

MEXICO

Report on the alleged commission of crimes against humanity in Baja California between 2006 and 2012

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel,



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PREAMBLE

The Federation for Human Rights (FIDH), the Mexican Commission of Defense and Human Rights Promotion (CMDPDH) and the Citizens' Commission of Human Rights of the Northeast (CCDH) (hereafter 'organizations') publish this report summarizing the information submitted to the Prosecutor of the International Criminal Court (ICC) in accordance with article 15 of the Rome Statute. This report concerns the alleged commission of crimes under the jurisdiction of the ICC in Mexico from 2006 to 2012, particularly in the State of Baja California.

This report mainly addresses alleged commission of crimes against humanity by agents of the State in Baja California. This does not mean that less importance is attributed to the seriousness of crimes committed by organized crime groups.

The information herein refers mainly to cases documented by CMDPDH and CCDH, some of which are contained in recommendations by the National Commission for Human Rights (CNDH) or by the Procuraduria de Derechos Humanos y Proteccion Ciudadana de Baja California (PDHBC), and national and local human rights institutions created in accordance with the Paris Principles. The report also contains information obtained from interviews and testimonies. Other cases, for which the PDHBC had already issued recommendations and that follow a similar pattern of attacks, are also presented.

I. EXECUTIVE SUMMARY

In light of the information provided, FIDH, CMDPDH and CCDH consider that there is reasonable basis to believe that crimes against humanity that fall within the jurisdiction of the ICC have been committed in Mexico, specifically in the State of Baja California, namely the crimes of murder, torture, rape, severe detention, and enforced disappearance, as provided under article 7 of the Rome Statute and the Elements of Crimes.

The Rome Statute entered into force in Mexico on 1 January 2006. The information presented herein refers to crimes committed from 2006 to 2012 in the territory of Mexico. Therefore, these acts fall under the *temporal* and territorial jurisdictions of the ICC.

Information referred in this report indicates that in Mexico in general, and especially in Baja California, security institutions, including military, federal, state and municipal police forces committed serious crimes, in particular torture and enforced disappearances. These acts could constitute crimes against humanity because of their systematic nature, and for having been carried out as part of State policy, as is evidenced by the use of defined patterns and by their organized character.

The acts described are not isolated or casual ones, but are planned actions that follow a specific pattern and are carried out as part of a course of conduct aimed at ensuring the legitimacy of a state policy. This is proven in part by the resources used in the course of the commission of the crimes, particularly military and police facilities, as well as the same torture methods used in different municipalities. It is for these reasons that our organizations believe that crimes against humanity that fall within the jurisdiction of the ICC have been committed.

In the cases documented here, there is no indication that any perpetrator, or any authority which bears the greatest responsibility, has been brought before judicial authorities.

There is preliminary information indicating that serious crimes - in particular widespread killings - are committed by drug cartels acting in Baja California, but the activities of those cartels are not the central focus of this report.

This information has been submitted to the Prosecutor of the ICC for his consideration in reaching a decision as allowed in article 53 of the Rome Statute.

Our organizations have requested the Office of the Prosecutor to publicly announce a preliminary investigation concerning the situation in Mexico and to send a mission to Mexico to verify the seriousness of these crimes. We further recommend that the Office of the Prosecutor request the following from Mexican authorities regarding crimes committed in Baja California from 2006 to 2012:

- Information regarding any criminal investigations and proceedings in progress, and to bring the alleged perpetrators in each of the cases presented before the ICC to justice.
- Information on the structure of the military arm that was acting in Baja California at the time the events took place, and its relations with Baja Californian officials and municipal authorities.
- All PDHBC and CNDH reports that concern complaints of arbitrary detention, extrajudicial execution, torture, and cruel, inhuman, and degrading treatment.

II. CONTEXT

A. GENERAL MEXICAN CONTEXT

In December 2006, President Felipe Calderón (2006 - 2012) announced his security strategy and ordered the deployment of military units to combat organized crime groups. This strategy authorised the use of military forces to perform duties that had been exclusively under public security forces – mainly policemen – during a time of peace. It is estimated that over 50,000 individuals participated in such activities, including members of the Army and Navy. The use of the army was not preceded by a declaration of a state of emergency, which is the only constitutional way through which certain rights and liberties may be restricted for citizens.

Further, this strategy was launched without an adequate legal framework which would restrict the duties and authority of federal armed forces, nor were

limits on the use of armed force established. As a consequence, systematic and generalized attacks on the civilian population took place. The absence of a clear legal framework permitted federal forces to commit serious abuses. Calderon did not issue protocols to regulate the actions of federal forces until 2012, when the strategy had already been operating for five years. However, these protocols did not satisfy the principle of legality, nor did they adequately regulate the use of force by military personnel.

In carrying out its “war against organized crime”, adequate legislative precautions and practices were not taken to prevent civilians from being the target of murders and other grave crimes. More serious is the fact that these acts were not, and have not, been duly investigated, nor have the perpetrators been brought to justice. On the contrary, the highest officers of the federal executive branch - including the President, the High Commands of the Army, the Navy, and the Ministry of Public Security - have systematically denied the existence of the acts, downplayed their importance, questioned their legitimacy, or considered them to be “isolated incidents.”

It is believed that over 70,000 murders took place as a result of Calderón’s security strategy. Additionally, according to official data, there were more than 160,000 internal displaced persons, and more than 24,000 forced disappearances.

The excessive use of force has been widely documented by the CNDH. Other most recent studies identify the consequences of the President’s strategy on the population in general, as well as on other sectors. For example, in 2010 it was calculated that 30,000 children were left orphaned. At the same time, it was a well-known that organized crime groups recruited minors and it is estimated that over 30,000 children were victims of such actions. Another indicator is the increase in the number of complaints received by the CNDH (from 182 in 2006 to 1,230 in 2008) against to the Secretariat of National Defense Ministry (SEDENA by its acronym in Spanish) regarding the use of security forces.

From 2006 to 2012, the CNDH issued more than 140 recommendations against security forces. Its investigation confirmed serious violations of human rights by the Army, the Navy, as well as federal and state police forces, which might constitute crimes that fall under the jurisdiction of the ICC.¹

President Calderón’s strategy against drug crimes had policies that encouraged, or allowed, the commission of crimes. For example, military and navy personnel, and federal, state and

1. Cfr. “The war” in numbers in www.cpimexico.org.mx

municipal police forces, systematically transferred detainees to military bases, or to facilities under their exclusive control, and where supervision by civil authorities was lacking. The persons detained were subjected to inhuman treatment, torture, and even enforced disappearance. Further, it has been documented that groups were dressed in civilian clothes in joint civil and military operations.

The news and media have promulgated the government's stance that those executed or killed (*abatidos*) were "fallen criminals" and not civilians. However, these statements were made without any preliminary investigations and despite that in many cases it was proven that the victim did not belong to any organized crime group, nor did he present any "risk" to society.

B. CONTEXT OF BAJA CALIFORNIA

The State of Baja California was one of the first states in Mexico to use "joint operatives", where armed forces were sent to undertake police actions as part of the President's strategy against organized crime. Violence in Baja California increased to such level that, according to data from the National Institute of Statistics and Geography of Mexico (INEGI by its acronym in Spanish), in 2009 it was the State with the most murders reported to the Public Prosecutor (Ministerio Publico).

The Mexican government claimed the decrease in violence in Baja California was the result of a "Successful Security Model," as part of the "war against organized crime."² This model had the support of the federal government, the military sector, and the main businessmen of Baja California.³ However, this claim is questionable, not only in respect to the diminution of violence, but in the cost of civilian lives and the human rights violations committed against citizens, particularly against their liberty and physical integrity.

The coordination between police and military personnel encouraged the practice of "arraigo" to be used as a means to commit torture.⁴ Arraigo is a form of arbitrary detention for periods of up to 80 days. It is requested by the Public Prosecutor and authorized by a federal judge in order to investigate any crime related to organized crime. The purpose of arraigo is to extend the time during which the authority has to gather evidence against the "arraigada", the person who is arbitrarily detained. However, there is no minimum amount of evidence required to prove either the detainee's responsibility in the commission of a crime, or for having any information regarding such crimes. Thus, the purpose of arraigo is not to determine if a person is innocent or guilty, but to detain a person in order to obtain information that may be used for criminal prosecution.

The Subcommittee for the Prevention of Torture⁵ and the UN Committee Against Torture, as well as the UN Special Rapporteur on Torture, have denounced the relationship between the use of arraigo and torture.⁶ The Committee Against Torture noted in its last report on Mexico:

"The Committee expresses its concern for the reports that document accusations of acts of torture and cruel treatment over persons who have been deprived of their liberty by virtue of orders of arraigo, some of them carried out in military facilities."⁷

2. The New Yorker, Letter from Tijuana. In the Name of the Law, October 18, 2010.

3. Ibid.

4. Proceso Magazine, March 20, 2011, page 8.

5. In its report of 2010 on Mexico, the Subcommittee dedicated one chapter to the figure of "arraigo" in respect to which it noted: **"The Subcommittee is of the view that the practice of arraigo may be conducive to torture owing to the lack of supervision and to the vulnerability of individuals held under arraigo, whose legal status is unclear and therefore their ability to exercise their right to defence is compromised."** Cfr. 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, May 31st, 2010 paragraph 238.

6. Cfr. In particular final observations in the fifth and sixth periodical reports combined of Mexico, adopted by the Committee in its 49th session period, (October 29 to November 23, 2012). CAT/C/MEXICO/5-6, paragraph 11.

7. Ibid.

III. JURISDICTION OF THE ICC

The Rome Statute entered into force for Mexico on 1 January 2006, according to article 126 of the Rome Statute. The information provided in this report relates to crimes committed in Mexico by Mexican nationals, after the Statute's entry into force. Our organizations consider these to be crimes against humanity, and therefore they fall under the jurisdiction of the ICC.

IV. CRIMES

The information presented herein relates to the commission of crimes against humanity against the civilian population in Baja California. These were mainly carried out by state security forces as part of a state policy of carrying out such crimes in order to show progress in, and thereby achieving legitimacy of, the war against drug trafficking.

The standard of evidence required to request the opening of an investigation (fundamental determination of a preliminary examination) is to have a reasonable basis to believe that crimes have been committed within the Court's jurisdiction. This is the lowest evidentiary level; the Statute⁸ requires each State provide proof of the individual criminal responsibility established by the Pre-Trial Chamber II.⁹ At this stage, the information available to the Prosecutor is neither complete nor conclusive, because he does not have full investigative powers. Therefore, ICC precedent determines that until the Office of the Prosecutor arrives at a reasonable conclusion with the information available, he is not obliged to refute other possible conclusions.¹⁰

The dispatch of communications is based on article 15 of the Rome Statute that refers to "information of crimes"¹¹ and establishes that facts are not necessary in order for information to be considered in a preliminary examination. Further, it is not necessary to specify those persons who are presumed to be responsible for crimes, nor must aspects related to admissibility be considered.

This report specifically references crimes that could constitute crimes that fall within the jurisdiction of the ICC and offers an interpretation of the facts as related to the Elements of Crimes. In order to aid in the evaluation of the facts, and to offer some guidance for the analysis and future evaluation of admissibility,¹² information regarding groups that could be responsible for these crimes is included. However, there is no information indicating individual responsibility. This is the precise reason why it is necessary for the Prosecutor

8. ICC-01/09-19.PTC II. In the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorisation of an Investigation in the Situation in the Republic of Kenya, March 31, 2010, para 27.

9. Ibid para. 29.

10. Ibid para. 33.

11. Article 15 of the Rome Statute.

12. Cfr. Building an eventual case according to supra n. 8 paragraph 50.

to open an investigation as there is an absence of any investigations made by Mexican authorities.

A total of 30 cases of crimes are referred to in this report, with a total of 95 victims, four of whom were subject to multiple detentions and torture.

A. EXISTENCE OF AN ATTACK AGAINST CIVIL POPULATION

An attack, for purposes of crimes against humanity, is the course of a conduct that involves the commission of acts of violence.¹³ According to article 7(2)(a) of the Rome Statute, it is “a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population”. According to the Elements of Crimes under the Rome Statute, it is not necessary that this be a military attack.¹⁴

The attack has to be directed against the civilian population. For such purposes, it is not necessary that the entire civilian population in a geographic area be the objective of the attack, but only that they are the main target and not merely an accidental victim. Civilian population is understood to be civilians who are not members of the armed forces or other actors to whom international humanitarian law recognizes as having the status of a combatant.¹⁵

Multiple acts of torture are carried out in Mexico by security forces, as are arbitrary detentions, inhuman treatment - including sexual violence, and enforced disappearances. The victims are painted as suspects, contributors, and/or members of drug cartels in the so called “war against drug trafficking” without any evidence to back up these claims. According to the UN Special Rapporteur on Torture, Juan Méndez, torture is used against persons who are linked with crimes that local or federal authorities consider to be serious, and who are abusing and misusing the figure of flagrancy.¹⁶ These acts, according to Human Rights Watch, are directed against persons belonging to low or working classes¹⁷.

According to the information collected for this report, multiple detentions, acts of torture, and enforced disappearances were carried out from 2006 to 2012 by military forces. They either committed these crimes directly, or have contributed to the commission of these crimes, through joint participation with state or federal officers, or through the facilitation of resources. The examples contained in this report are just a sample of widespread and systematic attacks as defined by Article 7(2)(a) of the Rome Statute.

These actions were directed against the civil population, mainly those who are middle or low class. Most of the victims belong to popular communities and have lived under threat of being singled out as being involved with drug cartels. The victims depend on small businesses or on an informal economy for a living. They are fishermen, housewives, retired persons, small business owners, and drivers. This report also includes accounts of arbitrary detention and torture against minors.

The vulnerability and social status of these persons makes it easy to portray them as cartel members, and to make unsupported or fabricated allegations against them. On such social and economic vulnerability depended the probability of undertaking future effective actions against

13. Icty. The Prosecutor against Blagojevic et Jokic. 17 January 2005, para. 504. Translation into Spanish. Universidad Iberoamericana and Human Rights Watch. “Genocide, Crimes of War and Crimes against Humanity: a technical summary of precedents of the International Criminal Court for the Former Yugoslavia”. 2010.

14. Elements of Crimes./Article 7, Crimes Against Humanity, introduction, paragraph 3.

15. *Supra* n 5 para 82.

16. Particularly, concluding his visit to Mexico, the United Nations Rapporteur on Torture, indicated that there is a generalized practice of the use of torture in the country, but he dismissed that it were the result of an active policy by the Mexican State of promoting the use of Torture. Carmen Aristegui. *Torture is practiced widely in Mexico*: UN Rapporteur and CNN. In *aristeguinoicias.com*, May 5, 2014.

17. HRW. *Neither Rights Nor Security*. Killings, Torture, and Disappearances in Mexico’s “War on Drugs”.

the attackers and the possibility of being presented, before the media, as persons linked with organized crime.

All the victims were civilians who, at the time of their detention and torture, were falsely accused of being linked with drug trafficking. In most of the cases, these civilians were captured in operations called “hunts”.¹⁸ In these hunts, civilians who are susceptible of being depicted as being members or collaborators of cartels are clearly targeted, and are not incidental victims, nor are they collateral victims of the actions by the State.

B. ATTACKS AGAINST THE POLICE

President Calderón developed a discourse of “police depuration” or “police cleansing”. This, along with an eagerness to show progress in the war against drug trafficking, generated a policy of incentives, as well as acquiescence amongst the military, for undertaking actions against policemen. This was further facilitated by the designation of active or retired military men as heads of municipal or state police forces. The consequence of this “cleansing” was the dismissal of federal, state and municipal policemen.¹⁹

The experience of Baja California clearly shows that a tendency of appointing military men as heads in charge of civil police forces occurred during Calderón’s presidency. The case that exemplifies this best is the one of Lieutenant Colonel Julián Leyzaola Pérez, a military man who turned into a “hard handed” policeman. Leyzaola adopted what was called “operations of police under a single unitary command” that left the police under the leadership of Commander Alfonso Duarte Mújica.

Within this framework is when, as part of the same course of a conduct that committed torture, serious deprivations of liberty and enforced disappearances described hereinbefore, and in response to the same policy whose goal was “to show results”, and which followed the same pattern of serious and summary deprivations of liberty and police, by armed forces, torture and presentation before the media and the General Prosecutor of the Republic (PGR by its acronym in Spanish), without any evidence, happen, so that the cases against the victims ended, most of them, in dismissal.

Another emblematic case involved the deprivation of liberty of 25 municipal policemen of Tijuana in March 2009, mainly those of medium rank. They became *arraigados* and were held at the 28th Infantry Battalion military base, where they were tortured by military agents.²⁰

The civil character is established in opposition to the armed forces and other legitimate combatants.²¹ The assumption of the civil nature of the forces is presented to enforce order, therefore, of civilian police corps.

The Political Constitution of the United Mexican States (“Constitution”) allows for the admission of States, as well as the regulation of the Army, the Navy and the Air Force.²² The Organic Law of the Mexican Army and Air Force also makes the same provisions.²³ However, the police corps are not designated as being part of the armed forces in either document.

Article 21 of the Constitution states: “prevention of crimes, investigation and prosecution, as well as punishment for breaking the administrative rules, but according to the law” are duties in charge of public security institutions, which “shall be of civilian nature, disciplined and

18. Supra. n 2.

19. Informador. “Historical depuration in the Federal Police”, August 31st, 2010. In this occasion it is announced that 9.2% of the police payroll is dismissed.

20. Supra.n 4 page 8. This case is known as “25 policemen”

21. ICC-01/U/3436, Le Procureur c. Germain Katango, Jugement rendu en application de l’ article 74 du Stat, parras. 1102.

22. Political Constitution of the United Mexican States, Article 73 (XIV). See also General Law of National Security, Article 6.

23. Ley Orgánica del Ejecutivo y Fuerza Aérea Mexicanos, Capítulo I, Artículo 1.

professional ones.” Accordingly, the institutions of public security and of a civil nature include police institutions.²⁴

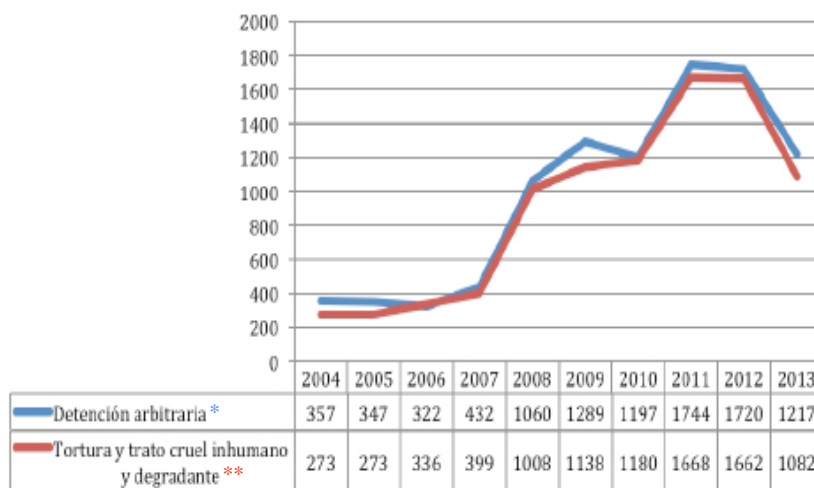
C. GENERALIZED NATURE

In his visit to Mexico in April 2014, the UN Special Rapporteur on Torture concluded that the use of torture in Mexico occurs in a generalized manner. “We find cases of torture throughout the territory, and perpetrated by all security institutions, from the Navy and the Army, up to the federal and municipal police forces”.²⁵

Even though the use of torture and arbitrary detention in Mexico has been a recurrent problem in regards to its armed and security forces, its use increased during the Calderón presidency as a result of the war against drugs. This is evidenced by the number of accusations filed before the National Commission for Human Rights.

Complaints for arbitrary detention, torture and mistreatment before the CNDH per year.

Source. Prepared from the annual reports of the CNDH



* Arbitrary detention

** Torture and cruel, inhuman, and degrading treatment

The examples presented in this report provide evidence that these practices were routinely employed as part of the so called “war against drug trafficking”, which was used to justify any such crimes perpetrated against any suspected civilian.

As of 2009, there was an alarming increase in reports of torture and enforced disappearance in Baja California. In 2008, the PDHBC received 26 accusations of torture. In 2013, the number of accusations rose to 110.²⁶ Human rights organizations have documented the direct participation of security personnel in some emblematic cases, particularly actions taken by members of the armed forces and state police.

24. General Law of the National System of Public Security, Article 5 (VIII).

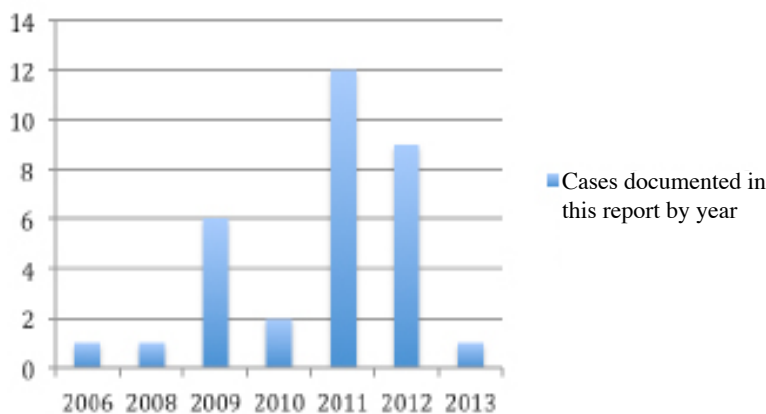
25. Supra.n 26

26. Regrettably, the PDH, in its annual reports of 2009 to 2011 did not publish statistical information by type of violation alleged in their claims. Nevertheless, the claims referred in this report documented by that body, and where a recommendation was issued referred to claims mainly corresponding to these years.

There are no statistics on the number of illegal detentions and tortures registered in Baja California from 2006 to 2012. Nevertheless, information on the incidents of torture, when it is available, is distributed throughout four municipalities of the region. The available information mainly refers to cases where the victims have brought formal accusations to human rights institutions. Many of those accusations were made in spite of threats and intimidations. There is a significant “black number” (unreported) of cases of torture in Mexico in general, and there is no reason to believe Baja California is an exception.²⁷ Among the population of Baja California there is no knowledge of torture and what it implies. In many cases the persons interviewed initially described their experience as “beatings”, despite the fact that they described the torture technique called “drowning”, internationally known as “waterboarding.” Likewise, Baja California usually labels illegal detentions, torture and disappearances as “*levantones*” (abductions), or abuse of authority.²⁸

The information on the 30 cases referred to in this report has been gathered from the files of different organizations and from the review of files of official institutions. This small sample of cases, when added to the lack of reporting of other crimes and therefore the absence of investigations thereof, suggests that these cases may be part of a wider phenomena.

Distribution of documented cases by years



When this information is taken cumulatively,²⁹ it is reasonable to conclude that the use of torture, arbitrary detention, and enforced disappearance, is common in Baja California and has become a general practice under federal control of police duties, particularly from 2006 to 2012.

D. SYSTEMATIC NATURE

The systematic nature of an attack “reflects the organized nature of the acts of violence committed and the improbability of their fortuitous nature.”³⁰ This characteristic refers to the existence of crimes resulting from the deliberate and regular repetition of similar criminal behaviors.³¹ In other words, the existence of a pattern of crimes, of which similarity is not accidental.³² Some elements of such a character are its organized nature, its pattern, and its execution on the grounds of a common policy, or the utilization of public or private resources.³³

27. See for example, HRW, *Neither security, Nor Rights, Executions, disappearances and torture in the “war against drug dealing in Mexico”*, (2011), pages 33 – 24.

28. *Supra* n.17 page 129 and subsequent.

29. Cfr. ICC.02/09-19, PTC II, *Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on Authorization of an Investigation in the Situation in the Republic of Kenya. 31 March 201 Para.95.*

30. *Supra* n.21 paras. 1123

31. *Ibid.*

32. *Supra* n.21 Para. 96

33. *Ibid.*

The use of torture in Mexico, in the context of the war against drug trafficking, shows a pattern of attacks, which are evidenced in its *modus operandi*: an illegal detention - at home or in public, followed by disappearance and the use of torture to obtain information or to force a confession. Any such confession would thereafter be presented to the courts and, is often given to the media as well. The UN Special Rapporteur on Torture, Juan Méndez, stated the following in regard to his recent visit to Mexico, stated:

“What is typical is for persons to be detained without an arrest or search warrant, and to suffer much abuse while detained. The criteria used is that of flagrancy, but it is badly understood. Within this context, they start beating them, in vehicles they are beaten too ... regularly during a period of 6 hours, 24 maximum, and then, yes, they are then brought before the Public Prosecutor. In some cases they are taken out of jail and tortured again on the premises of the Public Prosecutor. But the detention is not investigated and they are not permitted to file an accusation for torture.³⁴

Human Right Watch describes the same pattern in its study of torture in five Mexican States: Baja California, Chihuahua, Nuevo León, Guerrero, and Tabasco.³⁵

“It was also observed that there is a pattern in respect to the specific moment when tortures were applied and their apparent objective. The majority of the victims were detained arbitrarily with the pretext of having been taken prisoners while they were committing a crime (flagrancy), and then they were illegally retained and without acknowledging their detention during hours or even during days, before being brought before the Public Prosecutor. During such period of “enforced disappearance” the victims in many cases were uncommunicated in military facilities, police stations, or other clandestine detention centers, and there, they were tortured with the purpose of obtaining information on organized crime and to force them to confess that they are members of criminal organizations. In several occasions these confessions were used to justify a posteriori, an illegal detention carried out by the security forces, and they constituted the main evidence of the crimes attributed to them, which thereafter were presented in the accusations by the Public Prosecutor.”

The common torture techniques used in Mexico are³⁶: beatings with a bag over the head, waterboarding, electric shocks - even to the genitals, sexual torture, and death threats. These, as well as exposure to execution images and torture to their children, etc., constitute psychological violence.³⁷

As indicated by the UN Special Rapporteur, these acts were committed under the guise the war against drug trafficking, and were carried out by the armed forces as well as federal, state and municipal police.³⁸

These acts are carried out in the exact same manner in Baja California. The cases documented for this report, as well as those of the PDHBC, indicate a *modus operandi* in which a person is detained either in his house or in public without an arrest warrant, and the same torture techniques are applied.

Public and private resources, such as military facilities, vehicles, and high calibre firearms are used, particularly by police and military personnel. Drugs and weapons (exclusively available

34. Supra n.13

35. Supra n.17

36. Supra n.13

37. See as example, Supra n 17 pages 5 to 29 to 32.

38. Supra n 17 and Supra n 16.

to the army) are used to falsely implicate detainees in drug trafficking and/or organized crime.

In its 2008 annual report, the Office of the Prosecutor for Human Rights of Baja California indicated that there were complaints against municipal police for arbitrary detentions carried out in homes“ even though in the reports provided by authorities or agents established that the arrests took place in public *during surveillance activities in the districts*.”³⁹ Both the State Police and the PDHBC noted in that same year:

*“State Police also had complaints for breaking into houses in five municipalities of the State, where operations are carried out in a more violent manner as reported by the citizens, that they arrive at their houses and break doors with the false accusations that there are drugs, weapons, or kidnapped persons in the home.”*⁴⁰

The acts described in the cases documented while in Baja California, and those identified by the CNDH and the PDHBC, reveal that incidents of torture, enforced disappearances, and arbitrary detentions are of an organized, and not an incidental, nature, and sometimes result in death or murder.

The use of material resources - such as military facilities - as well as the concerted actions between security agents and other state institutions, is evidence that these criminal acts are of an organized nature.

Several witnesses indicated that there is designated place for torture in the military facilities. They also said that other persons were detained or tortured at the same time.⁴¹

One victim describes having been illegally detained without his family being informed as to his whereabouts, and tortured.⁴²

Resources are not limited to the use of facilities. Those persons committing these acts have army-issued weapons and drugs to provide a reason for the detentions, by planting them on victims as false evidence.⁴³

Private, army, and police vehicles are used in these attacks. One of the victims was detained through the use of 11 State Police car . In other cases, witnesses and victims described that those responsible used both private and army vehicles. In some cases, there are reports that

military and other participants in these operations were dressed as civilians.

The victims were able to confirm the presence of soldiers.

“I, with this eye [the left one] was looking and there I saw men dressed as a soldiers ... they took me into a room and there they took a picture of us and they took my husband away ... they showed me photos, and told me they were going to kill my family.”

*“They put me in a military vehicle. Inside there were only men in black and outside there were soldiers”*⁴⁴

39. Office of the Prosecutor for Human Rights and Citizens Protection of Baja California, Third Report of 2008, on: www.derechoshumanosbe.org/sites/default/files/informes/126_informe_2008.pdf

40. Ibid.

41. Confidential Testimony

42. Confidential Testimony.

43. Confidential Testimony.

44. Confidential Testimony.

These incidents follow a clear pattern: a person is detained without an arrest warrant and hooded, generally by military and/or police dressed as civilians. This often happens during an illegal raid into his home without a judge-issued search warrant, and detention without an arrest warrant issued by a judge. The victims are then transferred to a military facility where they are tortured, with techniques used in all areas. At the same time, their families and friends are denied the knowledge of their whereabouts, they are not brought before a court, nor are they allowed any contact with their lawyer. They are forced to sign confessions, or drugs or weapons of the exclusive use of the army, are planted on them. They are then presented before the court, and in many cases to the media (or the news reporters are informed of their detention). The crimes are often covered up by false reports that the detentions were carried out in flagrancy or in street surveillance activities. Medical examinations given to detainees are mere questionnaires, and do not include a physical or psychological exam.

In the 95 cases of torture referred in this report, a significant number of arbitrary detentions had taken place without a court order, and in no case did security agents have a search warrant when they raided the victim's home. Detention and searches were carried out with the knowledge that they were illegal acts.

The torture techniques were the same in all cases. All victims were beaten with a plastic bag covering their head, many had water poured over a cloth that was placed on their mouth, they also suffered from waterboarding, and electric shocks were given to different parts of their body, including the genitals. These techniques were even used on two minors.

In one of the cases, the torture was such that the victim had to be transferred to the hospital. According to a family member, "he says he was beaten very much, a bag was placed, a wet towel, and he says they said nobody had ever supported so much."⁴⁵ Another victim was sexually abused by military personnel several times during two of the days she was detained in military headquarters.

Other victims describe their experiences:

"The voice with the accent returned and said: put him in the bathroom, and inside [the bathroom] someone with a "chilango" accent said to me: *'listen you son of a bitch you will do what I tell you'*, while beating me in the stomach and in the rib cage with his closed fist. I then fell to the floor because one of his strikes sucked the air out of me. He also said: *'you just have to sign and not make any questions about anything. If you are told something you say 'yes ok' you shitty policeman.'* I asked him to please not beat me anymore. At the end he kicked my left leg, I rose up as I could (sic)."⁴⁶

"We were given electric shocks with a device that make us jump, both in the legs, as well as in the rib cage and in the stomach. We asked them to please leave us and asked why were they doing this to us, since we had not done anything, and they answered asking us where was (...) and they would let us go. We told them we did not have communication with him (...) We said please do not torture us, but they did not leave us. They left us for about two hours without beating us and stopped giving us electric shocks only for short times, then afterwards started doing it over and over again (sic)."⁴⁷

"Suddenly they stopped suffocating me and I started feeling that they were taking away my boots, pants and breeches and I felt how they put my feet inside a metal container with water while I was standing up with my hands tied and my arms hanging. In those moments I started to hear how some electric cables crashed amongst themselves

45. Confidential Testimony.

46. Confidential Testimony.

47. Confidential Testimony.

and suddenly I felt a strong electric charge to my testicles that they caused by using something made of metal.”⁴⁸

Victims were also submitted to psychological torture and sexual violence. They describe scenes where they were made to believe that they were going to be killed, or that the agents had killed, or were going to kill, members of their family if they did not say what they wanted them to say.⁴⁹

Family members also suffered as they were denied information as to the whereabouts of their families, thereby creating the crime of enforced disappearance as set forth in article 7(1)(i) of the Rome Statute and the Elements of Crimes.

“I went to the headquarters and they denied she was there.”⁵⁰

“They did not want to tell us where she was.”⁵¹

“I left about 10:30 [pm] to the delegations. In the PEP they told us that detained persons were not taken there. I went to the Office of the Federal Prosecutor (PGR) and I went with the agent in charge, and he told me that no [they were not taken there].”⁵²

Through using torture the agents hoped to implicate victims with drug dealing, either by planting them with drugs or weapons exclusively used by the army. They also made them sign blank papers.

“In the Office of the Federal Prosecutor they made us sign a blank paper and put our fingerprints there.”⁵³

Reports also provide evidence as to the collaboration or complicity of doctors in military headquarters, who made the victims sign blank medical reports. The descriptions given also point to the collaboration with police investigators.

This pattern is evidenced by the information provided in this report and reports of other human rights organizations concerning acts of torture. These acts that have taken place in Baja California and at national level, are not isolated acts, but are representative of a practice that was allowed under the framework of a “national security policy.” This is particularly evident in the report *Directives for Integral Fight against Drug Trafficking 2007-2012*, which will be discussed further.

Many of these cases were presented to the media as achievements toward the national security policy on the war against drug trafficking, despite the fact that most of those illegally detained were released for lack of evidence to uphold the charges attributed to them.

It is therefore clear that the acts reported are part of a systematic program of organized violence committed by security forces, and are directed against the medium and lower class civilian population of Baja California. This is proven by the reported use and availability of public resources to reach a single goal: to implicate anyone as being involved in organized crime in order to give the appearance that the war against drug trafficking was a success, as well as to gain legitimacy for this ‘war’ at any cost.

48. Confidential Testimony.

49. Confidential Testimony.

50. Confidential Testimony.

51. Confidential Testimony.

52. Confidential Testimony.

53. Confidential Testimony.

E. EXISTENCE OF A STATE POLICY

For the commission of a crime against humanity, there must be systematic or widespread attacks committed against any civilian population “pursuant to or in furtherance of a State or organizational policy to commit such attack or to promote that policy.”⁵⁴

As provided in the Elements of Crimes, “[I]t is understood that policy to commit such attack” requires that the State or organization actively promote or encourage such an attack against a civilian population”. Likewise, footnote number 6 of the Elements of Crimes specifies that the goal of said policy is that the civilian population be the subject of an attack, which is to be executed by actions of the State or the organization. Such policy, in exceptional circumstances, may be executed by a deliberate omission in acting and consciously would point to the encouragement of an attack of this sort. The existence of a policy of this kind cannot be deduced exclusively from the lack of action of the government or the organization.

According to the interpretation of the Pre-Trial Chamber in the confirmation of charges hearing against Jean Pierre Bemba, former Vice-President of the Democratic Republic of the Congo, “The requirement of a ‘State policy or of an organization’ implies the attack must follow a regular pattern. This policy may come from a group of persons who command a particular territory, or from an organization with the capacity to commit a generalized or systematic attack against the civilian population. The policy does not have to be formalized. Since it is a planned attack, whether directly or organized – and not spontaneous or isolated act of violence - it will satisfy this criteria.”⁵⁵

As previously indicated, the acts referred to in this report were carried out while following a regular plan by the armed forces and State security agents, framed within a policy of assuring legitimacy for the war against drug trafficking by demonstrating “results”. As noted in the foregoing paragraph, it has a systematic character which is evidenced by the resources used, by the pattern of the acts, by the use of public resources, and also by the statements of some of the officers.

In the decision against Congolese warlord Germain Katanga, the judges made a distinction between the systematic nature of the attack and the policy pursued. According to the judges, the verification of a systematic nature of an attack goes further than simply verifying the existence of a policy, and is limited to proving that a State seeks to carry out an attack. Nevertheless, both parties must meet the same requirement: to establish that an individual action is linked, through a chain, which connects it to a system or a plan.⁵⁶ What is important, as the Chamber indicated, is to prove that such line of conduct is carried out in order to apply, or in pursuance of, a policy, without being required to demonstrate the relationship between the line of conduct and the operation. In order to demonstrate a policy it not required to attribute the criminal intent of the perpetrators with the criminal policy.⁵⁷

In light of this decision, it is sufficient to note that the cases presented reveal the same fashion of acting and that they correspond with a concerted intent to attack vulnerable persons with the purpose of showing the public progress in the war against drug trafficking. This policy promotes and facilitates the commission of these crimes, and these acts are not isolated actions of corrupt State officers, even though some of the perpetrators are corruptly motivated. As was stressed by the judges in the Katanga decision, it is not necessary to demonstrate there is a policy, or to attribute the intent of those who carry out the acts to the policy, for purposes of demonstrating the general elements of a crime against humanity. These acts took place with the acquiescence of, contribution by, or in some cases, with the participation of high military command.

54. Rome Statute, Article 7(2)(i)

55. Original text in English at: ICC-ICC-01/05-01/08, Pre Trial Chamber III, The Prosecutor v. Jean Pierre Bemba, Gombo Decision Pursuant to Article 61(7)(a) and (b) of the Rome Statute on the Charges of the Prosecutor Against Jean Pierre Bemba GoGombo, June 15, 2009, par. 81. Also see ICC-01/04-01/07-717, Pre Trial Chamber I, The Prosecutor v Germain Katanga and Mathieu Ngudjolo Chai, Decision on the Confirmation of Charges, September 16, 2008, para. 396.

56. Supra n. 21 paras. 1112 y ss.

57. Ibid. Paras. 1115 and 1116.

Even though there is no statutory requirement of a written or manifest policy, the actions taken by the military authorities were based on the Directive for Integral Combat against Drug Trafficking 2007–2012, of which knowledge of its existence was only recently made public.⁵⁸ This Directive reflects the Presidential vision and strategy, and imposes compliance thereto by all subordinates under the principle of a chain of command. The Commander-in-Chief of the Armed Forces, the President of the Republic, established the vision, and the Army’s high command (the Ministry of National Defense) was responsible for preparing the Directive.

Under its own terms, the document establishes that the ones responsible for operating the Directive are the commanders of military regions, who in turn give orders to the commanders of military zones, and they in turn to the commanders of military garrisons. At the end of the chain of command are the commanders of military units, as established in a telegram by SEDENA, which also recently became public.

According to the weekly newspaper *Proceso*, it was through this Directive that the Army’s high command ordered commanders to act with “ample freedom of action in the use of resources at their disposal”, “ample initiative”, “more dynamism”, had the “capacity to command”, and to carry out “decisive actions” in order to reach their objectives.⁵⁹ The Directive was prepared by the then Chief of Section Seven (Operations against Drug Trafficking) of the National Defense Military Presidential Staff (EMDN), General Rogelio Armando Patiño Canchola, who is currently Under-Chief of Military Doctrine of the EMDN.

Those responsible for implementing this Directive were the commanders of the 12 military regions of Mexico. In Baja California, the commander was Alfonso Duarte Mujica. The zone and garrisons commands were in charge of putting the directive in practice.⁶⁰

The use of official State military facilities clearly shows the active institutional participation which, by implementing this Directive, led to the commission of crimes that fall within the jurisdiction of the ICC, and that said crimes were carried out by federal military authorities. This was condoned through the “ample freedom of action to employ any resources available to them”.

For example, in one of the victims⁶¹ received an order from a public authority to attend a training class, which then facilitated his arbitrary detention and the inhuman acts committed against him.

The absence of legal proceedings against the perpetrators of these crimes contributed to the promotion of such conduct, which were clearly carried out by the armed and security forces of the State. The authorities have not only failed to take single action to prevent, investigate, or judge any of the acts, but they have portrayed these acts as successes in the war against drug trafficking.

Instead of facing any reproach from the State, President Calderón promoted a high officer of the armed forces, despite the fact that several accusations of torture had been levied against him.

In order to claim accomplishments in the alleged war against drug trafficking, and in order to lend credence to its legitimacy, civilians were attacked, arbitrarily detained, tortured, and forced to sign confessions for possession or sale of drugs, and were further presented to the media as being drug dealers. Some of these victims were murdered in order to cover up this criminal policy. These acts occurred as a result of the Directive issued by the SEDENA, which demonstrates that there was a policy to do so by federal and State security forces, particularly by the military.

58. See “The Military Bible”. *Proceso Magazine* N° 1967, fragment in: www.proceso.com.mx/?p=377034 and you can find the complete version in: www.expresionlibre.org/main/escogidas/Proceso/la_biblia_militar_de_la_Guerra_de_Calderon.

59. *Ibid.*

60. *Ibid.*

61. Confidential Testimony.

V. ADMISSIBILITY

A. COMPLEMENTARITY

In most of the cases, there are no known investigations or criminal proceedings that have been brought against high ranking government officials, and those cases in which criminal investigations were pursued produced no results. There has not been a single criminal conviction for those most responsible for the attacks that constitute crimes against humanity as provided in the Rome Statute.

The cases contained in the report are symptomatic of the much larger problem of impunity in respect to torture and other serious violations of human rights, such as extrajudicial executions and enforced disappearances. According to the Counsel of the Federal Judiciary, despite the significant number of accusations of torture made between 2005 and 2013, only four sentences have been issued and only two of them are final.⁶²

B. GRAVITY

The Office of the Prosecutor has determined that the gravity of these crimes shall be assessed as to the scale, nature, and manner in which the crimes were committed, as well as their impact.⁶³

According to the policies established by the Office of the Prosecutor:

“The scale of the crimes may be evaluated in the light, among other things, of the quantity of direct and indirect victims, the importance of the harm caused by the crimes, particularly bodily or psychological harm caused to the victims and their families, or the geographical and temporal diffusion (high intensity of the crimes during a short period or low intensity of the crimes during an extended period).⁶⁴

As indicated above, our organizations present what we consider to be only a sampling of cases that may be more extensive in Baja California and even in all the Republic of Mexico. Nevertheless, this sample involves approximately 100 victims, a number that must be considered in relation to the high number of unrecorded cases, and the absence of registries concerning victims of torture.⁶⁵ Seen under this light, this sample, which refers to three places in only one State, evidences that these acts are carried out on a considerable scale.

Since these are serious cases of arbitrary detentions, disappearances, and torture, the physical and psychological harm caused to their families is significant.

Although the crimes committed in the cases presented occurred between 2006 and 2012, most of the cases were registered in 2011. Additionally, there are also cases that took place in four cities of located in one State. Therefore, in the light of the size of the territory, the period of time, the intensity of a larger number of cases - both during the six years covered in this report and over the years , the criteria of gravity is satisfied.

As the Prosecutor stated :

“The nature of the crimes referred to the specific elements of each crime, as for example

62. Vanguardia.com.mx. Mexico falsifies before the UN sentences of torture, July 7, 2014 at: www.vanguardia.com.mx/mexicofalseantelaonusentenciasportortura-2107000.html

63. Prosecutor of the ICC General policy document on preliminary examinations, 2015, par.61.

64. Ibid. Par.62

65. The National School of Victimization and Perception on Public Security 2013 (ENVIPE) prepared by the INEGI, reported a black cipher of 92.1%, only in 2012.

in murders, rapes, and other crimes which entail sexual violence or gender violence, and crimes committed against children, persecution or imposition to a group of conditions of life calculated to provoke their destruction.”⁶⁶

The cases presented deal mainly with torture. The fight against torture is considered to be an obligation that is applicable to all, and it is further evidence as to the grave nature that the international community has attributed to this conduct. The cases also refer to murder, rape and gender violence, as well as torture and arbitrary detentions, some of which were committed against minors.

According to the policies of the Prosecutor Office on preliminary examinations:

“The manner in which the crimes are committed may be evaluated in the light, among other factors, of the means employed to carry out the crime, the level of participation, intent of the perpetrator (if it is discernible in this stage), the extent to which the crimes were systematic or resulted from an organized policy or plan or were the result of abuse of power by any official function, and elements of particular cruelty such as the vulnerability of the victims, any cause that entails discrimination, or violence and sexual violence used as a means of destruction of a group.”⁶⁷

Torture implies cruelty to the victim’s human dignity, therefore any act of torture will satisfy the criteria of gravity as to the manner under which it was committed. These cases of torture arbitrary detentions, and disappearance were committed in a systematic manner as a result of a State policy of illegally detaining civilians, to torture and obtain confessions from them that would implicate them to organized crime in order to ensure the legitimacy of these actions. These acts were the result of abuse of power by police and military forces in respect to vulnerable persons due to their belonging to social and economic groups of little education or medium and lower classes of society. Also, cases of sexual violence both against men and women have been reported.

Finally:

“The impact of the crimes may be assessed in the light, among other factors, of the sufferings caused to the victims and the increase in their vulnerability, the terror instilled afterwards, or the social, economic and environmental harm inflicted on the affected communities.”⁶⁸

In all cases, the victims are still suffering the physical, psychological, economic and social consequences of the detentions and torture, as was related in their testimony.

“[After the events] I had nightmares, everything that I lived through came back. Afterwards it has all come back. Now my blood pressure is rising. I cannot hear any noise because I jump. When I am stopped by the government I get very nervous. When I do not work, I do not go out. I do not like to be in the street.”⁶⁹

“Sometimes I have nightmares (...) Sometimes I cannot sleep. Little noises wake me up easily.”

“Before I was a very happy person, (...). The expense of the lawyers was about one hundred thousand dollars. (...). I sometimes get very depressed.”

“The psychological harm has already been done to us. My nerves are sick. No car can follow me because I get very nervous. What worries us are the collections. We work from sunrise to sunset.”

66. Ibidem 2013 par.63

67. Ibidem par. 64

68. Ibidem par. 65

69. Confidential Testimony.

“I get sick all the time and have insomnia. (...). He goes into depression and many things come to his head.”

“He has been very weak. He has anxiety, stress, and tachycardia.”

Most of the victims spent time in prison, and their families were forced to incur in high expenses to prove their innocence.

“We have spent money for lawyers and photocopies of documents. We have spent over 10,000 dollars.”

“It cost a million pesos and we obtained a loan. (...). Photocopies were charged in dollars.”

In some cases, the victims are in such a vulnerable economic situation that they cannot pay and are therefore forced to stay in prison.

Victims do not have the adequate medical or psychological care needed to be able to deal with the consequences of the harm suffered. Further, they are subject to threats so that they do not even bring accusations for the torture to which they were submitted and, on some occasions, they suffer the social stigma for having been linked to drug trafficking or with criminal groups in the media.

In the light of the foregoing, it is clear that the elements required to satisfy the criteria of gravity have been met due to the scale, nature, and impact of the acts, as well as the manner in which they were committed.

VI. CONCLUSION

The information provided offers a reasonable basis to believe that from 2006 to 2012, attacks and arbitrary detention were committed in Baja California as part of a systematic attack, and likely a generalized one, against the civilian population. These acts were part of a strategy utilized by security forces, mainly the military in collaboration with state and municipal police forces, to produce suspects through confessions obtained by torture and the fabrication of evidence for the purpose of producing results to assure the legitimacy of the security policy and the war against drug trafficking and organized crime.

No criminal investigations or judgments have been brought against any military commander or any policeman implicated in these cases. Therefore, a case could be eventually admissible before the ICC. Finally, the facts surrounding these attacks satisfy the criteria of gravity set forth by the Office of Prosecutor concerning its policy on preliminary examinations.

Therefore, FIDH, CMDPDH and CCDH believe that there is a reasonable basis to believe find that the crimes committed in Mexico, and in particular in the State of Baja California fall, within the jurisdiction of the ICC. We submit this information to the Prosecutor of the ICC for consideration, with the intent that a decision be taken in accordance with article 53 of the Rome Statute.

Our organizations also request the Prosecutor to publicly announce a preliminary examination and to carry out a mission to Mexico. In light of the obligation of the Office of the Prosecutor to verify the seriousness of these facts, our organizations recommend that the Office of the Prosecutor to request the following information from Mexican authorities:

- Information on the criminal investigations and proceedings opened in each of the cases presented before the ICC to bring before justice the alleged perpetrators of these attacks.
- Information on the military structures that acted in Baja California at the time when the acts occurred, and its relationship with the State agents and the municipal authorities.
- All the reports of the PDHBC and of the CNDH that complaints of arbitrary detention, extrajudicial executions, torture, and cruel, inhuman and degrading treatment committed in Baja California from 2006 to 2012.



The **Mexican Commission for the Defense and Promotion of Human Rights, A.C.** (CMDPDH) is a civil, secular, autonomous and independent organisation, founded in 1989. The CMDPDH conducts local and international activities aimed at impacting governmental structure and policy in Mexico, in order to achieve full protection and enjoyment of human rights and to [promote] social justice.

The CMDPDH holds consultative status at the Organization of American States and the United Nations. CMDPDH is a member of the International Federation for Human Rights (FIDH) and part of multiple networks, such as the Coalition for the International Criminal Court (CICC), the National Citizens' Observatory on Femicide, the Citizens' Observatory on the Justice System, the International Network for Economic, Social and Cultural Rights, and the International Coalition of Organizations for Human Rights in the Americas.



The **Citizens' Commission of Human Rights of the Northeast** (CCDH) is a non-governmental not-for-profit organisation, founded in 2004 and dedicated to the promotion and defense of human rights in the State of Baja California, Mexico.

CCDH documents and litigates cases of human rights violations in the region, particularly regarding torture, enforced disappearance and extrajudicial execution.



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inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest, detention or exile. Article 10: Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him. Article 11: (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty

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