 2014 cited in: Amnesty International, *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 15.

884 Open Society Justice Initiative interview with a senior PGR official, Mexico City, June 2013.

885 UN Office of the High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, paras. 161 and 233, available at: www.ohchr.org/Documents/Publications/training8Rev1en.pdf.

886 Procuraduría General de la República, *Informe General Sobre Quejas por Presunta Tortura en Contra Servidores Públicos de la Procuraduría General de la República Interpuestas ante la Comisión Nacional de los Derechos Humanos y Sobre la Aplicación*

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del Dictamen Médico/Psicologógico Especializado para Casos de Posible Tortura y/o Maltrato (Protocolo de Estambul) desde su Instauración en la Procuraduría General de laRepública (Septiembre 2003—Octubre 2006), 2006, cited in: Physicians for Human Rights, *Forensic Documentation of Torture and Ill Treatment in Mexico*, 2008, p. 18. See also: *Memoria Documental. Dictamen Médico/Psicológico Especializado para casos de Posible Tortura y/o Maltrato*, PGR, November 2012, available at: www.pgr.gob.mx/Temas%20Relevantes/Documentos/Transparencia/MD6.pdf [accessed on April 23, 2015].

887 Amnesty International, Out of Control, pp. 49-50. See also: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, Addendum, Mission to Mexico, Document A/HRC/28/68/Add.3, December 29, 2014, para. 39, available at: http://antitorture.org/mexico-2014.

888 "[T]hose carrying out the investigation must, at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture to aid in any potential prosecution of those responsible; to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture." Istanbul Protocol, para. 77.

889 Article 13 of Agreement A/057/2003, available at: www.pgr.gob.mx/normatec/Documentos/ACUERDO%20A-057-03%20_675_.pdf [accessed on April 23, 2015].

890 Response to RTI request No. 0001700154112 filed by Tlachinollan Centro de Derechos Humanos de la Montaña to the PGR: document No. SJAI/DGAJ/09284/2012, August 24, 2012, information mentioned in document *"Additional information on torture practices in Mexico obtained through access to public information requests submitted by the human rights centre "Tlachinollan,"* available at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/MEX/INT_CAT_NGO_MEX_12957_E.pdf [accessed on April 15, 2015].

891 Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 2014, p.46.

892 Ibid.

893 *Oficio Circular C/ 002 /13, mediante el cual se instruye a los agentes del Ministerio Público de la Federación, para que en el momento en que un Juez de Distrito haga de su conocimiento hechos que presuman la existencia del delito de tortura realicen diversas acciones*, published in the *Federal Official Gazette* on November 15, 2013, available at: www.dof.gob.mx/nota_detalle.php?codigo=5322318&fecha=15/11/2013.

894 The PGR established a specialized office for the investigation of torture within the office of the deputy prosecutor for the investigation of federal crimes, with 11 prosecution agents. It augmented another office under the same deputy prosecutor with responsibility for torture prosecutions: the division for the investigation of environmental crimes and crimes set forth in specialized laws, which also has 11 prosecution agents. Together, in the year from December 2013 to December 2014, these prosecutors opened 1,089 investigations into torture, although from information provided by PGR, it is not clear whether any of these resulted in indictments. Also maintaining responsibility for torture investigations was the division of the PGR general inspector's office responsible for crimes perpetrated by PGR officials. Its 23 prosecution agents working on torture cases resulted in 11 indictments and 76 ongoing investigations between December 2013 and December 2014. PGR response to right-to-information request 1700322414 filed by the Open Society Justice Initiative. PGR document SJAI/DGAJ/01493/2015, February 9, 2015.

895 See discussion of these measures in the "New Criminal Justice System and Other Reforms on Torture" section of chapter five.

896 Amnesty International, *Out of Control*, p. 50. See also: *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Human Rights Council, December 29, 2014, A/HRC/28/68/Add.3, para. 40.

897 The revelations prompted the incoming Peña Nieto administration to launch an investigation of the scandal. See: "Another domino in Mexico's collapsing drug prosecutions," *Los Angeles Times*, April 20, 2013, available at: http://articles.latimes.com/2013/apr/20/world/la-fg-mexico-collapsed-justice-20130421 [accessed on April 7, 2015]. See also: "Calderón politizó la justicia," *Siempre*, May 11, 2013, available at: www.siempre.com.mx/2013/05/calderon-politizo-la-justicia [accessed on April 7, 2015].

898 "The risk of protected witnesses," *El Universal*, April 3, 2015, available at: www.eluniversalmas.com.mx/editoriales/2015/04/75680.php [accessed on April 22, 2015]. See also: "Los 'delatores' estrella de la PGR," El Universal, December 23, 2012, available at: www.eluniversal.com.mx/notas/891614.html and *Why Mexico's Management of Protected Witnesses is a Disaster*, InSight Crime, June 3, 2013, available at: www.insightcrime.org/news-analysis/why-mexicos-management-of-protected-witnesses-is-a-disaster [both accessed on April 22, 2015].

899 "En siete años la PGR ha cuadruplicado el número de sus testigos protegidos," *La Jornada*, December 7, 2009, available at: www.jornada.unam.mx/2009/12/07/politica/008n1pol [accessed on April 22, 2015].

900 The two witnesses were Reyes Reinado Zambada Garcia and Edgar Enrique Bayardo del Villar, the first found hanged in a dubious case of suicide, and the second shot to death in a crowded Starbucks in Mexico City. See: *Why Mexico's Management of Protected Witnesses is a Disaster*, InSight Crime, June 3, 2013, available at: www.insightcrime.org/news-analysis/why-mexicos-management-of-protected-witnesses-is-a-disaster; "Ejecutan a testigo protegido de PGR," El Universal, December 2, 2009, available at: www.eluniversal.com.mx/nacion/173350.html; "Matan a testigo protegido de PGR en Starbucks del DF," *El Universal*, December 1, 2009, available at: www.eluniversal.com.mx/notas/643349.html. See also: "Ser testigos de El Mayo los llevó a la muerte," *El Universal*, December 2, 2009, available at: www.eluniversal.com.mx/notas/643464.html [all accessed April 22, 2015].

901 Under the law, the director of the Center for Witness Protection is appointed by the president at the suggestion of the attorney general. Federal Law for the Protection of Persons Participating in Criminal Proceedings (*Ley Federal Para la Protección a Personas que Intervienen en el Procedimiento Penal*), June 8, 2012, Article 6, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LFPPIPP_120315.pdf.

902 In addition to domestic obligations listed here, Mexico has ratified two international treaties requiring it to protect witnesses in organized crime and corruption cases: the UN Convention against Transnational Organized Crime (especially Articles 24 and 25), which Mexico ratified in 2003 and which came into force that same year; and the UN Convention against Corruption (Article 32), which Mexico ratified in 2004 and which entered into force in December 2005.

903 "Justicia Penal con Perspectiva de Género," *El Mundo del Abogado*, December 31, 2015, available at: http://elmundodelabogado.com/revista/entrevistas/item/lilia-monica-lopez-benitez.

904 *Ley Federal Contra La Delincuencia Organizada*, Articles 34 and 35, November 7, 1996, Articles 34-39, available at: www.diputados.gob.mx/LeyesBiblio/pdf/101_120116.pdf.

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905 Mexican Constitution, Article 20(V)(2), available at: www.diputados.gob.mx/LeyesBiblio/htm/1.htm.

906 *Ley General Para Prevenir y Sancionar los Delitos en Materia de Secuestro, Reglamentaria de la Fracción XXI del Artículo 73 de la Constitución Política de los Estados Unidos Mexicanos*, Article 26, November 30, 2010, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LGPSDMS_030614.pdf.

907 Ley General de Víctimas, January 9, 2013, available at: www.dof.gob.mx/nota_detalle.php?codigo=5284359&fecha=09/01/2013.

908 At the time, SEIDO was called SIEDO.

909 For example, one witness to crimes of the Dirty War who was killed in 2003 had been ineligible for federal protection under the law at the time. See transcript of an interview with then-Attorney General Rafeal Macedo de la Concha, November 28, 2003, available at: www.pgr.gob.mx/cmsocial/coms03/281103.htm. [accessed on April 22, 2015]. See also: "Analiza la Fiscalía si se protege a testigos de la guerra sucia: Macedo," *Sur de Acapulco*, November 29, 2003, available at: http://suracapulco.mx/1/analiza-la-fiscalia-si-se-protege-a-testigos-de-la-guerra-sucia-macedo.

910 The government refuses to provide much information on the numbers of protected witnesses. Article 2, section IX defines protected persons as any persons who could face risk or danger due to their participation in a criminal proceeding. Further, Article 2, section X of the 2012 law defines collaborating witnesses (*testigos colaboradores*) as those members of organized crime who approach the PGR with offers of information in exchange for protection, a situation that is regulated in Articles 35 to 39 of the Federal Law against Organized Crime. The PGR only provides limited data on the latter group. Between 2006 and March 2014, there have never been more than 65 collaborating witnesses under protection during the same year (in 2012). This was up somewhat from 2006, when there were 43. During the period January-March 2014, the number had fallen again to 44. Information on the annual budget for witness protection was likewise limited to funds for the protection of collaborating witnesses, with that for *testigos protegidos* remaining a complete unknown. PGR response to Open Society Justice Initiative right to information request 1700087214, April 24, 2014.

911 Open Society Justice Initiative interview with Federal Judge Lilia Monica Lopez Benitez, Mexico City, September 26, 2014. Judge Lopez Benitez is the author of a book on witness protection: *Protección a Testigos en el Derecho Penal Mexicano, Editorial Porrúa. See also: Testigos protegidos en México*, available at: https://canaljudicial.wordpress.com/tag/lilia-monica-lopez-benitez.

912 Interview with eight families of victims from the Movimiento para la Paz y Justicia con Dignidad, Mexico City, February 15, 2013.

913 Federal Witness Protection Law (*Ley Federal Para la Protección a Personas que Intervienen en el Procedimiento Penal*), June 8, 2012, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LFPPIPP_120315.pdf.

914 The UN Office on Drugs and Crime notes that successful witness protection programs around the world have been located within various parts of government, including under police and prosecutors. Regardless of where the program is located, the three main determinants of success are: separation of protection functions from the investigation, operational and procedural confidentiality, and organizational autonomy from the regular police. See: United Nations Office on Drugs and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008, pp. 45-46, available at: www.unodc.org/documents/organized-crime/Witnessprotection-manual-Feb08.pdf [accessed on March 4, 2015].

915 Federal Witness Protection Law, Articles 1, 13, and 15.

916 Ibid, Articles 23, 24, 35, and 39.

917 Ibid, Article 7(III).

918 Ibid, Articles 5(III), 33, and 34.

919 Ibid, Article 21.

920 Ibid, Article 16.

921 Ibid, Article 17.

922 Ibid, Article 18 (II, III, and VIII).

923 Ibid, Article 31 (VI).

924 *Código Nacional de Procedimientos Penales*, March 5, 2014, Articles 137 and 139, available at: www.diputados.gob.mx/LeyesBiblio/ref/cnpp.htm.

925 Under the constitutional amendment adopted in 2008, judges have an explicit role in monitoring compliance with the obligation to protect witnesses. Constitution of Mexico, Article 20(V)(2). However, unlike other measures available for the investigation of crimes at the federal level (such as *arraigo*, wiretaps, and search warrants), the 2012 law does not require judicial authorization when it comes to decisions on whether to include or exclude persons in any witness protection mechanism. Open Society Justice Initiative interview with Federal Judge Lilia Monica Lopez Benitez, Mexico City, September 26, 2014. Even though judges can technically order admission of a witness into the program, the director of the center retains sole responsibility for determining which measures to apply. Without amending the law to extend the scope of judicial oversight, this creates a loophole that could allow the director to effectively defy the judge by determining that insufficient or no measures are justified.

926 See: United Nations Office on Drugs and Crime, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008, pp. 45-46, available at: www.unodc.org/documents/organized-crime/Witnessprotection-manual-Feb08.pdf [accessed on March 4, 2015].

927 Federal Law for the Protection of Participants in a Criminal Proceeding (*Ley Federal Para la Protección a Personas que Intervienen en el Procedimiento Penal*), Article 8.

928 Those found guilty of disclosing operational information about protected witnesses or the program without prior authorization face a prison sentence of 6-12 years. The penalty is one-third higher for public officials who reveal the information. Ibid, Article 49.

929 The law does state that Ministerial Federal Police are to be dedicated to the center, and prohibits the officers from sharing operational information outside of the center. Ibid, Articles 10-11, especially 11.IV. Without adequate judicial oversight, and in the context of the past manipulation of protected witnesses, this seems insufficient.

930 UNODC, *Good practices for the protection of witnesses in criminal proceedings involving organized crime*, 2008, pp. 45-46, available at: www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf.

931 For example, Human Rights Watch released its report, documenting 249 disappearances in Mexico, in February 2013. See: Human Rights Watch, *Mexico's Disappeared, The Enduring Cost of a Crisis Ignored*, available at: www.hrw.org/

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reports/2013/02/20/mexicos-disappeared [accessed on April 27, 2015].

932 "Arranca la Búsqueda de Desaparecidos; crean Comisión Especial," *Excélsior*, February 23, 2013, available at www.excelsior.com.mx/2013/02/23/885745 [accessed on April 10, 2015].

933 Roberto E. Galindo Domínguez, "Desaparecidos en México: 'La vida no vale nada'," *Contralínea*, June 16, 2013, available at: http://contralinea.info/archivo-revista/index.php/2013/06/16/desaparecidos-en-mexico-la-vida-vale-nada [accessed on April 10, 2015]; cited in: *Mexico's Disappeared Persons Task Force in operation despite criticism, Justice in Mexico*, July 11, 2014, available at: https://justiceinmexico.org/mexicos-disappeared-persons-task-force-in-operation-despite-criticism [accessed on April 10, 2015]. See also: press release 038/13 of the PGR, "PGR and Ministry of Interior announce agreements with families of the disappeared (*Anuncian acuerdos PGR-Gobernación y familiares de desaparecidos*)," May 17, 2013, available at: www.pgr.gob.mx/Prensa/2007/bol13/may/b03813.shtm [accessed on April 27, 2015].

934 Acuerdo A/066/13 por el que se crea la Unidad Especializada de Búsqueda de Personas Desaparecidas y se establecen sus facultades, available at: www.dof.gob.mx/nota_detalle.php?codigo=5303411&fecha=21/06/2013 [accessed on April 27, 2015].

935 In October 2015, the unit was replaced by the "Specialized Prosecution for the Search of Disappeared Persons" (*Fiscalía Especializada de Búsqueda de Personas Desaparecidas*), in accordance with PGR Regulation A/9094/15.

936 On June 17, 2014, an NGO working on disappearance cases mainly in Coahuila, *Fuerzas Unidas por Nuestros Desaparecidos en México*, sent a letter to the PGR with questions that remained open a year after the unit's creation. Principally, the organization wanted to know if the unit was only in charge of searching for the disappeared or also of conducting prosecutorial investigations into disappearances. Other questions included: information on located persons, the unit's budget, protocols for the search of missing persons, rules for coordination with other PGR units, operative staff, number of open cases and search operations conducted thus far. See: Cuestionario de *FUUNDEC-M*, June 17, 2014, available at: https://desaparecidosencoahuila.files.wordpress.com/2014/06/140616-cuestionario-de-fuundec-m.pdf [accessed on April 25, 2015]. Also, before the issuance of the List of Issues of the UN Committee on Enforced Dissappearance for Mexico's review, several Mexican NGOs raised concerns to the CED about the lack of clarity about the unit's competence and jurisdiction. See: *Presentación de Información en el marco de la adopción de la lista de cuestiones en la Séptima Sesión del Comité contra las Desapariciones Forzadas, 15-26 de septiembre de 2014*, FUNDAR, MPJD and SERAPAZ, June 1st, 2014, available at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_ICO_MEX_17804_S.pdf [both accessed on April 25, 2015].

937 See the following section for more on the National Plan.

938 Open Society Justice Initiative interview with a senior PGR official, Mexico City, September 25, 2014.

939 Summary record of the public part of the 119th meeting, CED/C/SR.119, February 6, 2015, para. 16.

940 The numbers do not add up, but some cases likely involve more than one missing person, and some cases may have prompted more than one criminal investigation. State's Reply to the List of Issues of the UN Committee on Enforced Dissappearance and Summary record of the public part of the 119th meeting, pp. 15, and 24-26, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCED%2fRLI%2fMEX%2f19337&Lang=en. Updated numbers were briefly available on the SNSP website in January 2016. According to this, the unit had 809 cases involving 1,136 persons still missing, and a further 67 cases relating to 147 individuals who had been located. PGR memorandum titled "Unidades de Búsqueda de Personas Desaparecidas Estatales," January 2016, on file with the Open Society Justice Initiative.

941 Open Society Justice Initiative interview with two senior PGR officials, Mexico City, September 25, 2014.

942 See the section on disappearances in chapter two of this report.

943 Open Society Justice Initiative interviews with victims and civil society organzations conducted in Mexico City, Chilpancingo, Oaxaca, Monterrey, Saltillo, and Querétaro in 2013 and 2014.

944 *Shadow report of the several NGOS for the first review of Mexico before the Committee on Enforced Disappearance*, paras. 109-112, available at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_ICO_MEX_17774_S.pdf [accessed on April 30, 2015].

945 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez*, Addendum, Mission to Mexico, Document A/HRC/28/68/Add.3, dated December 29, 2014, para. 27, available at http://antitorture.org/mexico-2014 [accessed on April 27, 2015].

946 See public response to right to information request number 0001700022314 at: www.infomex.org.mx/gobiernofederal/moduloPublico/moduloPublico.action. Response on file with Open Society Justice Initiative. The right to information request and response are quoted in "¿Desaparecidos? Hagan cola, que la Unidad aún no inicia," *Sin Embargo*, May 26, 2014, available at: www.sinembargo.mx/26-05-2014/1001099 [accessed on April 23, 2015].

947 Summary record of the public part of the 119th meeting, para. 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fSR.119&Lang=en [accessed on April 23, 2015].

948 "Busca Peña 'empequeñecer' unidad de búsqueda de desaparecidos," *Proceso*, September 15, 2014, available at: www.proceso.com.mx/?p=382176 [accessed on April 10, 2015].

949 See chapter 5 of this report.

950 Press release #347 of the Ministry of Interior presenting the progress of the National Plan for the Search of Missing Persons, July 9, 2014, available at: http://segob.gob.mx/es/SEGOB/Sintesis_Informativa?uri=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Content%3A5067&cat=http%3A%2F%2Fwww.SEGOB.swb%23swbpress_Category%3A1 [accessed on April 15, 2015].

951 Open Society Justice Initiative right to information requests filed with the PGR, No.1700187314; and with SEGOB, No. 400211714; both filed in July 2014.

952 Information obtained by the Open Society Justice Initiative after challenging the response of the Ministry of Interior to the right to information request 400137514. IFAI's order relates to Docket RDA2555/14.

953 See administrative decree A/024/08 that creates FEVIMTRA, published in the *Federal Official Gazette* on January 31, 2009, available at: www.pgr.gob.mx/Servicios/Normateca/Documentos/ACUERDOS/08/A-024-08.pdf [accessed on April 25, 2015].

954 See for example: Ministry of Foreign Affairs, "Informe del primer año de labores de la Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas," *Boletín Informativo*, June 18, 2009, available at: http://sre.gob.mx/sre-docs/dh/docsdh/boletines/2009/BOLETiNDGDH129.pdf.

955 See previous text box, "Achieving Arrests in a Case of Rape and Torture by the Military."

956 *Joint report presented by Mexican civil society organizations on the occasion of the second Universal Periodic Review of*

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Mexico, March 4, 2013, para. 19, available at: www.tlachinollan.org/wp-content/uploads/2013/07/UPR-Join-report-mexico.pdf [accessed on April 25, 2015].

957 The organization Equis notes that an obstacle to FEVIMTRA's investigation of violence against women and human trafficking lies in potential overlapping jurisdictions with other investigation authorities, within the PGR in organized crime cases and also with prosecutions at state level. See: *Informe elaborado por Equis: Justicia para las Mujeres*, México - Examen Periódico Universal (EPU) -Consejo de Derechos Humanos, Sesión 17° de EPU, October 23, 2013, p. 3, available at: https://epumexico.files.wordpress.com/2013/07/epu-equis-2013.pdf [accessed on April 25, 2015].

958 See the text box "Arbitrary Use of Force at Atenco" in chapter three.

959 Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico, document CEDAW/C/MEX/CO/6, August 25, 2006, paras. 14 and 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fMEX%2fCO%2f6&Lang=en [accessed on April 25, 2015].

960 Recommendation No.38/2006 of the National Human Rights Comission, pages 5, 23-24 and 35, available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2006/REC_2006_038.pdf [accessed on April 25, 2015].

961 As a presidential candidate, Peña Nieto defended his decision to break up the protest, but pledged that crimes by police would be prosecuted. See: "Atenco, el tema que 'encendió' a la Ibero y originó #YoSoy132," CNN Mexico, June 4, 2012, available at: http://mexico.cnn.com/nacional/2012/06/04/atenco-el-tema-que-encendio-a-la-ibero-y-origino-yosoy132 [accessed on April 5, 2015]. State and federal prosecutors have failed to bring charges against the perpetrators commensurate with the severity of the crimes. Very few officers have been charged with offenses at all. See: Amnesty International, *Mexico: Briefing to the UN Committee on the Elimination of Discrimination Against Women*, July 2012, p. 13, available at: www.amnesty.org/download/Documents/20000/amr410412012en.pdf [accessed on April 5, 2015]. See also: *Joint report presented by Mexican civil society organizations on the occasion of the second Universal Periodic Review of Mexico*, March 4, 2013, para. 33, available at: www.tlachinollan.org/wp-content/uploads/2013/07/UPR-Join-report-mexico.pdf [accessed on April 25, 2015]. Survivors of sexual violence at Atenco, represented by Centro Prodh and the Center for Justice and International Law (CEJIL), are pursuing justice through the Inter-American system.

962 Documents on file with the Open Society Justice Initiative.

963 See the following chapter for further detail.

964 Presidential decree that creates the Social Prosecution, published in the *Federal Official Gazette* on September 6, 2011, available at: www.dof.gob.mx/nota_detalle.php?codigo=5207985&fecha=06/09/2011 [accessed on April 25, 2014].

965 Organic Statute of the Social Prosecution, published in the *Federal Official Gazette* on February 24, 2012, available at: http://dof.gob.mx/nota_detalle.php?codigo=5235253&fecha=24/02/2012 [accessed on April 25, 2015].

966 Lauren Villagran, The Victims' Movement in Mexico, Wilson Center Working Paper Series on Civic Engagement and Public Security in Mexico, August 2013, p. 18, available at: http://wilsoncenter.org/sites/default/files/victims_mexico_villagran.pdf [accessed on March 20, 2015].

967 "Las victimas de PROVICTIMA, otro engaño del sexenio," Proceso, October 6, 2012, available at: www.proceso.com.mx/?p=321882 [accessed on December 28, 2015]. This is a shortened version of the report available in the printed version of *Proceso*.

968 Ibid.

969 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 88-91.

970 Lucha Castro, coordinator of the Center for Women's Human Rights (*Centro de Derechos Humanos de las Mujeres*) in Chihuahua, quoted in: "Fracaso total de la procuraduría que atiende a quienes sufren delitos: ONG," *La Jornada*, May 3, 2012, available at: www.jornada.unam.mx/2012/05/03/index.php?section=politica&article=015n2pol&partner=rss [accessed on April 25, 2015].

971 See: "Third to Fifth Transitory provision of the Decree creating the Executive Commission of Attention to Victims," published in the *Federal Official Gazette* on January 1, 2014, available at: http://dof.gob.mx/nota_detalle.php?codigo=5329188&fecha=08/01/2014 [accesed on April 25, 2015].

972 During the "Diálogo por la Paz" (Peace Dialogue) between President Calderón and the *Movimiento por la Paz con Justicia y Dignidad*, President Calderón expressed openness to discussing a new Victims' Law and reparations mechanisms. Transcript available at: http://calderon.presidencia.gob.mx/2011/06/dialogo-entre-el-presidente-y-el-movimiento-por-la-paz-nota [accesed on March 20, 2015]. After Congress passed a draft Victims' Law, a dispute emerged over the timeliness of the executive's comments on the bill. Near the end of his term, the president refused to publish the law in the *Federal Official Gazette* and filed a constitutional challenge (*controversia constitucional*) over the matter with the Supreme Court of Justice. President-elect Peña Nieto entered into a political agreement with Congress (*Pacto por México*) on a range of issues, including approval of the Victims' Law. See: Commitment 27, Agreements for a Society of Rights and Freedoms, Pact for Mexico, available at: http://pactopormexico.org/acuerdos [accessed on April 25, 2015]. He withdrew the constitutional challenge immediately upon taking office and the law took effect in January 2013. See: Judicial decree on the withdrawal of constitutional challenge 68/2012, December 6, 2012, available at: www.scjn.gob.mx/PLENO/LASTCC_acciones_inconstitucional/Acciones%20Incostitucional/DICIEMBRE/20121210/MI_ContConst-68-2012.pdf [accessed on April 20, 2014]. Decreto por el que se expide la Ley General de Víctimas, January 9, 2013, available at: http://dof.gob.mx/nota_detalle.php?codigo=5284359&fecha=09/01/2013.

973 "Promulga Peña Nieto la ley de víctimas; Sicilia celebra ese profundo gesto democrático," *La Jornada*, January 10, 2013, available at: www.jornada.unam.mx/2013/01/10/politica/002n1pol [accessed on April 30, 2015]; and "ONU celebra la promulgación de la Ley de Víctimas," *Excélsior*, January 10, 2013, available at: www.excelsior.com.mx/2013/01/11/nacional/878912 [accessed on April 30, 2015].

974 See, for example, the 2013 and 2014 hearings of Mexico at the IACHR. See also, paragraphs 212, and 245-253 of Mexico's report under Article 29, paragraph 1, of the International Convention for the Protection of All Persons from Enforced Disappearance, document CED/C/MEX/1, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en. A commissioner of the Executive Commission of the Attention of Victims attended the 8th session of the Committee on Enforced Disappearances, held in Geneva on February 2014 as part of the Mexican Delegation. In his intervention, the commissioner stated that the new legal and institutional framework on victim's rights contributed to Mexico's international obligations on enforced disappearances. Representatives of the Open Society Justice Initiative were present.

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975 State report to the UN Committee on Enforced Disappearances, CED/C/MEX/1, April 17, 2014, paras. 249-251, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2fC%2fMEX%2f1&Lang=en.

976 See *Final Report of the Truth Commission of Guerrero*, p. 88, available at: http://congresogro.gob.mx/files/InformeFinalCOMVERDAD.pdf [accessed on April 30, 2015].

977 Regulations available at: www.dof.gob.mx/nota_detalle.php?codigo=5372628&fecha=28/11/2014.

978 Press release of civil society organizations, available at: http://cmdpdh.org/wpcontent/uploads/2014/05/CP-Rechazo-a-reglamento-de-LGV.pdf.

979 Regulation of the General Law of Victims, Forth Transitory Article, published in the Diary of the Federation on November 28, 2014.

980 See Diary of the Federation, June 4, 2015, *Modelo Integral de Atención a Victimas*, available at: www.dof.gob.mx/nota_detalle.php?codigo=5395286&fecha=04/06/2015.

981 Lineamientos para la transmisión de información al Registro Nacional de Víctimas, published in the *Federal Official Gazette*, available at: http://dof.gob.mx/nota_detalle.php?codigo=5382843&fecha=20/02/2015 [accessed on April 30, 2015].

982 Victims' Law, Article 85.

983 The open call for the election of commissioners was issued on August 28, 2014, while the deadline to present submissions was September 26, 2014.

984 Open Society Justice Initiative interview with Julio Herández Barros, Commissioner of the Executive Commission of Attention to Victims, Mexico City, January, 2014.

985 "Víctimas, olvidadas por la CEAV," *El Universal*, February 1, 2015, available at: www.eluniversal.com.mx/periodismo-datos/2015/-articulos-100943html-100943.html [accessed on April 25, 2015].

986 See interpretation of Article 79 Section V of the General Victims Law and of Article 16 Section XV of the organic regulations of CEAV at: "La CEAV y su decisión de revictimizar a las víctimas," *Animal Político*, December 22, 2014, available at: www.animalpolitico.com/blogueros-verdad-justicia-reparacion/2014/12/22/la-ceav-o-el-hecho-de-revictimizar-las-victimas [accessed on April 30, 2015].

987 See: Minutes of the August 5, 2014 session of the Plenary of the Commission available at: www.ceav.gob.mx/wp-content/uploads/2014/04/AO-44.pdf.

988 The ten states were Jalisco, the State of Mexico, Coahuila, Michoacán, Morelos, Nuevo León, San Luis Potosí, Tlaxcala, Veracruz, and Zacatecas. See: CEAV press release 002/2016, January 14, 2016, available at: www.ceav.gob.mx/2016/01/fallan-a-la-gente-los-estados-que-no-han-creado-sus-comisiones-de-atencion-a-victimas-ceav.

989 In November 2014, in response to a request for information concerning the overall number of cases registered in the National Registry of Victims, the commission returned a document with all registered cases classified by "crime." CEAV document dated November 11, 2014 in response to right-to-information request 0063300022614.

990 Victims' Law, Article 9.

991 Victim's Law, Article 6, section XVII and XIX.

992 Summary of Hernández's remarks available in: Committee on Enforced Disappearances, Eighth session, Summary record of the 121st meeting, document CED/C/SR.121, para. 26, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CED%2FC%2FSR.121&Lang=en.

993 Victims' Law, Article 5.

994 Open Society Justice Initiative interview with Julio Herández Barros, Commissioner of the Executive Commission of Attention to Victims, Geneva, February 2, 2015.

995 See the section above on rhetorical foundations of impunity.

996 Victims' Law, Article 93, section IV. Legal provisions on the rights of disappearance victims are found in Articles 61(I), 91 and 108.

997 Right to information request to the Executive Commission, No. 63300028814 and response dated January 7, 2015. In in its reply, CEAV only provided a link to a search protocol for disappeared or missing persons that had been issued by PROVÍCTIMA.

998 CEAV press release, January 31, 2015, available at: www.ceav.gob.mx/2015/01/participara-la-ceav-en-sesion-del-el-comite-de-naciones-unidas-contra-las-desapariciones-forzadas. Leaders of the National Human Rights Commission had long been criticized for participating in such hearings as members of the government delegation, but newly selected CNDH President Luis Raúl González Pérez attended the February 2015 meeting of UNCED separately from the delegation.

999 *Proyecto de Ley sobre Personas Desaparecidas*, available at: www.ceav.gob.mx/wp-content/uploads/2015/03/2015-03-18-LEY-GENERAL-SOBRE-PERSONAS-DESAPARECIDAS.pdf.

1000 On February 3, 2015, in a meeting held in Geneva after the first review of Mexico by the UN Committee on Enforced Disappearance, victims and civil society organizations insisted on the unification and coordination of government efforts to amend the legal framework on disappearances, given that the Interior Ministry, Ministry of Foreign Affairs, Congress, and CEAV were enganging in separate efforts on the matter. Open Society Justice Initiative notes of the meeting on file, February 3, 2015.

1001 CEAV document dated January 7, 2015, obtained in response to Open Society Justice Initiative right to information request number 63300028814.

1002 The case concerns a doctor, Oscar Valle, who was abducted from his house in Veracruz by members of the Navy in September 24, 2011 and accused of being the doctor of the organized crime group Los Zetas. He was held in prison for 21 months before a federal judge issued an acquittal judgment in his criminal trial. The judge ruled that because the Navy had taken eight hours to take Valle to prosecutors, Navy officials had violated his rights to due process and personal liberty. CEAV authorized the payment of compensation and non-monetary remedies for violations of due process and personal liberty. See the public version of the session of the CEAV plenary authorizing the payment of reparations, January 21, 2015, available at: www.ceav.gob.mx/wp-content/uploads/2014/04/3-SO-2015.pdf [accessed on April 25, 2015].

1003 Reparations were ordered not for torture, but for violations of rights to due process and personal liberty. For the victim's direct and detailed account of alleged torture by the Navy, see: "El médico torturado por la Marina," *El Universal*, December 13, 2014, available at: www.eluniversal.com.mx/nacion-mexico/2014/impreso/el-medico-torturadopor-la-marina-221155.html; "Torturado en base naval será indemnizado," *El Universal*, January 28, 2015, available at: www.eluniversal.com.mx/nacion-

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mexico/2015/impreso/torturado-en-base-naval-sera-indemnizado-222614.html; and: "Denuncia médico que fue torturado por marinos durante una semana," *La Jornada*, April 13, 2015, available at: www.jornada.unam.mx/2015/04/13/politica/016n2pol [all accessed on April 25, 2015].

1004 See, for instance, the record of the 43rd ordinary session of CEAV, July 29, 2014, where Commissioner Carlos Ríos suggested that the plenary (i) accept cases in which state authorities had failed to create a local victims law, and (ii) acknowledge internal displacement. The plenary approved neither proposal. The record is available at: www.ceav.gob.mx/wp-content/uploads/2014/04/AO-43.pdf.

1005 *El maestro Carlos Ríos Espinosa presentó su renuncia al cargo de Comisionado de la CEAV*, January 30,2015, available at: www.ceav.gob.mx/2015/01/el-maestro-carlos-rios-espinosa-presento-su-renuncia-al-cargo-de-comisionado-de-la-ceav; and "Renuncia integrante de la Comisión de Atención a Víctimas por falta de claridad," *La Jornada*, February 1, 2015: www.jornada.unam.mx/ultimas/2015/02/01/renuncia-integrante-de-la-comision-de-atencion-a-victimas-por-falta-de-claridad-5732.html [accessed on April 25, 2015].

1006 "Por condicionamientos del gobierno renuncia director general del CEAV," *La Jornada*, April 5, 2015, available at: www.jornada.unam.mx/2015/04/05/politica/005n2pol [accessed on April 25, 2015].

1007 For example, former federal Attorney General Murillo Karam explained his office's late intervention in the investigation of the disappearance of the 43 Ayotzinapa students by saying that state prosecutors were investigating, and federal authorities could not intervene before jurisdiction was officially transferred. See: *Todo personal Entrevista Murillo Karam*, Proyecto 40 Informativos, December 11, 2014, available at: www.youtube.com/watch?v=2wnoiVY8Skk.

1008 See: Ana Laura Magaloni Kerpel and Carlos Elizondo Mayer-Sierra, *La Justicia de Cabeza: La Irracionalidad Del Gasto Público En Tribunales*, CIDE, 2011, available at: www.cide.edu/cuadernos_debate/Poder_Judicial_Ana_Magaloni_Carlos_Elizondo.pdf.

1009 The account of this case is based on Open Society Justice Initiative interviews in Oaxaca, and Mexico City in September 2014 and early 2015 with the victims, the victims' representative, and officers at the PGR working on the case.

1010 Organic Law of the Judicial Branch of the Federation, Article 50.

1011 Criminal Procedure Code, Article 10. The constitutional and legal amendments to the criminal justice system enacted on June 18, 2008 granted broad powers and widened the "exception statute" for the investigation and prosecution of organized crime and drug trafficking. This framework contributed to military and prosecutorial abuses in furtherance of the security strategy. Article 16 of the Constitution has a broad definition of organized crime: the *de facto* organization of three or more persons to perpetrate crimes on a permanent or repeated basis. Even if this definition requires the state to prove the existence of an organized structure, it has been criticized for been too expansive, allowing open interpretation or who may be members of organized crime. For example, critics have said that the definition of organized crime in Mexico's Constitution does not comply with international standards, because it defines organized crime by a partial set of criteria, disregarding other elements of the definition set forth in the Convention against Transnational Organized Crime; in turn this means that suspects in Mexico are "subject to wide and indiscriminate criminal prosecutions." See: Mariclaire Acosta, "El desafío de la delincuencia organizada en México," *Folios*, available at: www.revistafolios.mx/dossier/el-desafio-de-la-delincuencia-organizada-en-mexico. Specialists have warned that the vague definition of organized crime and lack of clarity with regard to the burden of proof has led to abuses. See: "5 puntos para entender la reforma al sistema de justicia penal mexicano," *Animal Político*, March 17, 2011, available at: www.animalpolitico.com/2011/03/cinco-puntos-para-entender-la-reforma-al-sistema-de-justicia-penal-mexicano. See also: Gustavo Fondevila and Alberto Mejia Vargas, *Reforma Procesal Penal: Acusatorio y Delincuencia Organizada*, 2010, available at: www.juridicas.unam.mx/publica/librev/rev/refjud/cont/15/pjn/pjn3.pdf.

1012 See the section below on inadequate substantive law. The law on organized crime makes specific reference to the following offenses: (i) crimes against public health, (ii) terrorism, (iii) arms stockpiling and trafficking, (iv) copyright crimes, (v) crimes related to hydrocarbons, (vi) currency counterfeiting, (vii) organs and human trafficking, (vii) trafficking undocumented persons, (viii) transactions involving illegally-sourced funds, (ix) car theft, (x) the corruption of minors (pornography, sexual tourism, assault, pimping), and (xii) kidnapping. Federal Law against Organized Crime, Article 2.

1013 See "Protocol for the investigation of killings related with organized crime" (*Protocolo de Investigación de Homicidio en relación con la delincuencia organizada*), available at: www.secretariadoejecutivo.gob.mx/docs/pdfs/ConcertacionFASP2015/INFORMACION%20COMPLEMENTARIA/6%20PROTOCOLO_INVESTIGACION_DELITO_HOMICIDIO_EN_RELACION_DELINCUENCIA_ORGANIZADA.pdf.

1014 See: section on legal framework, below.

1015 Open Society Justice Initiative interview with Coahuila Deputy Prosecutor for Human Rights, Capacitation, and Projects Norberto Ontiveros Leza, Saltillo, Coahuila, January 10, 2014.

1016 Open Society Justice Initiative interview with Antonio Esparza, from the Center of Human Rights Juan Gerardi and families of victims of disappeared persons, Torreón, Coahuila, January 9, 2014.

1017 Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, September 2015, pp. 48-50, available at: www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state.

1018 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, pp. 48-49.

1019 See: discussion of the Tanhuato incident in chapter three.

1020 Human Rights Watch, *Police Killings in Michoacán*, October 28, 2015, available at: www.hrw.org/news/2015/10/28/mexico-police-killings-michoacan.

1021 See: section above, "Resisting Accountability for the Military."

1022 The Organic Law of the PGR establishes a system of specialized administrative units for the investigation and prosecution of crimes that relate to the type of crime, as well as a system of regional offices. See: Article 11 of the Organic Law of PGR, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LOPGR_241214.pdf.

1023 Two of these are within the Deputy Attorney General's Office for Federal Crimes and one in the General Inspection. See section above on politicized forensics.

1024 See: *Acuerdo A/101/15 por el que se crea la Unidad Especializada en Investigación del Delito de Tortura y se establecen sus atribuciones*, available at: www.dof.gob.mx/nota_detalle.php?codigo=5413189&fecha=27/10/2015. See chapter five for further discussion of this change.

1025 In 2009, the PGR issued an Organizational Handbook. However, in the intervening years, the structure of the PGR has changed in important ways. There is no updated version of the handbook reflecting the PGR's current structure. The 2009 handbook is available at: www.diputados.gob.mx/LeyesBiblio/regla/n157.pdf [accessed on April 30, 2015]. The Regulations of the Organic

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Law of the PGR and the Organic Law itself also set forth some jurisdiction rules.

1026 Regulations of the Organic Law of the PGR, Article 15.

1027 Open Society Justice Initiative telephone interview with a lawyer within the PGR's Specialized Unit for the Search of Disappeared Persons, July 18, 2014.

1028 Regulations of the Organic Law of the PGR, Article 15.

1029 *Acuerdo A/ 101 /13 del Procurador General de la República, por el que se crea la Agencia de Investigación Criminal y se establecen sus facultades y organización*, available at: http://dof.gob.mx/nota_detalle.php?codigo=5315279&fecha=25/09/2013.

1030 According to the Interior Ministry's Handbook of General Organization, a "General Directorate on Stategies for the Attention of Human Rights," created on June 25, 2015, is in charge of collaborating with federal, state, and other authorities, including the Victim's Commission and PGR. The handbook is available at: http://dof.gob.mx/nota_detalle.php?codigo=5398023&fecha=25/06/2015.

1031 See section above on resisting accountability for the military.

1032 Open Society Justice Initiative interview with two senior PGR officials, Mexico City, September 25, 2014.

1033 See: "Reconoce PGR caos en casos de tortura," 24 Horas, November 26, 2013, available at: www.24-horas.mx/reconoce-pgr-caos-en-casos-de-tortura; and "Entrevista Renato Sales Heredia," *Foro Jurídico*, January 6, 2014, available at: www.forojuridico.org.mx/entrevista-renato-sales-heredia [both accessed on April 27, 2015].

1034 See, for example, the Pact for Mexico, Compromise 75, available at: http://pactopormexico.org/PACTO-POR-MEXICO-25.pdf.

1035 Open Society Justice Initiative interview with Ernesto Cardenas, Insyde, Mexico City, September 25, 2014.

1036 See: *Todo personal Entrevista Murillo Karam*, Proyecto 40 Informativos, December 11, 2014, available at: www.youtube.com/watch?v=2wnoiVY8Skk. See also, *La Omisión*, Punto de Partida, Noticieros Televisa, minutes 3:40 and 4:55, November 26, 2014, available at: http://noticieros.televisa.com/programas-punto-de-partida/1411/omision.

1037 U.S. Department of State, *Mexico 2013 Human Rights Report*, pp. 2-3, available at: www.state.gov/documents/organization/220667.pdf.

1038 Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, September 2015, p. 50 and endnote 252, available at: www.opensocietyfoundations.org/reports/broken-justice-mexico-s-guerrero-state.

1039 *Informe de la Fiscalía General del Estado sobre la investigación relacionada con los hechos acontecidos la noche del 26 y primeras horas del 27 de septiembre de 2014 en la ciudad de Iguala de la Independencia, Guerrero*. The document, on file with the Open Society Justice Initiative, was available in the website of the Fiscalía of Guerrero until the end of January 2015, but has since been removed.

1040 Transcript of PGR press conference held on January 27, 2015, available at: www.pgr.gob.mx/prensa/2007/bol15/Ene/b01715.shtm [accessed on February 24, 2015].

1041 See the section above on resisting accountability for the military.

1042 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, p. 58, available at: www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored.

1043 For background on the case see: "Ausencia de la Federación en el caso del asesinato de Bety Cariño y Jyri Jaakkola: David Peña en CNN," CNN, June 1, 2015, available at: http://aristeguinoticias.com/0106/mexico/ausencia-de-la-federacion-en-el-caso-del-asesinato-de-bety-carino-y-jyri-jaakkola-david-pena-en-cnn.

1044 See earlier section on obscured information on atrocities and justice.

1045 Open Society Justice Initiative phone interview with Ana Lorena Delgadillo, director of the *Fundancion para la Justicia*, March 7, 2014.

1046 Open Society Justice Initiative interview with Blanca Martínez from Fray Juan de Larios, and Antonio Esparza, from the Center of Human Rights Juan Gerardi, Torreón, Coahuila, January 9, 2014.

1047 Open Society Justice Initiative interview with Ernesto Cardenas, Insyde, Mexico City, September 25, 2014.

1048 See the section on "Militarized Policing" in chapter 4.

1049 See the section on "Symbolic Initiatives and Reforms" in chapter 4, and for background on Dirty War investigations and prosecutions, chapter 1.

1050 The 2008 constitutional amendments that introduced the adversarial system are available at: http://dof.gob.mx/nota_detalle.php?codigo=5046978&fecha=18/06/2008 [accessed on April 23, 2015]. See also the National Criminal Procedure Code (*Código Nacional de Procedimientos Penales*) that implements the NSJP and was published in the *Federal Official Gazette* on March 5, 2014, available at: http://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP_120116.pdf [accessed on April 23, 2015]. This new unified, national code is to replace the federal and all state-level criminal procedure codes.

1051 Ley Federal para Prevenir y Sancionar la Tortura, available at: www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf.

1052 Articles 16 and 20, B, VIII of the Federal Constitution.

1053 Articles 264 and 357 of the National Criminal Procedure Code.

1054 Article 20, B, II of the Federal Constitution and Articles 97 and 114 of the National Criminal Procedure Code. See also Article 8 of the Federal Torture Law.

1055 Article 285 of the Federal Criminal Procedure Code (*Código Federal de Procedimientos Penales*), available at: www.diputados.gob.mx/LeyesBiblio/pdf/7_291214.pdf [accessed on April 23, 2015].

1056 Articles 259 and 320 of the National Criminal Procedure Code.

1057 In its Concluding Observations, the Committee Against Torture observed in 2012 that even in jurisdictions that had adopted the adversarial system, and despite constitutional guarantees about the inadmissibility of evidence obtained through violation of fundamental rights: "[S]ome courts continue to accept confessions that have apparently been obtained under duress or through torture by invoking the principle of 'procedural immediacy.'" See United Nations Committee Against Torture, Concluding observations on the combined fifth and sixth periodic reports of Mexico as adopted by the Committee at its forty-ninth session (29 October–23 November 2012), CAT/C/MEX/CO/5-6, at para 15, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CAT/C/MEX/CO/5-6&Lang=En [accessed on May 22, 2014].

1058 Subcommittee on Prevention of Torture, *Report on the visit of the Subcommittee on Prevention of Torture and Other Cruel,*

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Inhuman or Degrading Treatment or Punishment to Mexico, May 31, 2010, CAT/OP/MEX/1, para. 144, available at: www.un.org/Docs/journal/asp/ws.asp?m=CAT/OP/MEX/1. [accessed on May 22, 2014]

1059 Article 17 of the National Criminal Procedure Code.

1060 Article 113, section XI of the National Criminal Procedure Code.

1061 Article 113, section V of the National Criminal Procedure Code.

1062 Article 113, section VI of the National Criminal Procedure Code.

1063 Article 16, para 6, of the Political Constitution of the Mexican United States and Article 150 of the National Criminal Procedure Code.

1064 Protocolo de actuación para quienes imparten justicia en asuntos que involucren hechos constitutivos de tortura y malos tratos, Supreme Court of Justce, pp. 81-82, available at: www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/Protocolo_tortura_electronico_actualizacion.pdf [accessed April 20, 2015].

1065 *Diagnóstico y propuestas de rediseño institucional de servicios periciales y forenses*, Instituto Mexicano de Derechos Humanos y Democracia, A.C., pp. 20-22, January 2014 [accessed on April 23, 2015].

1066 The exclusionary rule is set forth in Articles 8 and 9, and the reporting requirement in Article 11 of the Federal Law on Torture. See: Federal Law on Torture (*Ley Federal para Prevenir y Sancionar la Tortura*), available at: www.diputados.gob.mx/LeyesBiblio/pdf/129.pdf.

1067 General laws are directly applicable at federal, state, and municipal levels and establish minimum standards that local legislators must meet when passing local legislation. See judicial precedents P. VII/2007 and P./J. 5/2010 in the *Judicial Gazette*: http://sjf.scjn.gob.mx/. However, in practice, general laws have not guaranteed strong state laws. The Victims' Law of February 2014 was a general law, and many subsequent state laws diverge in significant ways from the federal statute. See: Instituto de Justicia Procesal Penal, *La Ley General de Víctimas y su armonización en los estados*, September 30, 2013, available at: www.presunciondeinocencia.org.mx/justicia/item/20-la-ley-general-de-victimas-y-su-armonizacion-en-los-estados.

1068 This was one of the measures proposed by Enrique Peña Nieto after the national and international outcry over the enforced disappearance of 43 Ayotzinapa students in September 2014. See: *Anuncia el Presidente Enrique Peña Nieto diez medidas para enfrentar los desafíos del país* at: www.gob.mx/presidencia/prensa/anuncia-el-presidente-enrique-pena-nieto-diez-medidas-para-enfrentar-los-desafios-del-pais.

1069 These amendments were published in the *Federal Official Gazette* on July 10, 2015, available at: www.dof.gob.mx/nota_detalle.php?codigo=5400163&fecha=10/07/2015.

1070 See further discussion of independent forensics, below.

1071 The Mexican Commission for the Defense and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*) and the World Organization against Torture (*Organización Mundial Contra la Tortura*, OMCT) have elaborated minimum requirements that the general law on torture must meet. See: www.cmdpdh.org/publicaciones-pdf/cmdpdh_propuestas_para_la_conformacion_de_una_ley_eficaz_de_aplicacion_nacional_sobre_tortura.pdf.

1072 Press release 399/2015 of PGR on the approval of the protocol, August 20, 2015, available at: www.pgr.gob.mx/sala-de prensa/Lists/Boletines%20tipo%20anuncios/DispForm.aspx?ID=319&ContentTypeId=0x0104002660D95F8868CC4F98516638CCD891EAwww.pgr.gob.mx/sala-de-prensa/Lists/Boletines%20tipo%20anuncios/DispForm.aspx?ID=319&ContentTypeId=0x0104002660D95F8868CC4F98516638CCD891EA. An excerpt of the protocol was published in the Federal Official Gazette on September 23, 2015, available at: http://dof.gob.mx/nota_detalle.php?codigo=5409181&fecha=23/09/2015. The full content of the protocol is available at: www.pgr.gob.mx/que-es-la pgr/PGR_Normateca_Sustantiva/Protocolo%20Tortura.pdf.

1073 See: PGR, *Acuerdo A/085/15 mediante el cual se establecen las Directrices institucionales que deberán seguir los agentes del Ministerio Público de la Federación, los peritos en medicina y psicología y demás personal de la Procuraduría General de la República, para los casos en que se presuma la comisión del delito de tortura*, available at: http://dof.gob.mx/nota_detalle.php?codigo=5410519&fecha=05/10/2015.

1074 The new regulation A/085/15 replaces regulations A/057/2003 and C/002/13, which are discussed in chapter four. (See the section on politicized forensics and expert services.)

1075 See: PGR, *Acuerdo A/101/15 por el que se crea la Unidad Especializada en Investigación del Delito de Tortura y se establecen sus atribuciones*, October 27, 2015, available at: www.dof.gob.mx/nota_detalle.php?codigo=5413189&fecha=27/10/2015. Under the agreement, allegations of torture against PGR personnel remain under the jurisdiction of the PGR General Inspector's Office.

1076 All of them available in the *Federal Judicial Gazette* (*Semanario Judicial de la Federación*), available at: http://200.38.163.178/sjfsist/Paginas/tesis.aspx.

1077 Judicial precedents XXVII.1o.(VIII Región) J/1 (10a.), XXVI.5o.(V Región) 7 P (10a.), 1a. CCVII/2014 (10a.), 1a. LVII/2015 (10a.), and 1a. LIV/2015 (10a.).

1078 Judicial precedents P. XXI/2015 (10a.), P. XXII/2015 (10a.) and 1a. CCV/2014 (10a.).

1079 Judicial precedents I.8o.P.5 P (10a.), XVII.11 P(10a.), III.2o.P.85 P (10a.), and I.3o.P.33 P (10a.)

1080 The ruling came in the case of Israel Arzate. See: Judgment of amparo procedure 703/2012 and non-binding judicial precedents: 1a. CCVI/2014 (10a.), 1a. CCVII/2014 (10a.), 1a. CCV/2014 (10a.), 1a. CCIV/2014 (10a.). All available at: http://sjf.scjn.gob.mx. For background on the Arzate case, see the "Attack and Course of Conduct" section of chapter three.

1081 The court threw out the case citing the Criminal Procedure Code of the Federal District, finding that the forced confession was inadmissible as evidence because it was obtained through torture; pursuant to Article 641 of the Federal District's Criminal Procedure Code, a convicted person must be released when the conviction is fundamentally based on a confession obtained through torture. See: *Ordena Primera Sala inmediata libertad de Alfonso Martín del Campo Dodd, al comprobarse la tortura de la que fue objeto*, press release of the Supreme Court No. 55/2015, available at: www2.scjn.gob.mx/red2/comunicados/comunicado.asp?id=3056 [accessed on March 18, 2015].

1082 See judgments of constitutional challenges (*acciones de inconstitucionalidad*) 29/2012 (www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=138009) and 22/2013 (www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=156333) on the issue.

1083 See discussion on the correlation between *arraigo* and the incidence of torture in the "Attack and Course of Conduct" section

of chapter three. *Arraigo* at state level would have been abolished at state level in any case, albeit with some further delay. Its application in the states was only possible because, despite the clear constitutional language establishing it only at federal level, 18 states incorporated it into their state criminal procedure codes. With implementation of the unified national criminal procedure code, passed in March 2014, all of these state codes were on their way to being supplanted no later than 2016 in any case. See: *Otros referentes para pensar el país: el uso e impactos del arraigo en México*, FUNDAR, April 2014, available at: http://fundar.org.mx/otrosreferentes/documentos/DocArraigoOK.pdf [accessed on April 20, 2015].

1084 "Disminuye número de arraigos: PGR," *Crónica*, March 27, 2014, available at: www.cronica.com.mx/notas/2014/824456.html [accessed on June 6, 2014].

1085 On April 14, 2015, the Supreme Court ruled that until the adversarial system is fully implemented, Congress has the authority to regulate *arraigo* and, therefore, its use for grave crimes at federal level is valid. Under the new system, *arraigo* will only be possible in organized crime cases. See: *Amparo Directo en Revisión* 1250/2012, April 14, 2015, available at: www.scjn.gob.mx/PLENO/Lista%20Oficial%20con%20Resolutivos/39%20-%2014%20de%20abril%20de%202015.pdf [accessed on April 20, 2015].

1086 See the discussion on *arraigo* in the "Attack and Course of Conduct" section of chapter three.

1087 Open Society Justice Initiative meetings with members of the federal judiciary, Mexico City, October, 2015.

1088 *Protocolo de actuación para quienes imparten justicia en asuntos que involucren hechos constitutivos de tortura y malos tratos*, Supreme Court of Justice, December 2014, available at: www.sitios.scjn.gob.mx/codhap/sites/default/files/archivos/paginas/Protocolo_tortura_electronico_actualizacion.pdf [accessed April 20, 2015].

1089 Amnesty International, *Out of Control: Torture and Other Ill-Treatment in Mexico*, September 2014, p. 21.

1090 For discussion of the torture law, see the "Legal Framework" section of chapter four.

1091 For example, between 2003 and 2008, the PGR implemented a program of human rights training that reached 27,023 individuals, mainly from the prosecutors' offices, the Federal Agency of Investigation, experts, evaluators (*peritos*), administrative staff, and municipal officials. See: Mexico's report to the UN Human Rights Council, Universal Periodic Review, A/HRC/WG.6/4/MEX/1, November 10, 2008, footnote 32, available at: www.ohchr.org/EN/HRBodies/UPR/PAGES/MXSession4.aspx [accessed on March 29, 2015].

1092 As of May 2015, the State of Mexico, Quintana Roo, Tabasco, and Michoacán did not have any legal definition of enforced disappearance. See: "Vacíos legales en materia de tortura y desapariciones," *El Universal*, May 28, 2015, available at: www.eluniversal.com.mx/entrada-de-opinion/articulo/santiago-concuera/nacion/2015/05/28/vacios-legales-en-materia-de-tortura.

1093 See: *Colectivos de familiares y organizaciones de la sociedad civil exigen un proceso de creación de Ley General sobre Desaparición Forzada y Desaparición por particulares que articule e integre las necesidades de las víctimas* available at: http://amnistia.org.mx/nuevo/2015/08/13/colectivos-de-familiares-y-organizaciones-de-la-sociedad-civil-exigen-un-proceso-de-creacion-de-ley-general-sobre-desaparicion-forzada-y-desaparicion-por-particulares-que-articule-e-integre-las-neces/?o=n.

1094 See: *La ONU-DH hace un llamado para que la ley general sobre personas desaparecidas incluya las legítimas demandas de las víctimas*, available at: www.idheas.org.mx/wp-content/uploads/2015/08/150829_ComPrensa_D%C3%ADaIntlDesForz_MEX.pdf.

1095 Amnesty International, *Treated with Indolence: The State's Response to Disappearances in Mexico*, January 2016, pp. 12 and 48, available at: www.amnesty.org/en/documents/amr41/3150/2016/en [accessed on January 15, 2016].

1096 Open Society Justice Initiative notes of a meeting held with civil society organizations after the review of the UN Committee on Enforced Disappearances on February 3, 2015.

1097 An excerpt of the protocol was published in the *Federal Official Gazette* on September 23, 2015, available at: http://dof.gob.mx/nota_detalle.php?codigo=5409180&fecha=23/09/2015. The full version of the protocol is available at: http://www.pgr.gob.mx/que-es-la-pgr/PGR_Normateca_Sustantiva/Protocolo%20Desaparici%C3%B3n%20Forzada.pdf. Templates explaining the procedure are available at: www.idheas.org.mx/infografia-mecanismos-de-busqueda-inmediata-durante-las-primeras-24-y-72-horas/.

1098 PGR Regulation A/9094/15.

1099 *Acuerdo A/117/15, por el que se crea la Unidad de Investigación de Delitos para Personas Migrantes y el Mecanismo de Apoyo Exterior Mexicano de Búsqueda e Investigación y se establecen sus facultades y organización*, published in the Federal Gazette on December 18, 2015, available at: www.dof.gob.mx/nota_detalle.php?codigo=5420681&fecha=18/12/2015.

1100 See: "Envía Peña ley que desaparece a la PGR y crea Fiscalía 'autónoma,'" *Proceso*, September 23, 2014, available at: www.proceso.com.mx/?p=382887 [accessed on April 23, 2015]. President Peña Nieto's draft amendments on the *Fiscalía*, as submitted to Congress, are available at: http://gaceta.diputados.gob.mx/PDF/62/2014/sep/20140923-IX.pdf.

1101 Congress amended Articles 21 and 102 of the Constitution.

1102 Draft law, *Ley de la Fiscalía General de la República*, available at: http://gaceta.diputados.gob.mx/PDF/62/2014/dic/20141210-II.pdf [accessed on April 23, 2015].

1103 See Chamber of Deputies press release 4707, available at: http://www5.diputados.gob.mx/index.php/esl/Comunicacion/Boletines/2014/Diciembre/10/4797-Aprueba-Pleno-dictamen-para-expedir-Ley-de-la-Fiscalia-General-de-la-Republica. See also the referral of the bill by the Chamber of Deputies to the Senate, available at: http://infosen.senado.gob.mx/sgsp/gaceta/62/3/2014-12-11-1/assets/documentos/MINUTA_FISCALIA.pdf.

1104 For a skeptical interpretation of the whole initiative, see: Patrick Corcoran, *Mexico Needlessly Plans to Alter Justice Agency*, InSight Crime, October 16, 2014, available at: www.insightcrime.org/news-analysis/mexico-needlessly-plans-to-alter-justice-agency [accessed on April 24, 2015].

1105 Physicians for Human Rights, *Forensic Documentation of Torture and Ill Treatment in Mexico*, 2008, pp. 21-22.

1106 *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, Addendum, Mission to Mexico*, A/HRC/28/68/Add.3, paras. 82 (e) and (f), December 29, 2014, available at: www.ohchr.org/SP/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx. In 2014, the Special Rapporteur also issued a general report, not specific to Mexico, on the importance of severing forensic services from law enforcement. See: Forensic services must be independent from law enforcement agencies—UN Rapporteur on torture, October 21, 2014, available at: www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=15195&LangID=E#sthash.lpMJ5Ldo.9O4WiVh7.dpuf [accessed on April 23, 2015].

1107 *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, Addendum, Mission to Mexico*, A/HRC/26/36/Add.1, para. 98, April 28, 2014, available at: www.ohchr.org/EN/HRBodies/HRC/RegularSessions/

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Session26/Pages/ListReports.aspx.

1108 Full report available at: http://prensagieiayotzi.wix.com/giei-ayotzinapa#!informe-/c1exv, pp. 333, 348

1109 A/HRC/26/36/Add.3, p. 11, in reference to para. 98 of A/HRC/26/36/Add.1

1110 Organigrama, OFICINA DEL PROCURADOR GENERAL DE LA REPUBLICA, Agencia de Investigación Criminal (AIC), available at https://www.google.com.mx/url?sa=t&rct=j&q=&esrc=s&source=web&cd=5&ved=0ahUKEwiDrb3Gp9fLAhWJuoMKHcnWD4AQFgg0MAQ&url=http%3A%2F%2Ftbinternet.ohchr.org%2FTreaties%2FCED%2FShared%2520Documents%2FMEX%2FINT_CED_ARL_MEX_19343_S.pptx&usg=AFQjCNFhL6qetBoLAToMl-RA0EJaiCyKqQ [accessed March 20, 2016].

1111 The PRD bill of September 18, 2015 is available at: www.senado.gob.mx/sgsp/gaceta/63/1/2015-09-22-1/assets/documentos/Inic_PRD_Vianey_otros_Servicios_Periciales_Autonomos.pdf [accessed on January 14, 2016].

1112 The PAN bill of September 2015 is available at: www.senado.gob.mx/sgsp/gaceta/63/1/2015-09-22-1/assets/documentos/Inic_PAN_Pilar_Ortega_CPEUM.pdf [accessed on January 14, 2016].

1113 "PAN presenta iniciativa para transformar Policías," *El Universal*, November 3, 2015, available at: www.milenio.com/politica/PAN_iniciativa_seguridad-propuesta_PAN_seguridad_publica-PAN_seguridad_0_621537959.html.

1114 See Maureen Meyer, *Mexico's Police: Many Reforms, Little Progress*, Washington Office on Latin America (May 2014), available at www.wola.org/sites/default/files/Mexicos%20Police.pdf.

1115 See the "Militarized Policing" section of chapter four.

1116 See: Alejandro Hope, "Does Mando Único work?" *El Daily Post*, January 7, 2016, available at: www.eldailypost.com/opinion/2016/01/does-mando-unico-work.

1117 See: *10 medidas para mejorar la Seguridad, la Justicia y el Estado de Derecho*, available at: http://embamex.sre.gob.mx/italia/images/pdf/DerechosHumanos/10medidas.pdf.

1118 Alejandro Hope, "Municipal Police Forces are Here to Stay," *El Daily Post*, November 4, 2015, available at: www.eldailypost.com/opinion/2015/11/municipal-police-force-are-here-to-stay [accessed on January 14, 2016].

1119 Alejandro Hope, "The Politics of Police Reform," *El Daily Post*, February 1, 2016, available at: www.eldailypost.com/opinion/2016/01/the-politics-of-police-reform [accessed on February 4, 2016].

1120 Alejandro Hope, "Police reform: There Are Alternatives," *El Daily Post*, February 3, 2016, available at: www.eldailypost.com/security/2016/02/police-reform-there-are-alternatives [accessed on February 4, 2016].

1121 "El PRI busca legalizar la participación de las fuerzas armadas en tareas de seguridad," *La Jornada*, February 22, 2015, available at: www.jornada.unam.mx/2016/02/02/politica/005n1pol.

1122 Alejandro Hope, "Police reform on the horizon?," *El Daily Post*, November 5, 2015, available at: www.eldailypost.com/opinion/2015/11/police-reform-on-the-horizon [accessed on January 14, 2016]. See also: Alejandro Hope, "Police reform: There Are Alternatives," *El Daily Post*, February 3, 2016, available at: www.eldailypost.com/security/2016/02/police-reform-there-are-alternatives [accessed on February 4, 2016].

1123 Organization for Economic Cooperation and Development, *OECD DAC Handbook on Security System Reform: Supporting Security and Justice*, 2007, available at: www.poa-iss.org/RegionalOrganizations/OECD/Instruments/OECD%20SSR%20Handbook.pdf.

1124 International Association of Prosecutors, *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide*, 2014, pp. 19-20, available at: www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.

1125 Stephanos Bibas, "Prosecutorial Regulation versus Prosecutorial Accountability," *University of Pennsylvania Law Review*, Vol 157, No. 4, April 2009, pp. 991-994, available at: http://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1188&context=penn_law_review.

1126 International Association of Prosecutors, *The Status and Role of Prosecutors: A United Nations Office on Drugs and Crime and International Association of Prosecutors Guide*, 2014, available at: www.unodc.org/documents/justice-and-prison-reform/14-07304_ebook.pdf.

1127 *Guidelines on the Role of Prosecutors*, Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, September 7, 1990, available at: www.ohchr.org/Documents/ProfessionalInterest/prosecutors.pdf.

1128 For example, among best practices elaborated by the Council of Europe, there should be a "special competent body which has as its task to apply any disciplinary sanctions and measures, where they are not dealt with by a court, and whose decisions shall be controlled by a superior judicial organ, or which is a superior judicial organ itself." Principle VI.3 of Recommendation No. R (94) 12 of the Council of Europe, available at: www.legislationline.org/documents/action/popup/id/7986.

1129 Organic Law of the Prosecution, Article 21, available at: www.pgr.gob.mx/fepade/Actividades/Marco%20Legal/LOPGR%2014-06-12.pdf.

1130 See: *Manual de Organización General de la Procuraduría General de la República. (Continúa en la Octava Sección),* available at: www.dof.gob.mx/nota_detalle.php?codigo=5423436&fecha=25/01/2016.

1131 See the section on "Politicized Forensics" in chapter four.

1132 Regulation A/025/15, April 2, 2015, available at: www.dof.gob.mx/nota_detalle.php?codigo=5387672&fecha=02/04/2015 [accessed on April 28, 2015].

1133 For example, the Crown Prosecution Service of England and Wales has a transparent Victims' Right to Review Scheme that offers recourse for victims of crime to challenge decisions not to prosecute. See: www.cps.gov.uk/victims_witnesses/victims_right_to_review. The CPS also publishes data on its actual use. See: www.cps.gov.uk/victims_witnesses/victims_right_to_review/vrr_data/index.html.

1134 See: Federal Criminal Procedure Code, Article 2, sections VII and VIII and 133, and judicial precedent Tesis: 1a./J. 115/2004 from the First Chamber of the Supreme Court, April 2005. Similarly, Articles 253-258 of the new National Criminal Procedure Code set forth the procedure for prosecutors' decisions not to prosecute, and for challenging those decisions.

1135 In 2011, the Calderón administration formed a commission tasked with presenting to Congress proposals for domesticating international crimes. The Inter-Secretarial Commission on International Humanitarian Law included participation of the Defense, Navy, Interior and Foreign Affairs Ministries. As of February 2016, it remained unclear whether the Commission drafted any proposals to domesticate international crimes, and it had made no public submissions to Congress. See:

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Regulations to the Inter-Secretarial Commission on International Humanitarian Law, available at: http://dof.gob.mx/nota_detalle.php?codigo=5203489&fecha=04/08/2011.

1136 Representatives in the Chamber of Deputies put forward a bill to domesticate Rome Statute crimes, albeit leaving war crimes within military jurisdiction. See: *"Propuesta que reforma y adiciona diversas disposiciones del Código Penal Federal, del Código de Justicia Militar, de la Ley General de Salud y del Código Federal de Procedimientos Penales, a fin de adecuar nuestro marco jurídico a lo previsto por el Estatuto de Roma de la Corte Penal Internacional"* by Diputadas Omeheira López Reyna and Esmeralda Cárdenas Hernández, Partido Acción Nacional, Gaceta Parlamentaria, no.2417-I, http://gaceta.diputados.gob.mx/Gaceta/60/2008/ene/20080104-I.html#Ini20080104-1.

1137 The proposal presented in the Chamber of Deputies in March 2012 would have incorporated Rome Statute definitions of war crimes and crimes against humanity into the federal criminal code. See: *"Propuesta que reforma y adiciona diversas disposiciones del Código Penal Federal, para tipificar los delitos de crímenes de guerra y crímenes de lesa humanidad en los términos que establece el estatuto de la Corte Penal Internacional,"* Diputado Jaime Fernando Cárdenas Gracia, Partido del Trabajo, February 16, 2012, Gaceta Parlamentaria, no. 3452-IV, (3730), http://gaceta.diputados.gob.mx/Gaceta/61/2012/feb/20120216-IV.html#Iniciativa6.

1138 See: Amendments submitted by the Executive, available at: http://sil.gobernacion.gob.mx/Archivos/Documentos/2010/10/asun_2692442_20101019_1287499222.pdf. The Senate let nearly four years pass before even discussing the proposal; then in April 2014, it dismissed it with the argument that there was an "ongoing procedure to approve a federal law on the issue." See the Senate's assessment of the amendments proposed by the executive, available at: http://infosen.senado.gob.mx/sgsp/gaceta/62/2/2014-04-24-1/assets/documentos/Dict.Justicia_Militar.23_abril_14.pdf.

1139 President Peña Nieto submitted a new set of amendments, similar to Calderón's in 2010, but Congress did not act on them. See: System of Legislative Information (*Sistema de Información Legislativa*), http://sil.gobernacion.gob.mx/Librerias/pp_ReporteSeguimiento.php?SID=95d2c06d8ee33ba6c27c7cf3178387bf&Seguimiento=3025107&Asunto=3025072 [accessed on May 5, 2015].

1140 See the "Legal Framework" section of chapter four.

1141 See: Pact for Mexico, Compromises 78 and 79, available at: http://pactopormexico.org/acuerdos/seguridad-y-justicia.

1142 See the section on "Resisting Accountability for the Military" in chapter four.

1143 Constitution of Mexico, Article 21(8). Following the reforms of 2011 that gave treaty law equal status to constitutional law, there is now a clear contradiction between Article 21 and Mexico's obligation to unconditional cooperation with the ICC under Part 9 of the Rome Statute.

1144 Previously the Supreme Court of Justice had been responsible for such investigations. See constitutional amendments of June 10, 2011, available at: http://dof.gob.mx/nota_detalle.php?codigo=5194486&fecha=10/06/2011.

1145 See the section on the National Human Rights Commission, below.

1146 See the "Sources of Data and Methodological Challenges" section of chapter two.

1147 Medina Mora was heavily implicated in human rights violations in the State of Mexico during his tenure as public security minister during the Fox administration. The National Human Rights Commission addressed its recommendation to him on human rights abuses perpetrated at San Salvador Atenco, in the State of Mexico in May 2006. (See the text box "Arbitrary Use of Force at Atenco" in chapter three.) While Medina Mora served as one of President Calderón's three attorneys general, from December 2006 to September 2009, the PGR was subject to a greater number of CNDH recommendations than under any previous office-holder. See: http://redtdt.org.mx/2015/02/incompatible-con-el-ejercicio-de-los-derechos-humanos-la-postulacion-de-eduardo-medina-mora-como-candidato-a-ministro-de-la-suprema-corte. In April 2015, shortly after his confirmation, Medina Mora provided the decisive vote in a split Supreme Court decision upholding the constitutionality of *arraigo*, which only increased concern among human rights activists about the Supreme Court's continuing ability to guide Mexico in addressing the crisis of human rights and atrocity crimes. See the transcript of the session at: www.scjn.gob.mx/PLENO/ver_taquigraficas/14042015PO.pdf.

1148 The council includes the Supreme Court president, two nominees from the plenary of the Supreme Court, two nominees put forward by the Senate, and one nominee put forward by the president. The Senate is responsible not only for making its own nominations, but confirming all nominees. Article 100 of the Federal Constitution.

1149 See the section on "Resisting Accountability for the Military" in chapter four.

1150 See the case of Jacinta Francisco Marcial, Alberta Alcántara Juan, and Teresa González Cornelio, accused of kidnapping six AFI agents. Alberta and Teresa regained their freedom in April 2010 after a judgment of the First Chamber of the Supreme Court. See: http://centroprodh.org.mx/en/?p=457. The Supreme Court also asserted jurisdiction over the San Fernando massacre case, ruling definitively on access to information on the investigation. See: http://fundacionjusticia.org/nuevoifai-frente-a-la-verdad.

1151 Amnesty International, *Out of Control*, p. 45.

1152 Further information on the CNDH mandate, as well as information on its recommendations, is available at its website: www.cndh.org.mx [accessed on March 1, 2014].

1153 It found that shortcomings were not due to a lack of resources, noting a 2007 budget of USD 73 million and a staff of over 1,000. See: Human Rights Watch, *Mexico's National Human Rights Commission: A Critical Assessment*, February 2008, available at: www.hrw.org/sites/default/files/reports/mexico0208_1.pdf [accessed on March 1, 2014].

1154 The study found that there had been an average of 664 complaints filed against the PGR each year from 2004 through 2009, and based its findings on scrutiny of a random selection of 48 of these complaints. See: Antonio López Ugalde, *Desempeño de la CNDH en la atención de quejas contra la Procuraduría General de la República*, Instituto Tecnológico Autónomo de México (ITAM), August 2010, available at: http://atalaya.itam.mx/Documentos_Atalaya/01.%20(2)/02.%20(10)/03.%20(24)/01.%20(18N).PDF [accessed March 1, 2014].

1155 Political Constitution of the United States of Mexico, Article 102(B), available (in Spanish) at: www.ordenjuridico.gob.mx/Constitucion/cn16.pdf [accessed on March 1, 2014].

1156 Prior language of Article 102(B), available (in English) at: www.constituteproject.org/constitution/Mexico_2007.pdf [accessed on March 1, 2014].

1157 As of February 2015, the five General Inspection units of the CNDH had a combined 23 medical experts and eight psychologists, many of them specifically trained to conduct the Istanbul Protocol. During 2014, the CNDH conducted at least 49 Istanbul Protocols at the request of local human rights commissions, at least 20 of which were positive. (Data obtained

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from the CNDH lists different but overlapping date ranges and information categories for the work of the five units, making aggregation difficult.) During 2014, the first General Inspection unit additionally performed 120 of the procedures at the request of detainees in federal prisons, nine of which were positive. CNDH document CNDH/DGSR/UE/404/2015, February 27, 2015, obtained in response to a right to information request filed by the Open Society Justice Initiative.

1158 When a minister of public security testified before the Senate about the ministry's refusal to comply with a CNDH recommendation related to the case of a victim who had allegedly been tortured, forcibly disappeared, and then executed, a civil society organization complained that the minister blatantly lied. But the CNDH mandate neither compels nor authorizes further action in such cases. Open Society Justice Initiative interview with a civil society representative, Mexico City, February 14, 2013. See also: "Genaro García Luna lies to the Senate on the case of Jethro Ramsses," Comisión Mexicana Defensa y Promoción de los Derechos Humanos, November 30, 2012, available at: http://cmdpdhmx.com/2012/11/30/genaro-garcia-luna-lies-to-the-senate-on-the-case-of-jethro-ramsses [accessed on March 1, 2014].

1159 It received 1,231 complaints and issued 13 recommendations. CNDH, 2008 Annual Report, p. 36.

1160 It received 418 complaints and issued 12 recommendations. The number of complaints are taken from CNDH annual reports, 2006-2014, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on January 16, 2016]. The number of recommendations are compiled from several sources: Ibid; *Consideraciones de la Comisión Nacional de los Derechos Humanos ante el Comité contra la Desaparición Forzada de la Organización de las Naciones Unidas*, filed by the CNDH during the 8th session of the Committee on Enforced Disappearances, February 2015, available at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_IFN_MEX_19449_S.pdf; statistics on atrocities facilitated by Comisión Mexicana de Defensa y Promoción de los Derechos Humanos; José A. Guevara B., *México y La Corte Penal Internacional: una primera aproximación a los crímenes de lesa humanidad cometidos en el contexto de la estrategia de seguridad de la administración de Felipe Calderón Hinojosa (2006-2012),* in *Mexico y La Corte Penal Internacional* 112 (Javier Dondé Matute and José A. Guevara B., coordinators, 2014), pp. 124 and 125; and document CNDH/PDS/124/2013, October 14, 2013, issued in response to right-to-information request 00048013, available at: http://infomex.cndh.org.mx/apps/.

1161 CNDH annual reports, 2006-2014, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on January 16, 2016].

1162 It received 143 complaints during the period and made 67 recommendations. Ibid.

1163 The Atalaya Program has criticized the CNDH's methodology in categorizing complaints of human rights violations, particularly the parameters used to distinguish torture and cruel treatment. In 2005, the Atalaya Program noted that, "files opened by the CNDH regarding torture do not necessarily represent the total number of complaints [...] since this Commission usually qualifies the facts as assault and battery or other violation." See: "Programa Atalaya, La tortura vista por la CNDH (December 2005)," p. 2, http://atalaya.itam.mx/Documentos_Atalaya/01.%20(2)/03.%20(25)/14.%20(39)/02.%20(90).PDF.

1164 Data taken from CNDH annual reports 2006-2014, available at: www.cndh.org.mx/Informes_Anuales_Actividades [accessed on January 16, 2016].

1165 Amnesty International, *Known Abusers but Victims Ignored*, 2012, pp. 29-30.

1166 Human Rights Watch, *Neither Rights Nor Security*, November 2011, pp. 13, 82-83, and 147-148.

1167 The CNDH has this mandate as a Mechansim for the Prevention of Torture, as set forth in Articles 3 and 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. The Optional Protocol is available at: www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx.

1168 Open Society Justice Initiative interview with civil society representatives, Chilpancingo, September 2014.

1169 "Acusan que la CNDH violó los derechos humanos en el caso San Fernando," *Animal Político*, January 20, 2014, available at: www.animalpolitico.com/2014/01/acusan-que-la-cndh-violo-los-derechos-humanos-en-el-caso-san-fernando/#ixzz2v5v2NG21 [accessed on March 5, 2014]. CNDH recommendation 80/2013 on the mass grave in Tamaulipas, issued December 23, 2013, is available at: www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2013/REC_2013_080.pdf [accessed on March 5, 2014].

1170 Open Society Justice Initiative interview with a representative of civil society, Mexico City, February 14, 2013.

1171 Open Society Justice Initiative interview with UN officials, Mexico City, February 15, 2013.

1172 Amnesty International, *Known Abusers but Victims Ignored*, 2012, pp. 29-30.

1173 "La CNDH gasta más en sueldos que en investigación," *El Excélsior*, November 23, 2015, available at: www.excelsior.com.mx/nacional/2014/11/23/993871 [accessed on January 15, 2016].

1174 Inter-American Commission on Human Rights, *Annual Report 2014*, p. 672, available at: www.oas.org/en/iachr/docs/annual/2014/docs-en/Annual2014-Chap-6.pdf.

1175 Open Society Justice Initiative interviews with representatives of civil society, December 2013 and January 2014. See also: "En México, la CNDH critica al gobierno, pero ante la ONU se alinea," *Animal Político*, October 25, 2013, available at: www.animalpolitico.com/2013/10/cndh-se-alinea-al-gobierno-ante-la-onu-pero-en-mexico-lo-critica/#ixzz2v61dhQFB [accessed on March 5, 2014].

1176 Luis Raúl González Pérez was appointed as the new head of the CNDH in November 2014. See report submitted by CNDH to the Committee on Enforced Disappearances at: http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/MEX/INT_CED_IFN_MEX_19449_S.pdf.

1177 Political Constitution of the United States of Mexico, Article 102(B), available (in Spanish) at: www.ordenjuridico.gob.mx/Constitucion/cn16.pdf [accessed on March 1, 2014].

1178 UPR, *National Report, Mexico 2009*, para. 17, available at: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/A_HRC_WG6_4_MEX_1_E.PDF.

1179 Human Rights Watch, *Neither Rights nor Security*, 2011, pp. 13-14.

1180 See: Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, September 2015, pp. 34-36, available at: www.opensocietyfoundations.org/sites/default/files/broken-justice-mexicos-guerrero-state-eng-20150826.pdf.

1181 Open Society Justice Initiative interview with Alberto Xicoténcatl, director of the NGO Casa del Migrante, January 21, 2014. Civil society organizations publicly criticized the former president of the Human Rights Commission for his performance in that office, including his lack of cooperation with families of the disappeared.

1182 Open Society Justice Initiative interview with Blanca Sánchez, director of the Center of Human Rights Fray Juan de Larios, A.C., Coahuila, January 9, 2014.

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1183 Open Society Justice Initiative interview with Antonio Esparza, from the Center of Human Rights Juan Gerardi, Coahuila, January 9, 2014.

1184 See Lauren Villagran, *The Victims' Movement in Mexico*, Wilson Center Working Paper Series on Civic Engagement and Public Security in Mexico, August 2013, available at: http://wilsoncenter.org/sites/default/files/victims_mexico_villagran.pdf [accessed on March 20, 2015].

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1186 See: Octavio Rodriguez Ferreira, *Civic Engagement and the Judicial Reform: The role of civil society in reforming criminal justice in Mexico*, Wilson Center Mexico Institute, August 2013, available at: www.wilsoncenter.org/sites/default/files/rodriguez_judicial_reform.pdf.

1187 *Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21,* A/HRC/WG.6/17/MEX/3, para. 15, available at: http://ap.ohchr.org/documents/alldocs.aspx?doc_id=22280.

1188 CNDH General Recommendation 25/2016, para 96, February 8, 2016, available at: www.cndh.org.mx/sites/all/doc/Recomendaciones/generales/RecGral_025.pdf.

1189 National Commission on Human Rights, 2015 *Annual Report*, available at: http://informe.cndh.org.mx/menu.aspx?id=98#Ida431.

1190 Espacio de Organizaciones de la Sociedad Civil o Espacio, *Segundo diagnóstico sobre la implementación del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*, July 2015, pp. 80-83, available at: http://redtdt.org.mx/wp-content/uploads/2015/07/272758468-Segundo-diagno-stico-Espacio-OSC.pdf [accessed on February 4, 2016].

1191 Article 40 of the Law of the National Human Rights Commission and Article 116 of the regulations to the law. The law is available at: www.cndh.org.mx/sites/all/doc/conocenos/ley_CNDH.pdf, and the regulations at: www.cndh.org.mx/sites/all/doc/conocenos/ReglamentoCNDH2013.pdf.

1192 *Ley para la Protección de Personas Defensoras de Derechos Humanos y Periodistas*, available at: www.diputados.gob.mx/LeyesBiblio/pdf/LPPDDHP.pdf.

1193 Summary of precautionary measures MC 312-09, available at: www.oas.org/es/cidh/defensores/proteccion/cautelares.asp#inicio.

1194 Ibid.

1195 Open Society Justice Initiative interview with Alberto Xicoténcatl, director of the NGO Casa del Migrante, Saltillo, January 21, 2014.

1196 A civil society critique published in 2015 concluded that structural failures prevented the mechanism from being effective. See: Espacio de Organizaciones de la Sociedad Civil o Espacio, *Segundo diagnóstico sobre la implementación del Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas*, July 2015, available at: http://redtdt.org.mx/wp-content/uploads/2015/07/272758468-Segundo-diagno-stico-Espacio-OSC.pdf [accessed on February 4, 2016].

1197 Open Society Justice Initiative interview with Leopoldo Maldonado, legal officer with Article 19 in the office for Mexico and Central America, Mexico City, January 2014, and email of February 18, 2016 from Leopoldo Maldonado to the Justice Initiative.

1198 See the section "Political Causes of Bad Data on Atrocities and Justice" in chapter four.

1199 For example, in a case of apparent enforced disappearance in Michoacán, a SEGOB official pressed victims to ignore guidance from Comisión Mexicana that the case should lawfully be moved from the military to the civilian system. (See the section on "Resisting Accountability for the Military" in chapter four.) In Guerrero, federal and state officials have publicly attacked Tlachinollan Centro de Derechos Humanos de la Montaña in an apparent effort to drive a wedge between the organization and families they represent in the case of the 2014 Ayotzinapa disappearances. See: Open Society Justice Initiative, *Broken Justice in Mexico's Guerrero State*, September 2015, p. 55, available at: www.opensocietyfoundations.org/sites/default/files/broken-justice-mexicos-guerrero-state-eng-20150826.pdf.

1200 Open Society Justice Initiative interview with Brenda Rangel, Querétaro, September 2015, See also: "A mi hermano lo mató el Ejército," *Animal Político*, March 27, 2012, available at: www.tlachinollan.org/nota-informativa-a-mi-hermano-lo-mato-el-ejercito.

1201 The following information is taken from an Open Society Justice Initiative phone interview with Ana Lorena Delgadillo, director of the Fundación para la Justicia, March 7, 2014.

1202 On March 2, 2016, the First Chamber of the Supreme Court of Justice granted constitutional protection (*amparo*) to the families of two migrants from Honduras who disappeared in transit to the United States of America, granting access to a copy of the case file and partially recognizing their status of victims. See: *Conoce SCJN caso sobre migrantes víctimas de masacre en San Fernando*, March 2, 2016, available at: http://fundacionjusticia.org/conoce-scjn-caso-sobre-migrantes-victimas-de-masacre-en-san-fernando.

1203 "Intento de soborno de la Segob para 'superar' Ayotzinapa," *Proceso*, December 13, 2014, available at: www.proceso.com.mx/390559/intento-de-soborno-de-la-segob-para-superar-ayotzinapa.

1204 One organization, Casa del Migrante Saltillo, documented 11 cases of police-perpetrated torture involving 35 victims in 2013 alone. Open Society Justice Initiative interview with staff of Casa del Migrante Saltillo, Coahuila, January 21, 2014.

1205 Right to information request 00279514 to the Prosecution of Coahuila.The judiciary of Coahuila confirms that between 2006 and 2014, there had never been a conviction for torture. Judiciary document UAIPPJ 157/2014, August 8, 2014, in response to right-to-information request 00268314 filed by the Open Society Justice Initiative.

1206 Civil society organizations said the statistic was unhelpful because it co-mingled victims of crime with those who were missing for non-criminal reasons. See: "En Coahuila hay unas 1,600 personas desaparecidas, según el gobierno local," CNN Mexico, January 15, 2012: http://mexico.cnn.com/nacional/2012/01/15/en-coahuila-hay-unas-1600-personas-desaparecidas-segun-el-gobierno-local. As of May 2015, the prosecutor's office reported 1,808 persons who remained missing. Untitled, undated document of the prosecutor's office of Coahuila, available at: http://nolocalizadoscoahuila.gob.mx/estadistica2.php [accessed on May 28, 2015]. It is not clear how often the statistics on this website are updated. When accessed on February 19, 2014, the site reported that 1,666 individuals remained missing.

1207 *Desapariciones en Coahuila, México*, Estadísticas agosto 2013, Fuerzas Unidas por Nuestros Desaparecidos en Coahuila, available for download (as a PowerPoint document) at: http://fuundec.org/estadistica/ [accessed February 19, 2014]. As of May 2015, the organization Fray Juan de Larios had documented 521 disappearance cases: 370 of them related to individuals reported disappeared in Coahuila, and 151 persons who disappeared in other states. 344 of the 370 disappeared in Coahuila were still missing. There was a pattern of involvement by local police. E-mail to the Open Society Justice Initiative from Michael

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Chamberlin, Fray Juan de Larios, May 21, 2015.

1208 By May 2015, about 110 families from 13 states were being represented. E-mail to the Open Society Justice Initiative from Michael Chamberlin, Fray Juan de Larios, May 21, 2015.

1209 By 2011, families had organized an umbrella movement called United Forces for Our Missing Persons in Coahuila (*Fuerzas Unidas por Nuestros Desaparecidos en Coahuila*). See: http://fuundec.org.

1210 *Report of the Working Group on Enforced or Involuntary Disappearances: Mission to Mexico*, Human Rights Council document A/HRC/19/58/Add.2 (December 20, 2011), available at www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-58-Add2_en.pdf.

1211 Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, p. 107.

1212 See: *Acuerdo por el que se crea el Grupo de Trabajo en el estado de Coahuila de Zaragoza, para el seguimiento de las recomendaciones del Grupo de Trabajo de la Organización de las Naciones Unidas sobre Desapariciones Forzadas e Involuntarias*, September 9, 2012, available at: http://fuundec.org/2012/09/10/acuerdo-por-el-que-se-crea-el-grupo-de-trabajo-en-coahuila [accessed on May 28, 2015].

1213 GAT reports are available at: http://fuundec.org/gta.

1214 E-mail to the Open Society Justice Initiative from Michael Chamberlin, Fray Juan de Larios, May 21, 2015.

1215 Untitled, undated document of the prosecutor's office of Coahuila, available at: http://nolocalizadoscoahuila.gob.mx/estadistica2.php [accessed on May 28, 2015].

1216 See: "El doble infierno de los GATES en Coahuila," *Milenio*, May 31, 2015, available at: www.milenio.com/policia/gates_fuerza_especial_coahuila-baja_delincuencia_coahuila-gates_0_527347516.html and "La CDHEC exige al gobierno de Coahuila procesar a 8 GATES por tortura y asesinato," *Proceso*, March 3, 2015, available at: www.proceso.com.mx/397415/397415-la-cdhec-exige-al-gobierno-de-coahuila-procesar-a-8-gates-por-tortura-y-asesinato.

1217 For an account of the origins of cooperation between families of the disappeared and prosecutors in Nuevo León, and early achievements, see: Human Rights Watch, *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored*, February 2013, pp. 92-106.

1218 Open Society Justice Initiative interview with Deisy Hernandez, legal officer, Ciudadanos en Apoyo a los Derechos Humanos, Monterrey, September 22, 2014.

1219 Nuevo León Criminal Code, 432 as amended December 13, 2012, available at: www.hcnl.gob.mx/trabajo_legislativo/leyes/pdf/CODIGO%20PENAL%20PARA%20EL%20ESTADO%20DE%20%20NUEVO%20LEON.pdf.

1220 Nuevo León Criminal Procedure Code, as amended December 28, 2012, 174, available at: www.hcnl.gob.mx/trabajo_legislativo/leyes/pdf/CODIGO%20PROCESAL%20PENAL%20PARA%20EL%20ESTADO%20DE%20NUEVO%20LEON.pdf.

1221 Open Society Justice Initiative interview with Deisy Hernandez, legal officer Ciudadanos en Apoyo a los Derechos Humanos, Monterrey, September 22, 2014.

1222 According to a document from CADHAC, as of August 2014, there were 316 documented disappearance cases, including 85 cases of enforced disappearance in Nuevo León, involving 1,219 persons. Of these, 87 persons had been located, 53 of them alive. 34 persons had been identified through DNA samples. CADHAC document on file with the Open Society Justice Initiative.

1223 Open Society Justice Initiative interview with Deisy Hernandez, legal officer, Ciudadanos en Apoyo a los Derechos Humanos, Monterrey, September 22, 2014.

1224 Open Society Justice Initiative interviews with a member of the state judiciary; the family member of a disappearance victim who has been eyewitness to torture at the prosecutor's office; Deisy Hernandez, legal officer, Ciudadanos en Apoyo a los Derechos Humanos; and Enrique Irazoque Palazuelos, inspector, Human Rights Commission of Nuevo León, Monterrey, September 22-23, 2014.

1225 Open Society Justice Initiative interview with Enrique Irazoque Palazuelos, inspector, Human Rights Commission of Nuevo León, Monterrey, September 23, 2014.

1226 Right to information request to the Prosecution of Nuevo León SI2014-9203-381956 and 0082/14 to the Judiciary of Nuevo León.

1227 Open Society Justice Initiative interview with Enrique Irazoque Palazuelos, inspector, Human Rights Commission of Nuevo León, Monterrey, September 23, 2014.

1228 Open Society Justice Initiative interview with a member of the state judiciary, Monterrey, September 22, 2014.

1229 For background on the failures of PROVÍCTIMA and the Victims' Law, see the "Symbolic Initiatives and Reforms" section of chapter four.

1230 See: www.hchr.org.mx.

1231 Physicians for Human Rights, *Forensic Documentation of Torture and Ill Treatment in Mexico: An Assessment of the Implementation Process of the Istanbul Protocol Standards*, 2008, p. 107, available at: https://s3.amazonaws.com/PHR_Reports/mexico-forensic-documentation-torture-2008.pdf [accessed on January 16, 2016].

1232 See the introduction to chapter four for more information on the roles of each.

1233 See the section on "Criticizing the Messengers" in chapter four.

1234 Press release 119/15 of the Inter-American Commission on Human Rights, October 28, 2015, available at: www.oas.org/en/iachr/media_center/PReleases/2015/119.asp [accessed on January 16, 2016].

1235 See: "Mexico Struggles to Clear Up 2014 Death of 43 Students," *Wall Street Journal*, January 5, 2016, available at: www.wsj.com/articles/mexico-struggles-to-clear-up-2014-death-of-43-students-1452041038 [accessed on January 14, 2016].

1236 For example, see: "La guerra de lodo contra el GIEI," *La Jornada*, March 15, 2016, available at: www.jornada.unam.mx/2016/03/15/opinion/016a2pol; and "La Marcha por la Paz entra a Campo Marte," *Excélsior*, June 6, 2015, available at: www.excelsior.com.mx/nacional/2015/06/01/1026940.

1237 See the section on "Resisting Accountability for the Military" in chapter four.

1238 Calculation by the Open Society Justice Initiative based on 122,035 reported deaths by homicide, 22,613 judgments at state level, and 83 at federal level. Data is taken from INEGI's customizable online database, available at www3.inegi.org.mx/sistemas/biinegi, searching for data on *defunciones por homicidio* for 2010 and INEGI data cited in Leticia Ramírez de Alba

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Leal, "Índice de Víctimas Visibles e Invisibles de Delitos Graves," *México Evalúa* (August 2011), p. 32, available at http://www.mexicoevalua.org/descargables/e42923_INDICE_VICTIMAS_VISIBLES_INVISIBLES.pdf. For years 2007 and 2008, INEGI only provides statistics on judgments for homicides. For years 2009-2012, it provides judgments for homicides, homicides of relatives (*homicidio en razón de parentesco*), and femicide. For purposes of this assessment, the overall number of judgments for homicide encompasses all the categories of killings of civilians registered by INEGI at local and federal level. INEGI does not specify how many judgments were convictions and how many were acquittals.

1239 The PGR conducted 261 investigations for grave homicide, leading to 56 indictments, and 317 investigations for non-grave homicide, leading to 38 indictments. Official documents SJAI/DGAJ/10912/2015 and SJAI/DGAJ/10913/2015, dated September 1, 2015, obtained in response to right-to-information requests 1700285315 and 1700285415 filed by the Open Society Justice Initiative.

1240 Oral presentation by government officials to the UN Committee on Enforced Disappearances in Geneva, February 2 and 3, 2015. A representative of the Open Society Justice Initiative was in attendance.

1241 "Mexico Sees First Conviction of Soldier in Disappearance," Associated Press, August 18, 2015, available at: http://bigstory.ap.org/article/3744d01c4e5245c79e1cbd4a6ce4a711/mexico-sees-first-conviction-soldier-disappearance [accessed on January 6, 2016].

1242 Data taken from the annual reports of the National Human Rights Commission, 2006 through 2014, available at: www.cndh.org.mx/Informes_Actividades.

1243 PGR data provided to Amnesty International in response to a public information request in June 2015. See: *Paper Promises, Daily Impunity: Mexico's Torture Epidemic Continues*, October 2015, p. 7, available at: www.amnesty.org/en/documents/amr41/2676/2015/en [accessed on January 6, 2016].

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Since the Mexican government escalated its war on organized crime at the end of 2006, over 150,000 Mexicans have been intentionally murdered. Countless thousands of others have been tortured; no one knows how many have disappeared. Caught between government forces and organized crime cartels, the Mexican people have suffered as atrocities and impunity reign.

Based on three years of research, over 100 interviews, and previously unreleased government documents, *Undeniable Atrocities* finds a reasonable basis to believe that government forces and members of criminal cartels have perpetrated crimes against humanity in Mexico. The report comprehensively examines why there has been so little justice for atrocity crimes, and finds the main answers in political obstruction.

Given the lack of political will to end impunity, new approaches must be taken. *Undeniable Atrocities* argues for a series of institutional changes, most importantly the creation of an internationalized investigative body, based inside Mexico, with powers to independently investigate and prosecute atrocity crimes.

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