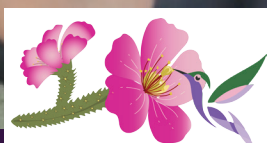




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y Democracia



i(dh)eas
LITIGIO ESTRATEGICO EN DERECHOS HUMANOS, A.C.

Article 15 Communication under the Rome Statute to the International Criminal Court Regarding the alleged commission of crimes against humanity in Chihuahua, México between 2008 and 2010

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I. Names of organizations that present the communication, and address for notifications

The International Federation for Humana Rights (FIDH);

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II. Methodology

In order to prepare this communication, the organizations analyzed a variety of publicly available sources. Of particular note was the study of 35 documented cases, 26 of those documented by the National Commission for Humana Rights (hereinafter, “CNDH”)¹, which include final reports (known as “recommendations”). The recommendations are public and they contain facts that the CNDH considers to be certain; that is to say, these facts are not contested by the authorities involved, to the extent that those authorities have respected the CNDH’s recommendations, recognized the facts, the findings, the conclusions, and the attribution of institutional responsibility.²

¹ The CNDH is a human rights institution that was created based on the Paris Principles, with an investigative capacity. Its conclusions regarding allegations of abuses committed by federal authorities are documented in files in the care of the institution and made public via official reports known as “recommendations.” The entire text of the recommendations are published on their website, since they constitute official public documents. For the purposes of this communication, the references to victims in the cases documented by the CNDH (e.g., names and other identifying information) were transcribed in the same way that they appear in the recommendations; accordingly, all of the cases reference the recommendation or file number, and the descriptions use the textual language that the CNDH uses to refer to them (be it by full name, first name or last name, or with an alias). The situation is the same with regards to the references to public officials as responsible or involved in the events documented by the recommendations (be it that they are referred to by their full name, first name, last name, or alias).

² All of the recommendations analyzed in this communication were accepted by the authorities to which they were addressed, principally the Secretariat of National Defense (SEDENA). The one exception is Recommendation No. 21/2010, related to the torture inflicted on V1, who was detained at the State Social Rehabilitation Center in Aquiles Serdán, Chihuahua. That recommendation was directed to the Constitutional Governor of the State of Chihuahua, in addition to SEDENA, and that institution did not accept it

These cases reference a total of 78 direct victims of crimes that were committed within the context of the Joint Chihuahua Operation (hereinafter, “OCCH”), which was implemented in that state at the beginning of 2008. Many of the victims experienced multiple criminal conducts resulting from the same incident, as described in the section on crimes of this communication.

The analysis also included the study of two cases documented by the organization Human Rights Watch (hereinafter, “HRW”) in their report, *“Mexico’s Disappeared: The Enduring Cost of a Crisis Ignored”*,³ and which represent a total of 4 victims; as well as 7 cases documented by media reports that represent a total of 39 victims. Just like the previous cases, the majority of the victims were subjected to diverse criminal conduct, resulting from multiple incidents registered during the time that the communications covers. All those cases took place in the period of 2008 to 2010.

Additionally, the organizations conducted 111 requests for information through the National Transparency Platform,⁴ by which they obtained official information from government sources. They analyzed official information contained in public documents such as press releases, official reports, and documents released by the authorities involved; as well as reviewing publicly available sources, including a review and analysis of 41 newspaper articles, 4 reports prepared by civil society organizations and academic institutions, and interviews with reporters and human rights defenders, whose identities remain confidential for their safety.⁵

The references to names and identifying information of the more than 120 victims that are included in this report have been pulled entirely from publicly available sources; accordingly they appear here in the same way that they appeared in those sources.

The signatory organizations submit this information for the consideration of the Prosecutor of the International Criminal Court (hereinafter, “Court” or “ICC”), in accordance with the procedure established in article 15.2 of the Rome Statute, with the goal of providing truthful information about the probable commission of crimes against humanity falling under the jurisdiction of the Court, based on facts that occurred in the state of Chihuahua, Mexico, between March 27, 2008 and January 16, 2010.

³ Human Rights Watch. *Mexico’s Disappeared: The Enduring Cost of a Crisis Ignored* (2013). Available at: <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>. (Last Accessed: 03/05/2018).

⁴ The requests for information are petitions addressed to different institutions, authorities, entities, organs, and organisms of the federal and local government, carried out through the official transparency system in accordance with *General Transparency and Access to Public Information Act*, which seeks to guarantee the right to access public information. That right obliges the authorities at all levels of government to make information available. Out of 111 requests, 26 were requested of the Secretariat of National Defense (SEDENA); 30 to the National Attorney General’s Office (PGR); 6 to the Secretariat of the Navy; 6 to the Executive Secretary for the National System of Public Security; 6 to the Federal Police or Preventative Police; 6 to the PGR National Center for Planning; 6 to the Transparency Unit at the Chihuahua state government Public Prosecutor’s Office; 6 to the Transparency Unit at the Secretary General of Government of the state of Chihuahua, 6 to the National Humana Rights Commission, and one to the Housing Secretariat.

⁵ See Appendix 1, “Sources for the Elaboration of the Communication and Appendices.”

III. Executive Summary

In light of the information contained in this communication, the signatory organizations consider there is a reasonable basis to believe that crimes falling under the jurisdiction of the ICC have been committed in Chihuahua, México, between March 27, 2008 and January 16, 2010. These crimes principally include murder, torture, severe deprivation of physical liberty, rape, sexual violence, and enforced disappearances, as defined by article 7 of the Rome Statute—which establishes the International Criminal Court—and its Elements of Crimes.

Chihuahua is a state located in the north of the Republic of Mexico, and borders the United States of America. The state has a total area of 247,455 km², making it the largest state in Mexico. It has 67 municipalities and an approximate population of 3,556,574 persons.

The Rome Statute entered into force in the United States of Mexico (hereinafter, “Mexico”) on January 1, 2006. The information presented in this report references crimes committed in the period between 2008 and 2010 in the Mexican territory, specifically in the border state of Chihuahua. Accordingly, these conducts fall under the temporal jurisdiction, subject matter jurisdiction, and territorial jurisdiction of the Court.

The information contained herein demonstrates the existence of a national policy by which the civilian population was systematically attacked, principally based on the use of military force in public security initiatives to confront organized crime since December 2006, by decision of Felipe Calderón Hinojosa. That policy was commonly known as “the war on drug trafficking” or “war on drugs.” The systematic attacks against the civilian population were justified through a direct call for a “head-on fight against drug trafficking.” These attacks translated in the systematic commission of crimes against humanity. Until now, those most responsible, those that promoted, encouraged, and cooperated in the implementation of these attacks, have not been investigated, prosecuted, or punished by the Mexican civil justice system. To the contrary, since that time public officials have consistently denied, minimized, or outright ignored the existence of crimes committed against the civilian population by the Mexican armed forces (hereinafter, “FAM”, for its initials in Spanish), which has prolonged the effects of the violence in the current administration.

The militarized strategy employed by former president Felipe Calderón in his role as Supreme Commander of the FAM resulted in a spiral of generalized violence that surpasses any recorded statistics in the modern history of Mexico. Nevertheless, the form and magnitude of this violence that arose in Mexico since the start of that strategy has not been homogenous; to the contrary, it has arisen and concentrated in those states or zones where so-called “joint operations” have been initiated. These “joint operations” implicate the participation of the FAM—the army and the navy—in tasks appropriate for the federal, state, and/or municipal police.

In previous communications, the organizations have presented information to the Office of the Prosecutor of the ICC about the commission of crimes against humanity in specific periods and areas of the Mexican national territory where these joint operations took place.⁶ That is the case

⁶ See FIDH, Familias Unidas en Búsqueda y Localización de Personas Desaparecidas, Fuerzas Unidas por Nuestros Desaparecidos en México, Centro Diocesano para los Derechos Humanos Juan Fray de Larios, and others, “Article 15 Communication to the International Criminal Court regarding the alleged commission of crimes against humanity in Coahuila, Mexico between 2006 and 2012,” July 5, 2017, *available at*: https://www.fidh.org/IMG/pdf/angmexico_coahuila_ongoing_crimes_against_humanity_fidh-final_a_revisar-1.pdf; FIDH,

with the communication sent in September 2014 about the alleged commission of crimes against humanity in another border state, Baja California, between 2006 and 2012. Similarly, in 2017 a communication was presented about murders, tortures, and disappearances committed by public security forces and organized crime in the State of Coahuila between 2009 and 2016.

The present communication refers to the military operation that was launched in the state of Chihuahua at the beginning of 2008 and which lasted until 2010, with the purpose of recuperating control of territories dominated by criminal organizations. In this period, the command chain was under orders from military authorities, who, with the support of the federal, state, and municipal police, directed both everyday security tasks and specific operations intended for “the combat” of criminal groups in the state of Chihuahua. The policy included the imposition of fatal consequences for anyone that was said to be a member of the organized criminal groups present in Chihuahua during the time that the OCCH lasted, or who was assumed to support those groups.

That policy was implemented under pressure to show “the results” of the official security strategy at the hands of the military, which led to the commission of attacks against the civilian population.

During almost two years, the military systematically committed serious crimes—in particular, torture, severe deprivation of physical liberty, enforced disappearance, murder, rape, and sexual violence. These crimes constitute crimes against humanity falling under the jurisdiction of this Court, because of their systematic nature and because they were carried out through regular patterns of action that confirm their organized nature. All of this shines light on a criminal context in which those most responsible have not been investigated, prosecuted, or punished.

Accordingly, this communication provides clear elements regarding the patterns of action of the military authorities in the context of a policy that permitted, tolerated, and in a certain way promoted the systematic commission of crimes against humanity, in the framework of the OCCH. The goal of showing “results of the effectiveness” of this security strategy led military institutions to permit and practice abuses using the state resources as well as military staff, goods, and installations. All of this occurred with the knowledge of the highest command, and, in particular, those involved with the implementation and supervision of the Joint Chihuahua Operation.

While the chain of abuses continued in Chihuahua even after the OCCH finished, in the context of the operations that came subsequently and at least until the end of 2012, this communication does not analyze those operations. However, it does make available to the Office of the Prosecutor information included in publicly available official sources that demonstrates how the criminal action has continued over time.

The criminal patterns of the OCCH included: searches and detentions conducted by members of the military without a warrant, generally undertaken in private homes or at checkpoints; transfers of civilians to military barracks or installations, followed by a denial to the family members about the detention and holding in those facilities, which fall exclusively under military control and are governed by the command chain; physical and psychological torture sessions with patterns of similar practices, including sexual torture; numerous rapes and other forms of sexual violence committed by the armed forces; delays in presenting detained persons before civilian authorities without any justification, up to hours or even days after their detention; as well as other serious abuses, including interment of bodies and their burial, in situations where civilians lost their life

CMDPDH, “Report on the alleged commission of crimes against humanity in Baja California between 2006 and 2012,” September 12, 2012, *available at*: <https://www.fidh.org/IMG/pdf/mexique642ang2014web.pdf>. FIDH et. al., (2017)

during torture sessions committed at the hands of the military while they were under military custody; in addition to the participation of military medical staff to cover such abuses.

In all of the cases the military provided false information, for example regarding the hour, day, and/or place of the detention, indicating generally that the individuals were detained in public, during a patrol or in checkpoints; or that the detention took place *in flagrante delicto*, when civilians were surprised by the military; or giving a false time for the detention even when they did reveal the correct place of detention.

The practices of severe deprivation of liberty, torture, rape and sexual violence, were not only known and tolerated by military authorities, but also by the federal, state, and local authorities. The persons who were deprived of their liberty were routinely transferred to military installations, even when there was no legal authority to permit such a transfer; nevertheless, the institutions responsible for criminal prosecution did not start official investigations into these conducts upon learning of them.

In several of the cases where people detained by the military suffered torture and were later brought before civilian authorities, the expert medical opinions by the agencies of the National Attorney General's Office (hereinafter, "PGR", for its initials in Spanish) demonstrated the lies and contradictions on the part of the military doctors. In other cases, statements from the CNDH itself confirmed the torture. Additionally, the testimony of the victims as well as the expert testimony confirmed the acts of torture, rape, and sexual violence. The medical examinations showed the injuries presented by persons who had been detained when they were brought before the civilian authority, without there being any credible and coherent explanation in the official military documents regarding how such injuries had been incurred.

The detained persons were brought before the civilian authorities with allegations of possession of weapons or drugs, and not for crimes of homicide, kidnapping, or theft of cars, which were the crimes with the greatest increase in frequency at the start of 2008 in the state, and which allegedly constituted the motivation for the launch of the OCCH and the presence of the military in the state.

In general, the evidence presented by the members of the military that they claimed incriminated the civilians that they had detained was used by the PGR to support the criminal charges; nevertheless, generally that evidence was not ultimately considered sufficient by the judges to open trials or to find the individuals guilty. As a result of this, the individuals were released without charges after several months or years of detention.

The scarce investigations, trials, and convictions against military staff—including those that have proceeded against individuals in the mid-level of the command chain—have not shown signs of punishment for the documented behaviors, nor have they brought to justice those most responsible, such as the highest-ranking members of the military and civilians who designed, permitted, and assisted this policy in such a way that it would result in the systematic commission of crimes falling under the jurisdiction of the International Criminal Court.

To the contrary, during the administration of Felipe Calderón, a policy of denying the recognition of the commission of these crimes was maintained. These serious acts were consistently presented as isolated cases, as "civilian casualties", "collateral damage" or the acts of "a few bad apples", in the context of an "effective strategy" of a head-on fight against the drug trafficking gangs.

The evidence of crimes committed by the authorities that were responsible for the implementation of the OCCH, combined with social rejection, led up to the withdrawal of the FAM from the direct command of the joint operation. This in turn required adjusting the command chain to place the

federal police in charge, and later, adjusting again so that the state police—who are directed by a former member of the military—were in charge.

While the OCCH was underway, violence increased drastically in the areas where the operation was being implemented. The official statistics of the number of violent deaths (executions) in the state increased from 517 in 2005, to 2,600 in 2008—the year in which the Joint Operation commenced—and culminated in a maximum 6,407 deaths in 2010, constituting an important indicator. It is important to mention that the OCCH increased significantly levels of lethal violence in the state, reflected in the increase in intentional homicides. Following the withdrawal of the military, the levels of lethal violence did not decrease enough to return to pre-OCCH levels (Figure 1).

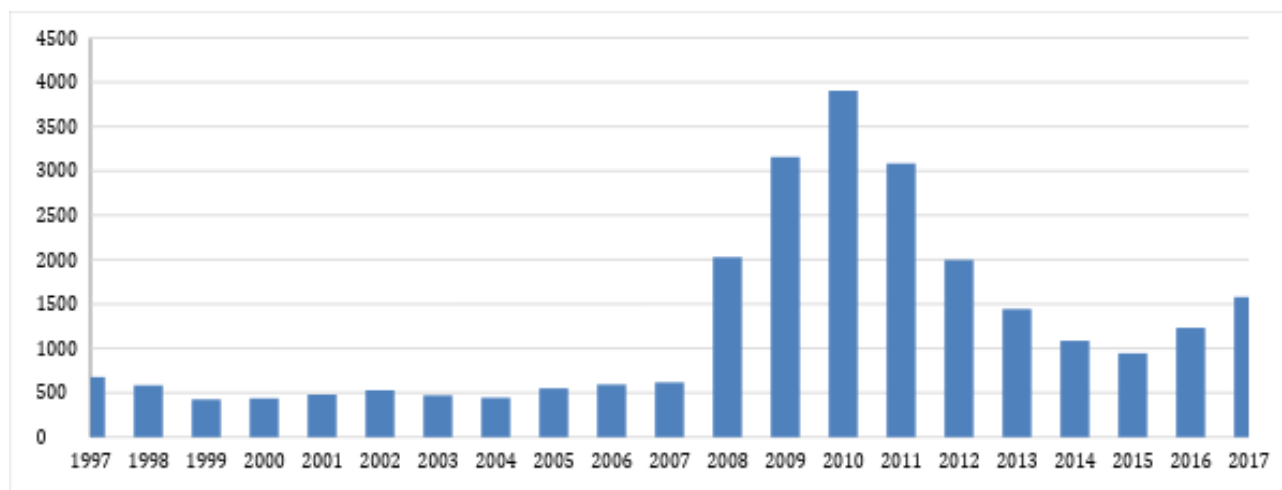


Figure 1. Source: Executive Secretary for the National System of Public Security. Data on the intentional homicide rate, through December 31, 2017. Figure prepared by the authors.

Similarly, we can observe a correlation between the increase in confrontations between the Secretariat of National Defense (hereinafter, “SEDENA”) and members of organized crime, and the increase in intentional homicides, as is demonstrated by Figures 1 & 2.

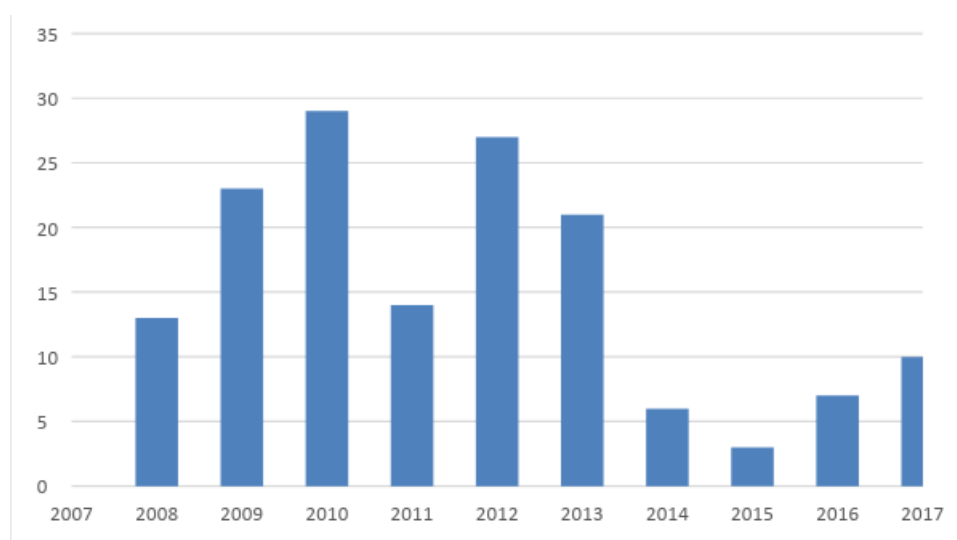


Figure 2. Source: SEDENA. Confrontations involving the SEDENA in Chihuahua. Figure prepared by the authors.

Another indicator is the fact that in the first half of 2008 alone, a mere three months after the OCCH was launched, 199 complaints of abuse perpetrated by members of the military in the state of Chihuahua were presented to the CNDH.⁷ Meanwhile, the State Human Rights Commission reported that in 2009 it received over 1,450 complaints where those responsible were members of the security forces participating in the OCCH.⁸

This communication includes cases of crimes committed in the period lasting from March 2008—when the OCCH was launched—through 2010—when control of the joint operation passed to the federal police. After violence failed to decrease under the leadership of the federal police in this second stage, in 2011 the responsibility for security duties returned to the local authorities, even though local police were led by a retired member of the military who has previously been accused by the signatory organizations of being directly responsible for crimes committed in the state of Baja California (these crimes were documented in the communication presented in September 2014 to the honorable Office of the Prosecutor). While the present communication documents only the abuses committed by members of the military operating as part of the OCCH, in the periods that followed the military’s withdrawal there are also documented crimes of torture and severe deprivation of liberty that similarly merit investigation and punishment.

Additionally, the organizations presenting this report to the Office of the Prosecutor of the ICC also recognize the significance of the serious criminal acts that have been committed by organized crime and non-state actors. Accordingly, we include in this communication some examples of acts that are publicly known and are considered serious enough to also have been referred to the Office of the

⁷ “Chihuahua, primer lugar de abusos de militares: CNDH”, La Jornada, Mexico 16/07/2008. Available at: <http://www.jornada.unam.mx/2008/07/16/index.php?section=politica&article=019n1pol> (Last Accessed: 03/10/2017).

⁸ Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf (Last Accessed: 03/05/2018).

Prosecutor of the Court, without adding further information than that which is available through publicly accessible sources.

The organizations have undertaken an analysis of the available information that involves the FAM from the perspective of international criminal law, particularly considering the obligations under the Rome Statute. Based on the information collected, the signatory organizations can confirm that the evidence meets the threshold of proof required in this stage, demonstrating that there is a reasonable basis to believe that from both a factual and a legal perspective, what we are seeing is the possible commission of crimes against humanity by members of the military working under the OCCH framework. This information allows us to craft a plausible hypothesis regarding the responsibility of high-ranking individuals in these serious crimes; that is to say, the responsibility of those persons who had the ability to prevent or effectively punish the crimes of their subordinates and did not do so, allowing complete impunity for these crimes to persist.

The organizations present this information to the Office of the Prosecutor with the objective of bringing an end to the impunity which has reigned regarding this crimes, due to the inaction of the Mexican justice system and the inexistence of authentic national procedures, principally because the investigations are not being carried out in an impartial or independent way, in addition to the total lack of corresponding investigations or trials⁹ that refer to those most responsible. Accordingly, the organizations believe that the complementary system of the ICC should be activated.

Additionally, we recognize that in its *Policy Paper on Preliminary Examinations*, the Honorable Office of the Prosecutor establishes that “[i]t is the responsibility of the Office [of the Prosecutor] to determine whether the statutory criteria for the opening of investigations are met.”¹⁰ Accordingly, we request that the Office of the Prosecutor of the ICC:

1. Conduct an analysis of the information provided, in light of the requirements of the Rome Statute, regarding crimes committed by the FAM in Chihuahua in the context of the OCCH, to determine whether there exists a reasonable basis to initiate an investigation regarding the commission of crimes against humanity in Mexico; and
2. Undertake a visit to Mexico and request additional information that would allow the Office to broaden the information available regarding the situation described in this communication, particularly regarding the investigation, prosecution, and punishment by the Mexican criminal system of military personnel and high-ranking individuals responsible for the crimes committed during the OCCH.

⁹ The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case, ICC-01/04-01/07-1497, September 25, 2009, para. 78, cited in the ICC-OTP. *Policy Paper on Preliminary Examinations*, November 2013. Para. 47.

¹⁰ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 23.

IV. Context

A. General Context

i) The effects of the so-called “Drug War”, 11 years after it began

On December 11, 2006, former President Felipe Calderón Hinojosa initiated a security strategy, commonly known as the ‘War on Drugs’ as well as other names. This strategy was coupled with a decision to militarize public security. It has provoked a surge of violence in the country, as organized criminal groups, as well as state authorities from all levels of the government and military, have committed serious crimes such as murder, enforced disappearances, and torture.¹¹

The current situation of violence presents an alarming structural crisis in the areas of security, corruption, and impunity, where crimes committed by agents of the State are connected to crimes committed by criminal groups, and the two sometimes work in collusion.¹²

In some regions of the Mexico, the population lives in an environment of open armed conflict between the military institutions and criminal organizations, but without any official recognition of even the nature of the violence. Motivated by the federal government’s security strategy the FAM has committed crimes of a severe nature, which fall under the jurisdiction of this Court.

Within the framework of the war on drugs, policies have been implemented that are aimed at restricting the human rights and guarantees due to individuals, such as: the 2018 criminal reforms, which included informal preventative detention for crimes linked to organized crimes, the *arresto penal*, or informal criminal detention (for investigative purposes) and protected witnesses;¹³ the

¹¹ See Open Society Justice Initiative (2016), *Undeniable Atrocities: Confronting Crimes Against Humanity in Mexico*, New York, available at: <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-en-20160602.pdf>; FIDH et. al., (2017) “Article 15 Communication to the International Criminal Court regarding the alleged commission of crimes against humanity in Coahuila, Mexico between 2006 and 2012,” July 5, 2017, available at: https://www.fidh.org/IMG/pdf/angmexico_coahuila_ongoing_crimes_against_humanity_fidh-final_a_revisar-1.pdf.

¹² See FIDH, Familias Unidas en Búsqueda y Localización de Personas Desaparecidas, Fuerzas Unidas por Nuestros Desaparecidos en México, Centro Diocesano para los Derechos Humanos Juan Fray de Larios, and others, “Article 15 Communication to the International Criminal Court regarding the alleged commission of crimes against humanity in Coahuila, Mexico between 2006 and 2012,” July 5, 2017, available at: https://www.fidh.org/IMG/pdf/angmexico_coahuila_ongoing_crimes_against_humanity_fidh-final_a_revisar-1.pdf.

¹³ Decree by which diverse articles of the Constitution were reformed, published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on June 18, 2008.

recently approved Law of Interior Security;¹⁴ the 2014 reforms to the Code of Military Justice;¹⁵ and the 2016 passing of the Military Code of Criminal Procedures.¹⁶

Human rights organizations, international organisms of the United Nations,¹⁷ and other intergovernmental organisms¹⁸ have documented the commission of international crimes and severe violations of human rights in Mexico between 2006 and the present, within the context of the so-called “war on drugs.” Among those crimes they have highlighted are the commission of crimes against humanity such as enforced disappearances, extrajudicial killings, rape, sexual violence, torture and other cruel and inhuman punishments, and severe deprivation of physical liberty in violation of international law (with regards to the last category, they emphasize the use of the *arresto penal*, informal detention for investigatory purposes).¹⁹

In 2008, in an appearance in front of the Chamber of Deputies, the Secretary of the Interior (1) stated that the objective of what was known as the “comprehensive strategy” was “to recover peace, tranquility, and security for every Mexican family.” He also affirmed that the joint operations with the use of the FAM, were aimed to combat crime “in those places in the country where we are clearly challenged to obtain territorial control,” and stated that while the military may have been the most visible part of the security strategy, they were not the only part.²⁰

In numerical terms, in the previous 6-year term (2006-2012) a total of 328,107 SEDENA troops were involved in security work, principally in joint operations like OCCH. In the six-year term of

¹⁴ Published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on December 21, 2017, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5508716&fecha=21/12/2017&print=true. Seven U.N. Experts pronounced their opposition to the draft Law of Interior Security for violating fundamental human rights and presenting as to risk for their guarantee: available at: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22535&LangID=E>. The IACHR made a similar pronouncement: http://www.oas.org/en/iachr/media_center/PReleases/2017/200.asp. In the same vein, the CNDH also released a joint statement with the Office of the High commissioner for Human Rights rejecting the legislation: https://gallery.mailchimp.com/54ff874b5ab8ff86ab68f4f15/files/846e2e8c-756e-402a-8748-dae099e3bc5e/20121213_ComPrensa_LSI_CNDH_ONUDH.pdf.

¹⁵ Published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on June 13, 2014, available at: http://dof.gob.mx/nota_detalle.php?codigo=5348649&fecha=13/06/2014.

¹⁶ Published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on May 16, 2016, available at: <http://www.diputados.gob.mx/LeyesBiblio/pdf/CMPP.pdf>.

¹⁷ The U.N. Committee on Enforced Disappearances (CED) in paragraph 10 of its *Concluding observations on the report submitted by Mexico under article 29, paragraph 1, of the Convention*, expressed that the information received “reveals a situation of widespread disappearances in much of the State party’s territory, many of which may be classified as enforced disappearances and some of which occurred after the Convention’s entry into force.” Available at: https://digitallibrary.un.org/record/792166/files/CED_C_MEX_CO_1-EN.pdf.

¹⁸ In the regional context, the Inter-American Commission for Human Rights, in its report on the situation of human rights in Mexico arising from its *in loco* visit, stated that it, “*was able to confirm that the disappearance of persons in large swathes of Mexican territory has reached critical levels.*” It also indicated “[t]he official figures provided, together with the information received from different regions in the country show that disappearances are generalized in Mexico.” The IACHR also indicated its concern for the lack of available data despite the magnitude of the problem, since “[t]he information available does not specify the cases in which there may be circumstantial evidence indicating forced disappearance, missing persons, or other kinds of absence. IACHR. *Situation of Human Rights in Mexico*. December 31, 2015, OEA/Ser.L/V/II., paras. 100, 106 y 107, available at: <http://www.oas.org/en/iachr/reports/pdfs/mexico2016-en.pdf>

¹⁹ For methodological purposes, the analysis of this quantitative information will run from December 1, 2006 and March 31, 2017.

²⁰ Appearance of the Secretariat of the Interior before the Chamber of Deputies. 23/09/2008. Last accessed: 18/10/2017. Available at: <https://www.youtube.com/watch?v=ChbiubT8EJs&t=116s>.

Enrique Peña Nieto (2012-2017), that total was 212,107 troops. That is to say, from 2006 through March 2017, 540,214 SEDENA troops have been deployed,²¹ as well as 100,481 troops of the Mexican Secretariat of the Navy (hereinafter, “SEMAR”)²² in support of the police to combat drug trafficking.

Such has been the magnitude of the military’s intervention in operations that constitutionally correspond to the police that between 2009 and 2017, 3,111 civilians were registered as detained by the SEMAR,²³ and between 2006 and 2017 there were 77,148 detentions by the SEDENA.²⁴ The SEMAR also conducted a total of 547 “operations against drug trafficking in support of the public security forces”²⁵ and the SEDENA conducted a total of 41 “operations to reduce violence” between 2006 and September 2017.²⁶

In this respect, between 2010 and September of 2017 there were 253 SEMAR operations in collaboration with SEDENA, the ministerial police, federal police, state police, and municipal police.²⁷ Of those operations, between 2010 and 2017, 107 were undertaken in collaboration with SEDENA in the states of Nayarit, Nuevo León, Michoacán, Veracruz, Guerrero, and Sinaloa.

Mexico is living through an environment of open armed confrontation between military institutions and criminal organizations, but without any official recognition of even the nature of that violence, never mind the magnitude that it has reached.²⁸ The numbers are even more alarming in the face of the existence of impunity in the judicial system with regards to undertaking relevant investigations that would permit punishing those responsible for such atrocities (including both the direct

²¹ SEDENA. Public Information Access Request, Folio Number: 0000700043917.

²² SEMAR. Public Information Access Request, Folio Number: 0001300019517.

²³ SEMAR. Public Information Access Request, Folio Number: 0001300021217.

²⁴ SEDENA. Public Information Access Request, Folio Number: 0000700038617.

²⁵ SEMAR. Public Information Access Request, Folio Number: 0001300079717. In addition to these operations, according to its annual reports, the SEMAR undertook a total of 158,071 “operations against drug trafficking” with an average of 6,878 troops deployed monthly in the period of 2007-2016. SEMAR. Public Information Access Requests, Folio Numbers: 0001300019517 and 0001300079717.

²⁶ SEDENA. Public Information Access Request, Folio Number: 0000700164317. The names of these operations are: *Mando Especial Huasteca* (Hidalgo, San Luis Potosí y Veracruz), *Culiacán-Navolato_Guamuchil* (Sinaloa), *Apoyo a la Seguridad Pública en Durango*, *Mando Especial Laguna* (Torreón, Coahuila), *Laguna Segura* (Durango, Coahuila), *Noreste* (Tamaulipas), *Apoyo a la Seguridad Pública en Tamaulipas* (Tamaulipas), *Apoyo a la Seguridad Pública en Nuevo León* (Nuevo León), *Jalisco* (Jalisco), *Chilapa* (Guerrero), *Guerrero* (Guerrero), *Mando Especial Iguala* (Guerrero), *Estrategia Guerrero* (Guerrero), *Seguridad a los Planteles Educativos del Puerto de Acapulco* (Guerrero), *Mando Especial Iguala* (Guerrero), *Estrategia Guerrero* (Guerrero), *Seguridad a los Planteles Educativos del Puerto de Acapulco* (Guerrero), *Conjunta Chihuahua* (Chihuahua), *Coordinada Chihuahua* (Chihuahua), *Apoyo a la Seguridad Pública en Michoacán* (Michoacán). Additionally, the operations with local troops in each military region: *Triangulo de la Brecha* (Estado de México), *Valle de Bravo* (Estado de México), *Morelos Seguro* (Estado de México), *Dragón* (Estado de México), *Seguridad Mexiquense* (Estado de México), *Ciprés* (Baja California Sur), *Fuerza H.* (Sonora), *La Paz Segura* (Baja California Sur), *Sahuaro* (Baja California), *Sonora Sur* (Sonora), *Culiacán-Navolato-Guamuchil* (Sinaloa), *Aguascalientes-Zacatecas* (Aguascalientes), *Sellamiento* (Jalisco), *Jalisco* (Jalisco), *Coliman* (Colima), *Veracruz Seguro* (Veracruz), *Triangulo II* (Puebla), *Villahermosa* (Villahermosa), *Tuxtla-Tapachula* (Tapachula), *Miahuatlan I-2016* (Oaxaca), *Istmo* (Chiapas), *Oaxaca*, *Veracruz*, *Monclova* (Coahuila), *Michoacán* (Michoacán), *Corredor Franco* (Michoacán).

²⁷ SEDENA. Public Information Access Request, Folio Number: 0001300080917.

²⁸ The war report from the Geneva Academy for International Humanitarian Law and Human Rights includes a section about the situation, because of the confrontations between criminal organizations and the Mexican armed forces, which could potentially be classified as a non-international armed conflict. Annyssa Bellal (ed.) (2017). *The War Report. Armed conflicts in 2017*, pages 83-91: <https://www.geneva-academy.ch/joomlatools-files/docman-files/The%20War%20Report%202017.pdf>

perpetrators as well as those identified further up the command chain) and achieve comprehensive reparations for victims.²⁹

a) Crimes committed in Mexico

Murders

The frequency of murders in Mexico has been increasing, and this is related, among other things, to the increasing deployment of military troops in public security duties and countering drug trafficking. It is important to mention that there is a significant lack of official statistics that would allow a complete analysis of trends in the increase of violence within the context of the war on drugs. What is clear is that since 2006 there has been an increase in the number and rate of violent homicides in the country.

In the first trimester of 2017 the states' attorney generals' offices registered 6,511 violent homicide victims, which equates to an average of 72 murders per day.³⁰ 2017 ultimately closed as the most violent in the war on drugs in Mexico. The statistics of the National Institute of Geography and Statistics (hereinafter, "INEGI") reveal that at the end of 2016, 24,559 homicides were registered in Mexico, almost 20% higher than in the previous two years. From 2006 to 2016 a total of 220,456 murders were registered at the national level. 2007 was the year with the least homicides, in contrast to 2011 and 2017, which were the years with the most homicides during those two six-year terms.³¹

2017 was the most violent year in the last decade with a total of 25,338 homicides. Of those homicides, 18,898 were committed by organized crime, a number significantly higher than the 12,224 executions the year before and also higher than the 16,987 executions committed in 2011. Out of the total number of executions in the country, 56.7% were concentrated in seven states, each of which registered more than a thousand murders: Guerrero (2,011), Guanajuato (1,983), Veracruz (1,919), Michoacán (1,327), Chihuahua (1,260), Baja California (1,187) and Sinaloa (1,028).³²

In addition, it is important to mention that across the country within the context of the current security policy, the lethality index in actions undertaken by the FAM is extremely high. Such is the case that of the 3,966 confrontations that the SEDENA registered between 2007 and March 22, 2017, there were at least 209 members of the military, 60 victims not involved in the situation, and 3,907 alleged aggressors killed, while only 3,949 supposed aggressors were detained.

According to an investigation conducted by the Center for Economic Investigation and Teaching (hereinafter "CIDE") the lethality index compares the number of civilians killed with the number of civilians injured in situations qualified as "conflicts." In this measurement, there are correlations between the numbers of deaths and injuries. When you are dealing with a "normal" combat, these

²⁹ See Open Society Justice Initiative (2016), *Undeniable Atrocities: Confronting Crimes Against Humanity in Mexico*, New York, available at: <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-en-20160602.pdf>.

³⁰ Tourliere, M. (2017) En 2017, más carpetas por homicidio doloso que en el peor año de "guerra contra el narco" de Calderón: SNSP. Proceso. Available at: <http://www.proceso.com.mx/512011/en-2017-carpetas-homicidio-doloso-en-peor-ano-guerra-contra-narco-calderon-snsp> (Date accessed: February 13, 2018).

³¹ Elías Camhaji, Jacobo García. "Año 11 de la guerra contra el narco". El País. Available at: <https://elpais.com/especiales/2016/guerra-narcotrafico-mexico/> (Date accessed: February 13, 2018).

³² Semáforo Delictivo. "Semáforo Delictivo Nacional 2017," available at: <http://www.semaforo.mx/content/semaforo-delictivo-nacional> (Date Accessed: February 16, 2018).

tend to be the same: that is to say, one person dead, one person wounded, two people dead, two people wounded, etc. In contrast, when a conflict presents a **total lethal index**, all parts of one of the groups die and there are no wounded persons. According to their analysis, the lethality index for Mexico is alarmingly high, since any coefficient higher than 1 would point to an abuse of force and the existence of summary executions.³³ This conclusion proceeds from the logic that, in an authentic fight, there should be more wounded than dead when the intention is to deescalate and not to kill the aggressor, in keeping with the rules of legitimate use of force, including the use of firearms. Nevertheless, in Mexico the lethality index of the army was 7.7 civilians dead for every civilian wounded in 2013 and 11.6 in the first trimester of 2014.³⁴

Of the 3,327 confrontations³⁵ between authorities (military and police) and civilians (alleged criminals) between 2007 and 2011, 37% (which is to say 1,223 conflicts) presented a total lethality index (all civilians were killed).³⁶

State	Total Confrontations	Confrontations Initiated by Actions of the Authorities
Tamaulipas	781	680
Nuevo León	425	364
Guerrero	213	182
Michoacán	208	159
Chihuahua	205	159
TOTAL	1832	1544

Figure 3. Data from the CIDE. Figure elaborated by authors.

After systematizing all of the recommendations released by the CNDH regarding events that occurred between 2006 and April 2017, we found that they added up to a total of 75 recommendations that document murders, 47 of those responsibility of the FAM. The Secretariat of the Navy (hereinafter, “SEMAR”) appears as responsible in 9 recommendations and the SEDENA in 39. A total of 91 victims are involved. These executions were committed in 17 states of the country, principally in states in the north.

³³ Ignacio Cano, “La policía y su evaluación. Propuestas para la construcción de indicadores de evaluación en el trabajo policial.” Available at: <http://www.observatoriodeseguranca.org/files/ignacio%20cano.pdf>

³⁴ Catalina Pérez Correa, Carlos Silva Forné, Rodrigo Gutiérrez, Índice de Letalidad, Menos enfrentamientos, más opacidad. 2015. Nexos Magazine.

³⁵ The majority of these confrontations took place in the states of Tamaulipas, Nuevo León, Guerrero, Chihuahua, and Michoacán.

³⁶ El País. “Índice de letalidad perfecta en México, por estado.” February 10, 2017. Available at: https://elpais.com/internacional/2017/02/10/mexico/1486693490_817800.html (Date accessed: January 24, 2018).

Enforced Disappearance of persons

The National registry of Missing or Disappeared Persons (hereinafter, “RNPED”),³⁷ as of a January 1, 2018 consultation, had 34,656 persons registered as reported as disappeared in the country.³⁸ From 2006 through August 2017, the PGR reported that it had initiated a total of 721 prior inquiries and investigation folders for the crime of enforced disappearance,³⁹ of which only 19 cases were brought to the judiciary (Allocations), that is to say, 3.18% of the investigations.⁴⁰

What is more, according to the Prosecutor’s Office for the Search for Disappeared Persons, from 2013 through March 2017, 9 investigation files were opened, 5 in 2016 and 4 in 2017, plus two investigation files from the Investigatory Unit on Crimes against Migrants (UIDPM) in 2016 in Tamaulipas and Mexico City. In sum, **a total of 732 investigations were initiated regarding the crime of enforced disappearance of persons from 2006 through August 2017.**⁴¹ Presently, the Prosecutor’s Office for the Search for Disappeared Persons and the UIDPM have 32 and 13 Prosecutors working, respectively.⁴²

At the state level, 28 of the 32 States Attorneys General have reported that the number of reports received for the crime of enforced disappearances of persons from 2006 to 2016 amount to a total of 1,197.⁴³

According to information from the SEDENA, between December 1, 2006 and December 31, 2017, 445 persons affiliated with the Military Regions I, III, and V were in military prison. Of these, 31 were accused of the crime of enforced disappearance.

For its part, the CNDH released 60 recommendations where it identified incidents of enforced disappearance with 59 cases of disappearance (because two of the recommendations involved the same victim). In total, these recommendations involved 239 victims.

³⁷ Executive Secretary for the National System of Public Security (2018). Data base of the National Registry for Missing or Disappeared Persons, *available at*: <http://www.secretariadosecutorio.gob.mx/rnped/datos-abiertos.php>, (January 2, 2018)

³⁸ RNPED. The figures present the total number persons registered, related to the initial investigations in local jurisdictions started in the period between January 2014 and July 2017, and that had not been located as of the close of October/November 2017.

³⁹ PGR. Public Information Access Request, Folio Number: 0001700295117,

⁴⁰ PGR. Public Information Access Requests, Folio Numbers: 0001700121517, 0001700018017, 0001700018117 y 0001700114417.

⁴¹ PGR. Public Information Access Request, Folio Number: 0001700121517.

⁴² PGR. Public Information Access Request, Folio Number: 0001700309717.

⁴³ These figures only cover 27 states in the Republic, because: for the states of Puebla and Aguascalientes the PNT is not working and the request cannot be accessed; Yucatán only provides information about complaints regarding abuse of authority; the State of Mexico responded that it is not required to generate information *ad hoc*, and Mexico City said it did not fall under its competency.

This information is presented graphically in Figure 4 below:

Concept	Number of Recommendations	Number of cases	%	Number of Victims	%
Total	60 ⁴⁴	59	100	239	100
Number of Recommendations involving the FAM	Army 32	32	54 %	94	39 %
	Navy 11	11	5 %	26	11 %
	Total 43	43	73 %	118	49 %
Number of Recommendations involving the Police	Federal Police 7	7	12 %	19	8 %
	State Police 7	7	12 %	12	5 %
	Municipal Police: 5	5	8%	14	6%
	Total ⁴⁵ 17	17	29 %	41	17 %

Figure 4. Made by authors with data from the CNDH.

Torture

From December 1, 2006 through October 2017, the PGR reported that it initiated 5,746 prior inquiries and 3,609 investigation files for the crime of torture.⁴⁶ That is to say, in sum, a total of 9,355 criminal investigations. To this figure must also be added the 6,493 prior inquiries or investigation files for torture that were registered in 25 states of the Republic during the period of 2006 to 2016.⁴⁷

⁴⁴ There are a total of 60 recommendations, but for the purposes of the analysis only 59 will be mentioned because two recommendations refer to the same case, that of V1 who had a proceeding open for disappearance by the Zetas criminal organization, and was later buried without identification.

⁴⁵ The total figure is higher than the sum of each police agency because there are two cases where they have participated together, involving 3 victims.

⁴⁶ PGR 0001700312117. After sending a revision request (RRA 5618/17) when the response to our initial request (0001700205717) was insufficient with regards to the number of complaints filed for the crime of torture, the COPLADII (which is the only channel by which statistical information on the institution flows) reported that it only had statistical information regarding the number of preliminary inquiries and investigation folders initiated for the crime of torture, and did not have statistics regarding the number of complaints presented. Similarly, the SEIDE, SCRPPA, SDHPDSC, VG, and SEIDO all said they could not identify information regarding the number of complaints presented for the crime of torture.

⁴⁷ State Public Prosecutors' Offices. Public Information Access Requests, Folio Numbers: 00006617; 00012317; 00016817; 0100013717; 00041717; 003982017; 00049117; 00014117; 0113000010617; 00023317; 00106017; 00025917; 00027417;

According to the CNDH (2017), from 2006 through June 15, 2017, 7,869 complaints were lodged accusing the PGR, the Federal Public Security Secretariat (now the Secretariat of the Interior), the SEMAR, and the SEDENA as authorities responsible for committing acts of torture and/or cruel, inhumane, or degrading treatment. Additionally, the CNDH released 148 recommendations related to acts of torture committed in the context of the war on drugs. Those identified as responsible for the cases of torture, among others, are the Secretariat of the Navy in 29 cases, the SEDENA in 85 cases, the Federal Police (ministerial police, federal investigation agents, and federal police) in 28 cases, the state police in 15 cases, and the municipal police in 7 cases.⁴⁸

Rape and Sexual Violence

From 2006 to 2017, the CNDH released 64 recommendations regarding sexual torture, 14 documenting rapes, and the rest documenting other forcible acts of a sexual nature. The total number of victims amounts to 137 persons.

The recommendations that document acts of sexual violence refer to the following states:

Chihuahua	3
Veracruz	3
Coahuila	2
Federal District	2
San Luis Potosí	2
Baja California	1
Guerrero	1

Figure 5. Made by authors with data from the CNDH Recommendations

ii) The security strategy: presidential vision and military order

At the beginning of 2007, all of the Military Regions of the country began operating under an order issued by decision of Felipe Calderón in his role as supreme commander of the FAM to carry out “the war on drugs.” The “*Directive for the Comprehensive Fight against Drug Trafficking 2007 - 2012*” (hereinafter, “Directive”)⁴⁹ incorporated the presidential vision in this decision and converted it into the military order for all of the FAM, whereby members of the military would have to show results to demonstrate the effectiveness of said strategy. The directive consisted of an order signed by the then Secretariat of National Defense (1) on March 1, 2017. It was classified as a secret document and its contents were made public by the media.⁵⁰ The Directive defined the participation

00199917; 00196/PGJ/IP/2017; 00058917; 00384817; 00010517; 00049117; 00014117; 00027217; 00180317; 0037117; 00028217; 00063817; 00081217; 00072217; 00024317; 00033917; 00103817; 00046517; 00041317.

⁴⁸ The same unit can commit acts of torture in different places against the same victim, and in the database they are registered as separate incidents. Similarly, in one episode of torture various authorities from different units of the public administration may be involved.

⁴⁹ See Appendix 8, “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012.*”

⁵⁰ Proceso Magazine No. 167, available at: <http://www.proceso.com.mx/377034/la-biblia-militar-de-la-guerra-de-calderon>.

of the military in diverse public security tasks. One of the principal modes of implementation was the launching the “joint operations” to recover territorial control from criminal organizations.⁵¹

The Directive recognizes, just as it is contemplated by the Mexican Political Constitution (hereinafter, the “Constitution”) that it is neither the direct nor the principal function of the FAM to undertake public security tasks, and that the FAM’s partaking in tasks that were commended to them by the militarized security strategy to combat organized crimes is merely relative to the role of the police, and that the objective of that participation was to support the principal responsibility of the states (as the federal entities into which the Mexican territory is divided) in the area of security. The Directive justifies the participation of the FAM to achieve a “better quality of life and save the public work and recreation spaces of the population.” It also establishes as one of the objectives of the participation of the FAM, “assisting other authorities to break down structures of organized crime.”

The Directive designates the regional commanders as responsible for the operations; it grants them “broad autonomy for the use of the resources put at their disposal”⁵² and it demands of them “broad initiative at every level.”⁵³ Similarly, it authorizes military authorities to undertake searches and “seizure of presumed drug traffickers,”⁵⁴ which is to say, detentions. On this topic, it refers to civilians allegedly involved in illicit activities as “targets”⁵⁵ mentioning “bosses and deputies of organized crime” The Directive also empowers military troops to surveil people and houses and to detain people in support of the (civil) authorities in connection to a warrant or, exceptionally, to detain civilians directly if they were found *in flagrante delicto* (caught in the midst of committing a crime). That is how from 2006 to February 2017 the FAM detained 80,259 persons alleging that they were caught in the process of committing a crime; of those people, 4,804 were detained in Chihuahua by the SEDENA.⁵⁶

Although the Directive alludes to references to the law—including to articles of the Constitution—the legality of the operations, particularly the actions of agents of the FAM in public security duties, has been strongly disputed by human rights organizations. Despite the continued use of military troops in these duties, principally via the joint operations, to date the OCCH does not have an adequate legal framework issued by the legislature that would regulate their participation; there exist only the regulating documents issued by the executive power that were adopted in 2012. This is to say, the Directive was not accompanied by Congress passing a law that would define the terms of participation of the military authorities in these new tasks in accordance with the Constitution or that would specify the control mechanisms over those participating in these operations to avoid abuses of power in undertaking tasks that the armed forces are not trained to partake in. Nor were there mechanisms foreseen to adequately punish those abuses once they occurred.

⁵¹ Appearance of the Secretariat of the Interior before the Chamber of Deputies. 23/09/2008. *Available at:* <https://www.youtube.com/watch?v=ChbiubT8EJs&t=116s> (Last accessed: 18/10/2017).

⁵² See Appendix 8, “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012*” at p. 4.

⁵³ See Appendix 8, “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012*” at p. 7.

⁵⁴ See Appendix 8, “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012*” at p. 15.

⁵⁵ See Appendix 8, “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012*” at p. 17.

⁵⁶ SEDENA, Public Information Access Request, Folio Number: 0000700038617.

As mentioned in the previous paragraph, it was only at the end of the administration of Felipe Calderón Hinojosa (2006-2012) when regulatory measures were adopted that, although they did not satisfy the principal of legality, tried to regulate these powers that the FAM had been exercising *de facto* for over five years (specifically, public security duties in the context of the war on drugs). These measures were taken by means of the issuance of three protocols that are applicable to the FAM and all federal employees and regulate: the use of force; the preservation of evidence; and detention and procedure for bringing detained persons before the PGR and Secretary. To present, these protocols keep the FAM involved in undertaking tasks appropriate for the police.⁵⁷

We should highlight that the regulations regarding the use of force were adopted in 2012,⁵⁸ at a date later than the period covered by this communication, and accordingly during the years 2008 to 2010 even these protocols did not exist.

Despite abuses documented by the CNDH, complaints received by the PGR, and cases documented by civil society organizations and the press—all of which made clear the serious crimes committed in the context of the so-called security strategy—during the administration of former president Felipe Calderón Hinojosa, there was a consistent practice on the part of the high-ranking officials of the Federal Executive, led by the President of the Republic and the high command of the Army, Navy, and Secretariat of Public Security, to categorically deny these incidents, minimize and cast doubt upon them, or treat them as “isolated incidents.” This practice included presenting detained or killed persons to the press as “fallen criminals” without having passed through any investigation or process to declare them as such. On multiple occasions the authorities issued media remarks regarding the membership of individuals that had been murdered in criminal organizations, when later it was confirmed that they did not belong to any criminal group.⁵⁹

As was mentioned previously, the joint operations were the most visible element of the security strategy to recover control from the criminal organizations in various parts of the national territory. The OCCH was the fifth military operation that was launched by the government of Felipe Calderón, which required the deployment of a significant number of military personnel to the border state of Chihuahua.⁶⁰

⁵⁷ DIRECTIVE which regulates the legitimate use of force by members of the Army and Mexican Air Force, in fulfillment of their functions in supporting the civilian authorities and in applying the Federal Law on Firearms and Explosives, published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on April 23, 2012, available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5244755&fecha=23/04/2012; DIRECTIVE 003/09 of September 30, 2009, regulating legitimate use of force by navy personnel in fulfillment of its functions and in contribution to the maintenance of the Rule of Law, published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on October 15, 2009 (http://www.dof.gob.mx/nota_detalle.php?codigo=5114505&fecha=15/10/2009); Secretarial AGREEMENT 27, reforming and adding to Directive 003/09 from September 30, 2009, published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on April 23, 2012 (http://dof.gob.mx/nota_detalle.php?codigo=5244757&fecha=23/04/2012). The Manual on the Use of Force, which applies commonly to all three branches of the Armed Forces. Published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on May 30 2014. Collaboration in the human rights framework by Secretariat of the Interior, the Secretariat of the Navy, the National Attorney General’s Office, and the Federal Secretary for Public Security. Published in the Official Diary of the Federation (“*Diario Oficial de la Federación*”) on April 23, 2012.

⁵⁸ Informative Note. Office of the President. 23/04/2012. Available at: <http://calderon.presidencia.gob.mx/2012/04/protocolos-de-seguridad/>.

⁵⁹ See as an example the reaction of the head of the Executive regarding the massacre of young people in Villas de Salvácar (January 2010), is included later in this communication.

⁶⁰ The first operation was implemented in the state of Michoacán (December 2006), weeks later an operation was implemented in Tijuana (December 2006); at the beginning of 2007 the Joint Guerrero Operation was launched, and in the same month the Sierra Madre Operation was implemented. Maya Solís, Brisa, Las consecuencias silenciosas de la política de la seguridad

As part of the OCCH, a large number of troops were deployed: 4,253 in 2008; 9,710 in 2009; and 7,552 in 2010.⁶¹ To these figures should be added the more than 9 thousand troops that were already deployed in the area known as the golden triangle (Chihuahua, Durango and Sinaloa).⁶² As is described in the corresponding section, the OCCH evolved within the framework of a directive of maximum military command. Although it was recognized that activities to combat low-level drug trafficking were the function of local-level “public security forces”, the OCCH General Order of Operations II included military involvement in decreasing the traffic of small shipments of narcotics, known as “ant trafficking” or small-scale drug trafficking.⁶³

B. Context of Chihuahua

i. Roots of the violence in Chihuahua

At the end of 2007 and beginning of 2008, incidents of extreme violence began to surprise the population of Chihuahua, and especially the residents of Ciudad Juárez. Sources consulted indicate that the number of violent homicides registered in January 2008 is due to the conflict between two cartels to control traffic in illegal substances.⁶⁴ This conflict motivated the start of joint operations that allowed for the participation of the FAM in public security work.⁶⁵

pública en México. El Cotidiano [online] 2009, (Jan. – Feb.). ISSN 0186-1840. Available at: <http://www.redalyc.org/articulo.oa?id=32515310> (Last Accessed: 4/10/2017).

⁶¹ SEDENA (2017), Public Information Access Request, Folio Number: 0000700043617.

⁶² Maya Solís, Brisa, Las consecuencias silenciosas de la política de la seguridad pública en México. El Cotidiano [online] 2009, (Jan-Feb.). ISSN 0186-1840. Date Accessed: 4/10/2017. Available at: <http://www.redalyc.org/articulo.oa?id=32515310>. Rodríguez, Francisco. “2011 el año con más militares desplegados a la región de Coahuila y Chihuahua”. Vanguardia, MX. Torreón 23/10/2015. Available at: <http://www.vanguardia.com.mx/articulo/2011-el-ano-con-mas-militares-desplegados-la-region-de-coahuila-y-chihuahua> (Last accessed: 03/10/2017).

⁶³ OCCH General Operations Order II.

⁶⁴ La Jornada, <http://www.jornada.unam.mx/2010/03/28/index.php?section=politica&article=007n1pol>.

⁶⁵ To better understand the course of the OCCH, see Appendix 4, which contains a “time line” of the operation.



Figure 6. Map of the Mexican Republic showing the State of Chihuahua and the municipalities of Juárez and Chihuahua.

Drug traffickers use the State of Chihuahua as an exit route to ship drugs north to the United States of America (U.S.A.) because it is a border state. In particular, Ciudad Juárez (with an average population of 1.2 million inhabitants in the period covered by this communication), along with other cities in the region known as “la Laguna”, is located along the route by which, according to official sources, 75% of the cocaine that entered into the U.S.A. in 2006 passed. This converted the city in a strategic location for drug trafficking organizations.

It should be noted that the number of intentional homicides in the state of Chihuahua was not especially high in the years prior to the OCCH, with a total of 550 intentional homicides in 2005. This number jumped to 2,030 in 2008, when the Joint Chihuahua Operation was launched as a result of the implementation of the “national strategy to combat insecurity.” Throughout the implementation of the OCCH, as is shown in Figure 1, the number of intentional homicides kept rising, reaching a peak of 3,903 intentional homicides in the state in 2010.⁶⁶

In Ciudad Juárez the violence also increased with the start of the OCCH, as is demonstrated in Figure 7.

⁶⁶ National System of Public Safety, figures on intentional homicide rates in Chihuahua.

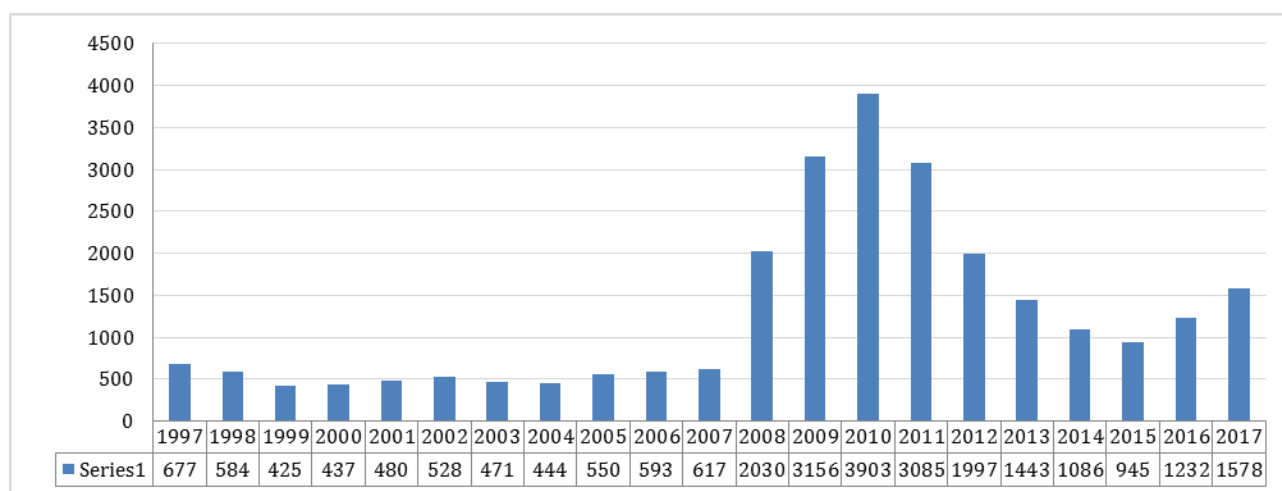


Figure 7, Number of violent deaths registered in Ciudad Juárez in the period of 2005 – 2009⁶⁷
Made by authors with data from Inegi

In 2008, when the OCCH began, the homicide rate increased from 26 to 132 homicides per hundred thousand inhabitants, and in 2009 it increased again to 191 homicides per hundred thousand inhabitants. With these statistics, for two consecutive Ciudad Juárez was the most violent city in Mexico and in the world, surpassing even Iraq.⁶⁸

Some authors suggest that the violence had particular expressions, such as the “narco-banners” or “narco-messages” at the beginning of 2008. The high number of homicides, they also assume, has to do with the start of the head-on confrontation between the Juárez Cartel (including the groups “La Línea” or “The Line”, “Los Aztecas” or “The Aztecs”, and the “Nuevo Cartel de Juárez” or “The New Juárez Cartel”) and the Sinaloa Cartel (called the Pacific Cartel, including the groups “Gente Nueva” or “New People” and the “Artistas Asesinos” or “Artist Assassins”) “for the control of the routes, points of transfer, sale, consumption, and distribution of illicit drugs in the city, and in order to coopt and/or corrupt the police corporations in order to obtain protection and allies. This conflict is also known as the war to ‘take control of the plaza’”⁶⁹

In 2008, there was also a wave of threats, murders, and kidnappings attributed to the alleged criminal organizations against local police, probably motivated by their membership in or protection granted to one of the groups in the dispute. This led to the resignation of police personnel, including the then Chief of Police of Ciudad Juárez (1). In the wake of this resignation a

⁶⁷ Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf (Lasted accessed: 03/05/2018).

⁶⁸ “Ciudad Juárez, la más violenta del mundo”. El Siglo 14/11/2009. Available at: <https://www.elsiglodetorreon.com.mx/noticia/477776.ciudad-juarez-la-mas-violenta-del-mundo.html> (Lasted accessed: 03/10/2017).

⁶⁹ Paniagua Vázquez, Abraham. “Para los que no creyeron... y para los que siguen sin creer...”. El discurso como herramienta de poder entre la relación Estado - Sociedad - Crimen Organizado en Ciudad Juárez. Prisma Social (En Línea) N° 8 (june-nov. 2012), Social Science Journal. ISSN: 1989-3469. pp. 199. Available at: <http://www.redalyc.org/html/3537/353744580007/> (Last accessed: 03/10/2017).

member of the military who was “on leave” took over the position.⁷⁰ Some references to this violence between cartels are now used as justification for the implementation of the military operation in that state, without any official reference that the signatory organizations have been able to identify regarding what motivated the launch of the OCCH.

In July 2008, the military authorities considered that in Chihuahua, by virtue of “the operations undertaken by military personnel [...] it has become more difficult for drug traffickers to transfer drugs as they had commonly been doing, considering that they began to use ‘ant traffic’ from the supply centers to ranches located close to the border with the U.S.A.” The military authorities considered that supply and operations centers had been established in the cities of Aldama and Camargo, Chihuahua, and that San Antonio del Bravo, in the municipality of Ojinaga, and Santa Elena, in the municipality of Manuel Benavides (both also in Chihuahua) were being used to traffic small shipments of drugs to the U.S.A.⁷¹

As a result of the violence, studies reveal that between 2007 and 2011 in Ciudad Juárez alone 254,426 people were displaced.⁷² Other municipalities reported situations of extreme violence that left them “deserted” after the authorities and the population itself fled.⁷³

Nevertheless, the threats against civil security personnel continued despite the military operation in the State. In 2009, the then Secretary of Public Safety of the Municipality of Ciudad Juárez (1), a former member of the military, stepped down from his post, in the face of threats that if he did not do so they would kill an agent every 48 hours.⁷⁴ Acts intended to cause terror attributed to the criminal organizations also did not decrease with the launch of the OCCH; an example being the explosion of a car bomb in July 2010 in Ciudad Juárez.

During the period covered by this communication, two governors led the executive power in the state of Chihuahua: Governor Chihuahua (1) (2004-2010) y Governor Chihuahua (2) (2010-2016). For their part, the military commanders in charge of implementing the OCCH changed over time. Accordingly, the chain of command in force during the period covered by this communication went through several changes that are detailed in the documents that make up Appendix 6.⁷⁵

⁷⁰ “Renuncia Jefe de Policía de Ciudad Juárez”. Veanoticias.com 18/05/2008. *Available at:* <https://www.voanoticias.com/a/article-2008-05-19-voa10/43531.html> (Last Accessed: 03/10/2017).

⁷¹ Appendix 9. “General Operations Order II “OPN. CONJ. Chihuahua.”

⁷² CIS-UACJ. “Encuesta de percepción ciudadana de inseguridad en Ciudad Juárez 2010”, Autonomous University of Ciudad Juárez. *Available at:* <http://www.observatoriodejuarez.org/dnn/Portals/0/encuestas/Encuesta%20de%20Percepcion%20Ciudadana%20sobre%20Inseguridad%20en%20Ciudad%20Juarez%20II-2010%20v6mayo2011.pdf> y CIS-UACJ. “Encuesta de percepción ciudadana de inseguridad en Ciudad Juárez 2011”, Autonomous University of Ciudad Juárez. *Available at:* <http://www.observatoriodejuarez.org/dnn/Portals/0/encuestas/Encuesta%20de%20Percepcion%20Ciudadana%20sobre%20Inseguridad%20en%20Ciudad%20Juarez%20III-2011%20v26enero2012.pdf>.

⁷³ Villa Ahumada, una ciudad de México desierta que aterriza hasta a la policía”, La Voz de Galicia. *Available at:* http://www.lavozdeg Galicia.es/mundo/2008/05/24/0003_6845000.htm.

⁷⁴ “El jefe de policía de Ciudad Juárez dimite por presión de los ‘narcos’”. El País. 20/02/2009. *Available at:* https://elpais.com/internacional/2009/02/21/actualidad/1235170802_850215.html (Last accessed): 03/10/2017.

⁷⁵ See the documents included in Appendix 6 on the OCCH Chain of Command.

ii. Criminal Organizations present in Chihuahua⁷⁶

Sources consulted reveal that during the six-year term of Vicente Fox (2000-2006), the Juárez Cartel, from the Cartel Boss (1), saw its control over the state reduced, presumably due to the growing presence of the Sinaloa Cartel.⁷⁷

Experts on the subject recognize that at the end of 2007, the dispute over Ciudad Juárez began when the Sinaloa cartel started a battle against the Juárez Cartel to take control of the zone, which as has been mentioned is the area of the border with the greatest flow of drugs to the United States.⁷⁸ Both groups made use of gangs or criminal groups with a local presence, which resulted in a bloody dispute.⁷⁹

a) Juárez Cartel and related groups or gangs

Open sources consulted reveal that the Juárez Cartel recruited, contracted, or allied itself with the following criminal groups:

Los Aztecas (“The Aztecs”)

In 2008, the Juárez Cartel recruited a group known as the “Barrio Azteca” (“Aztec Neighborhood”), “los Aztecas” (“the Aztecs”), or “La Familia Azteca” (“Aztec Family”) to combat the Sinaloa Cartel. This group eventually became a vital component of the fight for control of Ciudad Juárez, in addition to maintaining operations related to the crimes of trafficking of persons and drug trafficking.⁸⁰ The Juárez Cartel united with them with the goal of hiding drugs in the neighborhoods of El Paso, U.S.A. that were controlled by the group, and where they could also grant protection.⁸¹ The Aztecs had a hierarchical structure similar to the army, with a committee of “generals”, “captains”, “deputies”, and the “sergeants” or “Indians”, this last group generally made up of children or adolescents.

The “Aztecs” are considered to be responsible for the murder of 15 young people in a party in 2010 in Villas de Salvárcar, and for the murder of a civil servant from the United States Consulate. By March of year following that murder, the government of the United States issued an arrest warrant for 35 of the group’s members, ten of whom had been accused in relation to the consulate case. Of these, 33 were arrested, and 26 were found guilty, including an individual who the authorities

⁷⁶ This communication includes limited information about the actions of different criminal groups and organizations present or with influence in Chihuahua, prior to or during the period covered by the communication.

⁷⁷ Carrasco Araizaga, Jorge. “Las rémoras del Operativo Chihuahua”. Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

⁷⁸ De Llano, Pablo. “Ciudad Juárez, paz entre cadáveres”. *El País*. 07/12/2013. Available at: https://elpais.com/internacional/2013/12/06/actualidad/1386331573_929940.html (Last Accessed: 16/10/2017).

⁷⁹ Insight Crime: Center for Investigation of and Analysis of Organized Crime. 2016. “Barrio Azteca”, available at: <https://www.insightcrime.org/mexico-organized-crime-news/barrio-azteca-profile/> (Last Accessed 03/05/2018).

⁸⁰ Insight Crime: Center for Investigation of and Analysis of Organized Crime. 2016. “Barrio Azteca”, available at: <https://www.insightcrime.org/mexico-organized-crime-news/barrio-azteca-profile/> (Last Accessed 03/05/2018).

⁸¹ “Pandillas al servicio del narco”. Revista Proceso. 2006. Available at: <http://www.proceso.com.mx/97085/pandillas-al-servicio-del-narco> (Last accessed: 26/09/2017).

identified as the “leader” of the organization and intellectual author of the murders, who was given a life sentence.⁸²

La Línea (“The Line”)

The Line is a criminal group that began as the armed branch of the Juárez Cartel, with the purpose of guaranteeing its security. The group was formed by police officers and former police officers of Ciudad Juárez as well as state security officials, in active duty, who provided physical protection for the members, goods, and illegal services of the Cartel. During the OCCH, the presence of the military led the group to diversify its criminal activities and broaden its territory.⁸³

According to the military authorities, as of July 2008, there was a drug sales network operating out of the plaza of Ojinaga, Chihuahua that belonged to the criminal organization “The Line” or “The Cachitas.” This network sold drugs by telephone using a “home delivery” model.⁸⁴ One of the group’s advantages is considered to have been that between 2008 and 2010 the leader of the group was not identified, which made it difficult to break up the group.⁸⁵ This group is considered to be responsible for the explosion of a car bomb in Ciudad Juárez in 2010.

Los Zetas (the “Zetas”)

The criminal group “the Zetas” was originally formed by members of the military elite that belonged to the Special Forces Airmobile Group (GAFE), the Amphibious Special Armed Forces Group (GANFE) and the Parachute Riflemen Brigade (BFP), which belong to the Mexican Army. These members of the military deserted to operate as the armed branch of the Gulf Cartel. In 2008, they separated from the Gulf Cartel and began to function as an independent group. Sources consulted⁸⁶ refer to the presence of “the Zetas” in the state of Chihuahua as early as 2008, while as of 2011 they had presumably allied themselves with the criminal group “the Line” in order to confront the Sinaloa Cartel.

According to PGR dossiers recovered via publically available sources, there was an alliance between the Juárez Cartel and “the Zetas.” The Mexican and United States governments jointly undertook investigations to determine the presence of “the Zetas” in Chihuahua, particularly in Parral. The alliance between “The Zetas” and the Juárez Cartel lasted at least three years. In 2011, a

⁸² Insight Crime: Center for Investigation of and Analysis of Organized Crime. 2016. “Barrio Azteca”, *available at*: <https://www.insightcrime.org/mexico-organized-crime-news/barrio-azteca-profile/> (Last Accessed 03/05/2018).

⁸³ Fregoso, Juliana. 2017. “La Línea: el nuevo grupo criminal que se perfila como el modelo de los cárteles mexicanos del futuro”. *Infobae*. *Available at*: <http://www.infobae.com/americamexico/2017/07/06/la-linea-el-nuevo-grupo-criminal-que-se-perfila-como-el-modelo-de-los-carteles-mexicanos-del-futuro/>.

⁸⁴ See Appendix 9, “General Operations Order II “OPN. CONJ. Chihuahua.”

⁸⁵ Fregoso, Juliana. 2017. “La Línea: el nuevo grupo criminal que se perfila como el modelo de los cárteles mexicanos del futuro”. *Infobae*. *Available at*: <http://www.infobae.com/americamexico/2017/07/06/la-linea-el-nuevo-grupo-criminal-que-se-perfila-como-el-modelo-de-los-carteles-mexicanos-del-futuro/>.

⁸⁶ What started as a rumor was then confirmed days later with documents from the National Attorney General’s Office and a joint investigation between the Mexican and United States governments. Fregoso, Juliana. 2017. “La Línea: el nuevo grupo criminal que se perfila como el modelo de los cárteles mexicanos del futuro”. *Infobae*. *Available at*: <http://www.infobae.com/americamexico/2017/07/06/la-linea-el-nuevo-grupo-criminal-que-se-perfila-como-el-modelo-de-los-carteles-mexicanos-del-futuro/>.

“narco-banner”⁸⁷ was found that announced the union between “The Line” and “the Zetas” to reduce the control of the Juárez Cartel.⁸⁸

Additionally, another group is known to have operated with the function of strengthening the Juárez Cartel, called “The Velázquez”, who were direct collaborators with “The Zetas” and had a presence in Jiménez, Parral, and Camargo, and sought to reach Ciudad Juárez.⁸⁹

Los Linces (“The Lynxes”)

This group acted as hit men for the Juárez Cartel. The organized criminal group is made up of former members of the Army Special Forces and operates using military tactics. “The Lynxes” moves in small groups with sophisticated arms and combat equipment. Its orders are limited to committing murders. It does not have any other relationship with the Juárez Cartel or its members. They work under the protection of federal, state, and municipal police. The “Lynxes” undertook the “cleaning” of obstacles in the cities of Chihuahua and Juárez.⁹⁰

B. Sinaloa Cartel (Pacific Cartel) and affiliated groups or gangs

The open sources consulted⁹¹ indicate that the Sinaloa Cartel, in the period covered by this communication, recruited, contracted, or allied itself with the following criminal groups:

Gente Nueva (“New People”)

The Sinaloa Cartel recruited this group composed of hit men that received training from members of the military, federal police, ministerial police, *kaibiles* Guatemalan Special Forces, and private security employees, to fight for the territory controlled by “The Line”, the armed branch of the Juárez Cartel.⁹² Comprised of young men between 20 and 30 years old, they use military uniforms, have their faces covered, carry high caliber arms, and use trucks with the name of the group.⁹³

The founder of the group was an apprentice to “El Chapo” and was eventually designated as El Chapo’s deputy for all of the state of Chihuahua. In 2008, he ordered the young members of the

⁸⁷ The ‘narco-banners’ or ‘narco-messages’ are banners hung in public places with messages from the criminal groups, generally directed at their enemies, bureaucrats, police, and others, as well society in general, as a means to communication or raise complaints. *BBC Mundo*. Available at: http://www.bbc.co.uk/spanish/specials/1243_narcocantitas/index.shtml (Last Accessed: 13/02/2018).

⁸⁸ Fregoso, Juliana. 2017. “La Línea: el nuevo grupo criminal que se perfila como el modelo de los cárteles mexicanos del futuro”. *Infobae*. Available at: <http://www.infobae.com/america/mexico/2017/07/06/la-linea-el-nuevo-grupo-criminal-que-se-perfila-como-el-modelo-de-los-carteles-mexicanos-del-futuro/>.

⁸⁹ Mayorga, Patricia. 2014. “Aparece narcopinta de Los Zetas en Chihuahua; advierten que tienen protección oficial”. *Proceso*. May 17, 2014. Available at: <http://www.proceso.com.mx/372541/aparece-narcopinta-de-los-zetas-en-chihuahua-advierten-que-autoridades-los-protegen>.

⁹⁰ Gómez, Francisco. “Los Linces”, narcosicarios misteriosos”. *El Universal*. 20/07/2009. Available at: <http://archivo.eluniversal.com.mx/nacion/169859.html> (Last accessed: 12/10/2017).

⁹¹ See Appendix 1 for the sources consulted to write this communication.

⁹² Gallegos, Sorayda. “Diez ejércitos criminales operan para El Chapo Guzmán”. *El País*. 13/01/2016. Available at: https://elpais.com/internacional/2016/01/12/mexico/1452555899_149689.html (Last accessed 16/10/2017).

⁹³ La Tribuna. “Gente Nueva”, el grupo de sicarios que protegen a “El Chapo” Guzmán”. *La Tribuna*. 25/10/2015. Available at: <http://www.latribuna.hn/2015/10/25/gente-nueva-el-grupo-de-sicarios-que-protegen-a-el-chapo-guzman/> (Last Accessed: 16/10/2017).

cartel to fight in the plaza with horrible methods, including cutting the throats of their victims and leaving “narco-messages.”⁹⁴

Los Mexicles (the “Mexicles”)

The “Mexican Revolutionary Party” or “The Mexicles” are a military cell formed by gang members⁹⁶ who were deported from the United States to Mexico. In the period covered by this communication, they assisted the Sinaloa Cartel or the “New People” group with the goal of building a defense against other gangs.⁹⁷

Los Artistas Asesinos (“The Artists Assassins”)

Group with presence in Ciudad Juárez. Their function was to serve as the armed branch of the Sinaloa Cartel.⁹⁸ They participated in the murder of those considered “enemies”, in addition to maintaining activities of small-scale drug trafficking; surveillance, including of security forces,⁹⁹ and kidnapping. Their recruiting focuses on adolescents.

Their opponents are “The Aztecs.” They are characterized by violent and dark tactics: they torture their rivals and dismember, dissolve, or burn their bodies; they leave messages in placards to threaten, challenge, or take credit for crimes.¹⁰⁰

According to the specialized security consultant group Stratford, the Mazatlecos group belongs to the Sinaloa Cartel, and their area of control is located in Sinaloa (the municipalities of Choix, Los Mochis, Guasave, Guamúchil and the plaza of Mazatlán) and the part of Chihuahua that borders with Sinaloa (the municipality of Choix).¹⁰¹

⁹⁴ The narco-messages are strategic for the groups to generate “respect” and “construct a reputation in the face of their rivals and society in general through ‘narco-banners’, murders, leaving corpses in public places, and other actions. Ángel, Arturo. “Narcomensajes reflejan el vacío de poder del Estado y la falta de instituciones: estudio” *Animal Político*. January 6, 2017. Available at: <http://www.animalpolitico.com/2017/02/narcomensaje-crimen-asesinato-calderon/>. (Last Accessed: February 13, 2018).

⁹⁵ La Tribuna. “Gente Nueva”, el grupo de sicarios que protegen a “El Chapo” Guzmán”. *La Tribuna*. 25/10/2015. Available at: <http://www.latribuna.hn/2015/10/25/gente-nueva-el-grupo-de-sicarios-que-protegen-a-el-chapo-guzman/> (Last accessed: 16/10/2017.)

⁹⁶ There is no one accepted definition, but according to the National Gang Center in the United States, gangs are groups: of three or more members; that share an identity and have their own symbolism; have a certain degree of permanency and organization; and are involved in an elevated level of criminal activity. *National Gang Center*. “What is a gang?” Available at: <https://www.nationalgangcenter.gov/About/FAQ> (last accessed: February 13, 2018).

⁹⁷ El Diario. “¿Quiénes son Los Mexicles?” *El Diario*. 09/05/ 2015. Available at: http://diario.mx/Local/2015-05-09_0ecd423f/_quienes-son-los-mexicles/?/ (Last Accessed: 16/10/2017).

⁹⁸ Gallegos, Sorayda. “Diez ejércitos criminales operan para El Chapo Guzmán”. *El País*. 13/01/2016. Available at: https://elpais.com/internacional/2016/01/12/mexico/1452555899_149689.html (Last Accessed: 13/01/2017).

⁹⁹ The search for and provision of information about the operations of security forces in particular is codified as a crime called, ‘*halcaoneo*.’ Some criminal codes had added an element to the definition of that crime requiring that the search for information have a particular aim: that of committing other crimes. Others code emphasize the type of actions taken in the search for information, barring behaviors such as stalking and harassment. Maldonado, Leopoldo. “Halconeos: El delito de buscar información”. *Nexos*. April 4, 2016. Available at: <https://eljuegodelacorte.nexos.com.mx/?p=5740>. (Last Accessed, February 13, 2018).

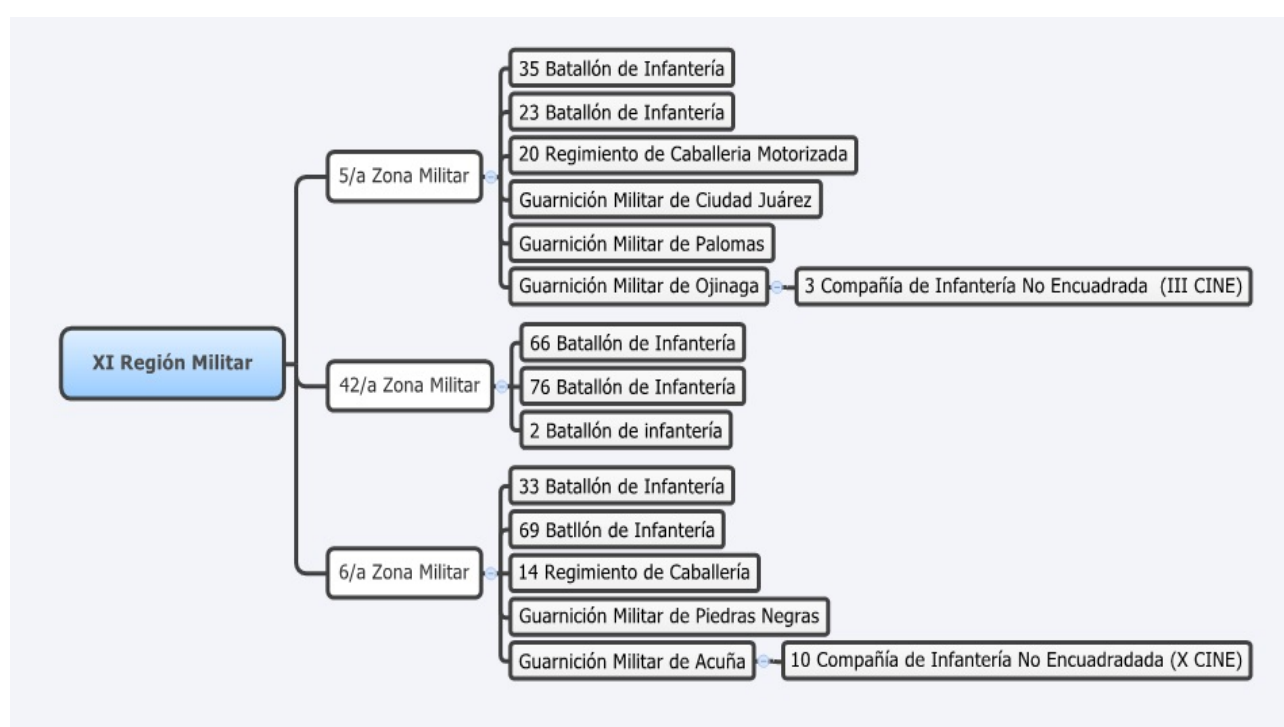
¹⁰⁰ Blancas Madrigal, Daniel. “Cuatro pandillas rivales “limpian” de narcomenudistas a Cd. Juárez”. *Crónica*. 4/02/2010 Available at: <http://www.cronica.com.mx/notas/2010/485687.html> (Last Accessed: 16/10/ 2017).

¹⁰¹ Aguilar, Rubén. “Nuevo cártel: Los Mazatlecos”. *Animal Político*. January 22, 2013, available at <http://www.animalpolitico.com/blogueros-lo-que-quiso-decir/2013/01/22/nuevo-cartel-los-mazatlecos/>.

iii. Stages of militarized operations in Chihuahua

a. Military structure during the OCCH

The Mexican territory is divided into twelve military regions. The military regions are operational entities that structure how the units through which the Mexican Army operates. Those who are in charge of the military regions act directly under the command of the Secretariat of National Defense, who reports directly to the President of the Republic, the supreme commander of the FAM. The military regions have direct control over the military zones that they are comprised of, who in turn control smaller units like battalions, garrisons, companies, and regiments. In general, the military regions cover more than one state; in the case of Chihuahua, the state is under the control of Military Region XI, and within that region the OCCH was implemented.¹⁰² Figure 8



shows the division of Military Region XI.

Figure 8. Made by the CMDPDH. Based on the information in Appendices 5 & 6 regarding the chain of command in Military Region XI during the OCCH.¹⁰³

Throughout the communication, it will become clear that the majority of the units subordinated to the Military Region XI face allegations of abuses committed directly or indirectly, due to their positioning in the geographic space and period of time where the OCCH had control, be it via their

¹⁰² For more information about Military Region XI, see the information provided by Security Force Monitor in Appendix 5.

¹⁰³ The sources used to prepare Appendix 6, as well as those used to make Figure 3, are broken down in Appendix 1, “Sources of the Communication and Appendices.” See particularly the section on Military Command Chain in the OCCH.

direct participation in the crimes, by the use of their facilities, or through the participation of their medical personnel during the crimes, as is detailed in Appendix 6.

b. Joint Chihuahua Operation (March 2008- January 2010)

The signatory organizations do not have privileged information regarding the make-up and functioning of the Joint Chihuahua Operation (OCCH). Nevertheless, we have been able to assemble, through information contained in publicly available sources and official documents, elements that describe the make-up of the Operation, its objectives, the military units involved, as well as the commanders in charge of particular units that participated during the period covered by this communication.

The next section will describe the different elements that have been identified regarding the structure of the OCCH as well as its command chain in different moments, though its high command was maintained throughout the time that the operation lasted. The organizations note that the Calderón administration was not accurate when reporting on the joint operation in the state of Chihuahua. As is mentioned later, the publicly available sources and official documents indiscriminately refer to the operation using different names, including: *Operación Conjunta Juárez*, *Operación Conjunta Chihuahua*,¹⁰⁴ or *Operativo Conjunto Chihuahua*. For the purposes of this communication, the OCCH encompasses the combination of military operations derived from military action in the state of Chihuahua, such as the “Joint Juárez Operation” (*Operación Conjunta Juárez*) and the “Buenaventura” Operation as is described in this section.

The launch of the OCCH was announced by the then Minister of the Interior Minister of the Interior (1) on March 1, 2008. On the same day Brigadier General (1), then responsible for the 5th Military Zone, which forms part of Military Region XI, was placed in charge of the operation.¹⁰⁵ At that time, a Colonel (1), a Major (1) and a Captain (1) were named as his subordinates.

Information obtained from publicly available sources affirms that the operation officially began activities on March 27, 2008 with the announcement by the Secretary of the Interior, the Secretary of Defense, the Federal Attorney General’s Office, and the then Governor of the state of Chihuahua.¹⁰⁶ Thus, more than 2,000 troops were deployed in the state of Chihuahua, 425 Federal Police agents and 63 from the PGR, including Special Forces, all with the objective of “trying to recover the spaces that organized crime had stolen from society and dismantle the criminal gangs.”¹⁰⁷

¹⁰⁴ This is the name by which the military document, “General Operations Order II “OPN. CONJ. Chihuahua” is known. July 2, 2008. See Appendix 9.

¹⁰⁵ Brigadier General (1) held that role from January 18, 2007 through July 2, 2010, when he was transferred to the Santa Gertudis military base. Silva, Mario Héctor. “PGR Investiga a Felipe de Jesús”. Politikkon.com Periodismo en su punto. México, Chihuahua. 25/05/2015. Available at: <http://politikkon.com/investiga-pgr-a-felipe-de-jesus/>. (Last Accessed: 03/10/2017)

¹⁰⁶ Ruiz Romero, Laura Cecilia y Lara Rodríguez, Luis Manuel. “Discurso oficial y derechos humanos en el Operativo Conjunto Chihuahua”. Chihuahua Hoy 2016. 199. Ciudad Juárez, Chihuahua, México. Available at: <http://revistas.uacj.mx/ojs/index.php/ChihuahuaHoy/article/download/1387/1217> (Last Accessed: 03/10/2017)

¹⁰⁷ Paniagua Vázquez, Abraham. “Para los que no creyeron... y para los que siguen sin creer...”. El discurso como herramienta de poder entre la relación Estado - Sociedad - Crimen Organizado en Ciudad Juárez. Prisma Social (online) No. 8 (June – Nov. 2012), Social Science Journal. ISSN: 1989-3469. pp. 200. Available at: <http://www.redalyc.org/html/3537/353744580007/> (Last Accessed: 03/10/2017).

In a press release, the SEDENA confirmed this by indicating that within “the framework of the Permanent Campaign against Drug Trafficking carried out by the Mexican Army and Air Force,” military personnel participated in the Joint “Juárez” Operation with 2,026 troops, 180 tactical military vehicles, 3 aircrafts, and 12 molecular detection kits.¹⁰⁸ This press release does not detail the objectives of the Operation nor was it until August 2008, several months after the operation was underway, when the then Secretary of Interior indicated that it was:

“[D]istance drugs from children, from young people, from Mexican society itself and recover for society, for every family, the freedom, the peace that they require, and the ability to enjoy the spaces of relaxation, all the spaces of freedom and growth, and the freedoms in general which are needed to be able to develop freely and which we are obligated, as a State to be able to provide.”¹⁰⁹

What that press release does detail is the first part of the OCCH, when the SEDENA rolled out ten Mixed Operations Bases and 46 Mobile Checkpoints in Ciudad Juárez; strengthened the Military Garrison in the municipality of Palomas; and sent Special Forces. Everything had a command center in Ciudad Juárez. At the same time the press release recognized operations in the cities of Chihuahua, Ojinaga, Buenaventura, Janos, Casas Grandes, Nuevo Casas Grandes, and Asunción (sic),¹¹⁰ confirming that the OCCH reached beyond Ciudad Juárez and encompassed other cities in the state of Chihuahua. In addition to the 46 checkpoints in Ciudad Juárez, the OCCH was characterized by military patrols in the streets.¹¹¹ The OCCH command post was established in Ciudad Juárez.¹¹²

As part of the OCCH, the troops undertook diverse tasks, including “operations of interdiction and harassment [...] with the goal of capturing or neutralizing groups of individuals dedicated to illegal activities and that would seek to disrupt the peace and security of society”¹¹³ in the area. The troops’ conduct included establishing surprise, mobile, and fixed checkpoints; locating and capturing “targets”; daytime and nighttime patrols in urban and rural areas; as well as searching for information. The Third Specialized Infantry Platoon (“*La III Compañía de Infantería No Encuadrada*”) included a ‘reaction force’ intended to act “on orders, against criminal gangs.”¹¹⁴

The OCCH was also carried out through focused operations in some areas. An example of this is the operation in Buenaventura, Chihuahua in 2009, which was carried out under the charge of the 35th Infantry Battalion in the interior of the municipality of Buenaventura with headquarters in Nuevo Casas Grandes.

¹⁰⁸ SEDENA Press Release. No. 60. 27/03/2008. Available at: <http://calderon.presidencia.gob.mx/2008/03/efectivos-militares-refuerzan-las-acciones-en-contra-de-la-delincuencia-organizada-en-el-estado-de-chihuahua/>. (Last Accessed: 03/10/2017)

¹⁰⁹ Press Conference, published august 8, 2008. Available at: <https://www.youtube.com/watch?v=mo-pliHLHck> (Last Accessed: 03/10/2017)

¹¹⁰ SEDENA Press Release. No. 60. 27/03/2008. Available at: <http://calderon.presidencia.gob.mx/2008/03/efectivos-militares-refuerzan-las-acciones-en-contra-de-la-delincuencia-organizada-en-el-estado-de-chihuahua/>. (Last Accessed: 03/10/2017)

¹¹¹ Brisa, El Cotidiano No. 153 pp. 10; See also Appendix 9, “General Operations Order II “OPN. CONJ. Chihuahua.”

¹¹² See Appendix 9, “General Operations Order II “OPN. CONJ. Chihuahua.”

¹¹³ See Appendix 8, “Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012.”

¹¹⁴ See Appendix 9, “General Operations Order II “OPN. CONJ. Chihuahua.”

As was previously indicated, since its launch, the actions of the OCCH fell under the responsibility of a Brigadier General (1), the then commander of the Fifth Military Zone which was headquartered in Chihuahua, Chihuahua,¹¹⁵ while a Captain (1) acted as Deputy Chief of Staff of the operation. The commander in charge of the OCCH, the General, was in turn under the command of the Commander of Military Region XI, a position that was held for the first months of the operation¹¹⁶ by a General (2) who acted under direct orders from the General Secretary of National Defense at the time (1).

The three Military Zones that make up the Military Region XI (see Figure 3)—which have their headquarters in the city of Torreón and an area of operations that covers the states of Coahuila and Chihuahua—participated in actions pertaining to the OCCH. At the time of the joint operation, there were more than seven thousand troops in the region under the command of a General (2)¹¹⁷ Nevertheless, it is the *Fifth Military Zone*, specifically, through its subordinate units, that was involved in the commission of the greatest numbers of crimes in the context of the OCCH. The 35th Infantry Battalion, under the command of Infantry Colonel (2) and Infantry Lieutenant Colonel (3) as second-in-command;¹¹⁸ the Ojinaga Military Garrison under the command of Commander (1); as well as the 20th Motorized Cavalry Regiment under the command of General (3). All of these units formed part of the 5th Military Zone, and they have the highest number of accusations against them for different crimes, or for crimes that took place inside of their facilities.¹¹⁹

Within the Ojinaga Garrison was the Third Specialized Infantry Platoon¹²⁰ (III CINE), which was commanded by Infantry Lieutenant Colonel (4). Said garrison also had reinforcement troops belonging to the 5th Mechanized Regiment located in four points; as well as the support of diverse troops that also participated in the OCCH (under the command of Brigadier General (1), the commander of the Fifth Military Zone). These units were known as ‘friendly troops’, and included: the 23rd Infantry Battalion in Chihuahua; the 66th Infantry Battalion in Delicias; the No. 13 Military Air Base in the Plaza of Chihuahua; the “Castillo” control post under the command of Second

¹¹⁵ One of those most responsible in the OCCH chain of command. He held this position until July 2010, when the command of the Fifth Military Zone was taken over by Brigadier General (13). In January 2016 he retired.

¹¹⁶ After General (2) left about two months after having launched the OCCH, the Commander Mario Marco Antonio González Barreda took over the command of Military Region XI. He remained in charge of that Region for the remainder of the Operation, leaving the role in January 2002.

¹¹⁷ He was murdered on May 21, 2011 in the State of Mexico. “Asesinan al general que inició Operativo Conjunto Chihuahua”. La Policiaca, Chihuahua. Redacción La Policiaca. Mexico, Chihuahua, Chihuahua. 22/05/2011. Available at: <http://www.lapoliciaca.com/nota-roja/asesinan-al-general-que-inicio-operativo-conjunto-chihuahua/> (Last Accessed: 03/10/2017).

¹¹⁸ He was nominated by Felipe Calderón in November 2007, and ratified by the Chamber of deputies on January 23, 2008. “Ordena Coronel ejecutar desertores en Nuevo Casas Grandes”. El Diario MX, Estado, Juárez, Chihuahua. México, Distrito Federal. 14/02/2012. Available at: http://diario.mx/Estado/2012-02-14_3f423609/ordena-coronel-ejecutar-desertores-en-nuevo-casas-grandes/ (Last Accessed: 03/10/2017)

¹¹⁹ As is demonstrated in Appendices 5 and 6.

¹²⁰ The Company is a small military unit that is made up of the command and organs of command, soldiers or units that all carry one type of weapon (in this case infantry) and the appropriate and necessary services. The Spanish term ‘No Encuadra’ in its name indicates that it is an independent unit, that is to say, it has its own necessary staff and resources to see to the performance of its particular functions.

Infantry Lieutenant (5); the “Galván” control post, under the control of Infantry Lieutenant (6); and the “Acevedo” control post, under the command of Infantry Lieutenant (7).¹²¹

The 6th Military Zone, which also belongs to Military Region XI, was first under the command of General (4), (from the beginning of the Operation through February 12, 2009), then General (5) (until December 2010), and subsequently General (6) (until January, 2014).¹²²

Likewise, during the duration of the OCCH, diverse military units outside of Military Region XI also participated in the operation, including units assigned to or originating from other military regions or zones, independent infantry brigades, Special Forces, and even units of the military police. Additionally, it is known that various units, such as the 6th Special Forces Battalion of Nogales Sonora, participated in “high impact” operations in support of the OCCH.¹²³

In June 2008, at a second stage of the OCCH, the federal government ordered the reinforcement of the operation via the deployment of 1,400 additional soldiers with the objective of supporting those who were already operating in the state.¹²⁴ In that same month, General (2), was relieved from his post and promoted to Army and Air Force Inspector and Comptroller. One year later, in February 2009, he was again promoted, this time to Head Official of the SEDENA with the rank of General of the Diplomatic Division of the Joint Chiefs of Staff, whereby he reached the highest position in the Army, subordinate only to the Secretary Defense and Undersecretary.¹²⁵

On June 30, 2008, a Commander (1) was designated responsible for Military Region XI, under the command of the Single Military Command, and Commander-In-Chief of security operations in the Comarca Lagunera, including the OCCH.¹²⁶ He remained in this post until 2011.¹²⁷

By October 2008, the command post of the Joint Operation was located in the military garrison of Ciudad Juárez (“the barracks of the Joint Operation.”) Additionally, the 5th Military Police Battalion operated in Ciudad Juárez during October and November 2008 under the command of Colonel (1),

¹²¹ Referred to as “friendly troops” (“*tropas amigas*”). See Appendix 9, “General Operations Order II “OPN. CONJ. Chihuahua.”

¹²² See Appendix 5.

¹²³ Huerta, Carlos. “Usaban grupo de élite para desaparecer y matar civiles” Norte Digital de Cd. Juárez. Juárez, Chihuahua. 07/05/2015, Available at: <http://nortedigital.mx/usaban-grupo-de-elite-para-desaparecer-y-matar-civiles/>. (Date Accessed: 10/01/2017).

¹²⁴ Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf. (Last Accessed: 03/05/2018).

¹²⁵ “Arraigan a 3 sujetos por homicidio del General Juárez Loera”. Animal Política, Redacción. México. 03/08/2011. Available at: <http://www.animalpolitico.com/2011/08/arraigan-a-3-sujetos-por-homicidio-del-general-juarez-loera/> (Last Accessed: 03/10/2017).

¹²⁶ “Entra nuevo mando de la XI Región Militar”. Redacción La Policiaca, Coahuila. México, Torreón. 16/01/2012 Available at: <http://www.lapoliciaca.com/nota-roja/entra-nuevo-mando-de-la-xi-region-militar/>. (Last Accessed: 03/10/2017).

¹²⁷ In January 2012, General (8) took over the command of Commander (1), as commander of Military Region XI. The Command of Military Region XI in the city of Torreón was renewed. Government of Coahuila. News. Mexico. 17/01/12. Available at: <http://coahuila.gob.mx/noticias/index/renuevan-mando-en-la-xi-region-militar-con-sede-en-la-ciudad-de-torreon> (Last Accessed: 11/07/2017).

whose unit had come from its base located in Santa Lucía in the State of Mexico to join and reinforce the OCCH actions.¹²⁸

In December 2009, there were again changes in the military structure in charge of the OCCH. At this time, General (7), who was in charge of the Juárez Military Barracks that was headquartered in Ciudad Juárez, was transferred to the 42nd Military Zone¹²⁹ and a Brigadier General (3) took his place.¹³⁰

In February 2009 a General (5) was named the new commander of the 6th Military Zone, replacing General (4).¹³¹

On March 1, 2008, in a third stage of the OCCH, the deployment of 5,332 additional troops to Ciudad Juárez was announced.¹³² By that month, it was estimated that 1 out of every 4 soldiers deployed as part of the strategy to fight drug trafficking were in Ciudad Juárez.¹³³

On March 14, 2009, the OCCH spokesperson reported that approximately five thousand soldiers would be incorporated in the Joint Juárez Operation. With this announcement, the number of soldiers supporting the operation rose to approximately 8,500. The spokesperson reported that between soldiers and federal police that formed part of the operation in that border city, the total number of federal forces reached 10,800.¹³⁴ That same day, SEDENA personnel and federal and state moved into Camargo, and that same month, they also incorporated 30 dogs from the Second Military Police Brigade.¹³⁵

On September 16, 2009, the federal government announced the second stage of the Comprehensive Security Strategy in Ciudad Juárez, as part of the OCCH. This stage entailed that the military would stop having autonomous operational functions in the city, and would switch to only undertake functions in support of the civilian authorities (local police). An estimated 1,182 police were trained

¹²⁸ Veledíaz, Juan. “Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua”. Special Report. Proceso. Mexico. 05/01/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua> (Last Accessed: 23/11/2017).

¹²⁹ General (7) performed that role until July 2011, when he retired and was replaced by Commander (2). “Relevo en la 42 Zona Militar de Parral”. El Ágora, Un Espacio de Libertad. Mexico, Chihuahua. 01/07/2011. Available at: <http://www.elagora.com.mx/Relevo-en-la-42-Zona-Militar-de.html> (Last Accessed: 04/10/2017).

¹³⁰ “Toma posesión comandante de la Guarnición Militar de Juárez”. El Digital. Ciudad Juárez. Chihuahua. 10/12/2008. Available at: http://www.eldigital.com.mx/html/24786_0_1_0_C.html (Last Accessed: 23/11/2017).

¹³¹ “Rubén Serrano Herrera, nuevo comandante de la 6ta. Zona Militar”. Zócalo, Chihuahua, Media. Mexico, Coahuila. 02/02/2009. Available at: <http://www.zocalo.com.mx/multimedia/fotogalerias/asume-ruben-serrano-herrera-nuevo-comandante-de-la-sexta-zona-militar> (Last Accessed: 03/10/2017).

¹³² Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf (Last accessed: 03/05/2018).

¹³³ “Juárez bajo sitio militar” El Universal, México, 1/03/2009. Available at: <http://archivo.eluniversal.com.mx/nacion/166104.html> (Last Accessed: 03/10/2017).

¹³⁴ Cano, Luis Carlos. “Unos mil soldados se integran a Operativo Conjunto Juárez”. El Universal, México, 14/03/2009. Available at: <http://archivo.eluniversal.com.mx/nacion/166104.html> (Last Accessed: 10/10/2017).

¹³⁵ “Refuerza unidad canina operativo conjunto en Chihuahua” (Redacción) Proceso. 23/03/2009. Available at: <http://www.proceso.com.mx/113756/refuerza-unidad-canina-operativo-conjunto-en-chihuahua> (Last Accessed: 03/10/2017).

by military personnel “to undertake their activities with greater effectiveness and professionalism”¹³⁶ upon resuming their principal duties. On January 16, 2010, per instructions of Felipe Calderón, the Joint Chihuahua Operation came to a close.

c. Coordinated Chihuahua Operation (January 16, 2010 – October 3, 2011)

After the conclusion of the OCCH, public security duties in the state were assigned to the Federal Police. This operation came to be known as the Coordinated Chihuahua Operation.¹³⁷ Nevertheless, the operation continued to be commanded by an active member of the military, a Brigadier General (1),¹³⁸ who led the Coordinated Operation until April 8, 2010.

On January 16, 2010, it was announced that 5,000 Federal Police forces would be dispatched to the state, which is why that is considered to be the date when the Federal Police took over control of the operation. In that stage the FAM “would maintain its role as guards at the international border crossings, air and bus terminals, and the highway access points to Ciudad Juárez, and they would continue working in rural areas of the municipality of Ciudad Juárez”.¹³⁹

In 2010 the program “We are All Juárez: Let’s Rebuild the City” (“*Todos Somos Juárez: Reconstruyamos la Ciudad*”) was launched. This program entailed an investment to undertake 160 concrete actions in the city. It arose out of 3 visits by Calderón to Ciudad Juárez at the beginning of 2010, motivated by the Villas de Salvarcar massacre (one of the cases cited in later parts of this communication). This marked the start of a “new stage of programs and operations” in the state, as part of an attempt to show a change in the military strategy that had previously been adopted under the OCCH and, as has been mentioned in previous sections, did not manage to reduce the violence or to limit the actions of criminal gangs in Chihuahua.

On December 1, 2010, a General (6) from the Certified Brigade of the Joint Chiefs of Staff (“*Brigada Diplomado de Estado Mayor*”) arrived in Satillo, Coahuila as the commander of the 6th Military Zone.

The coordinated operation ended on October 3, 2011, when the withdrawal of 70% of the Federal Police Agents in the state was announced.¹⁴⁰

During the time that the operation lasted (January 16, 2010 through October 3, 2011), abuses by members of the military and the federal police were also documented by the CNDH.¹⁴¹ The

¹³⁶ “Comienza segunda fase del Operativo Conjunto Chihuahua”. Notimex/ El Universal. 16/09/2009. Available at: <http://archivo.eluniversal.com.mx/notas/626969.html> (Last Accessed: 03/10/2017).

¹³⁷ “SEDENA remueve al general Espitia de la 5a. zona militar”. El Universal, Estados. Corresponsalia. Mexico. 02/07/2010. Available at: <http://archivo.eluniversal.com.mx/estados/76705.html> (Last Accessed: 09/10/2017).

¹³⁸ Brigadier General (1) retired in January 2016. “Generales que pasaron a retiro, satisfechos de “cumplir con el país””. La Jornada. 10/01/2016. Available at: <http://www.jornada.unam.mx/2016/01/10/politica/013n1pol> (Last Accessed: 07/11/2017).

¹³⁹ Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf (Last Accessed: 03/05/2018).

¹⁴⁰ Paniagua Vázquez, Abraham. “Para los que no creyeron... y para los que siguen sin creer...” El discurso como herramienta de poder entre la relación Estado - Sociedad - Crimen Organizado en Ciudad Juárez. Prisma Social (online) No. 8 (june-nov. 2012), Social Science Magazine. ISSN: 1989-3469. pp. 199. Available at: <http://www.redalyc.org/html/3537/353744580007/> (Last Accessed: 03/10/2017).

¹⁴¹ See CNDH, Recommendations No. 31/2011, 49/2011, 75/2011, 18/2012, 46/2012 and 39/2013 in Appendix 3. .

documented conduct includes torture, severe deprivation of physical liberty, disappearances, and murder.

c. Local police commanded by a retired member of the military (2011- 2013)

Although the federal forces began to withdraw in October 2011, as of March of that same year, the then mayor of Ciudad Juárez (2010-2013) named Lieutenant Colonel (8), a retired member of the military, as Secretary of Public Safety for the Municipality of Ciudad Juárez. In this post, Lieutenant Colonel (8) commanded the municipal police through the remainder of the term of that mayor's administration. The nomination of Lieutenant Colonel (8), a retired member of the military, was confirmed despite multiple accusations of police abuse committed under his command when he was Secretary of Public Safety in Tijuana, Baja California in previous years (2008-2010).¹⁴²

In a prior communication presented to the Honorable Office of the Prosecutor of the ICC, the signatory organizations presented information that established a reasonable basis to believe that under the command of this former Secretary of Public Safety, crimes against humanity were committed in the state of Baja California, which is also a border state.¹⁴³

Police abuses under the command of the aforementioned retired member of the military were also documented in the recommendations of the Chihuahua State Human Rights Commission, and while they are not analyzed in detail in this communication, the appendices do include information regarding the recommendations of 17 cases documenting abuses with a clear pattern of action, to bring them to the awareness of the OTP.¹⁴⁴

V. Temporal and Territorial Jurisdiction of the ICC

The Rome Statute enters into force in Mexico on January 1, 2006, in accordance with Article 126 of the treaty. The conducts described in this communication were committed within the Mexican territory, are presumably attributable to Mexican nationals, and occurred after January 1, 2006.

VI. Crimes falling under ICC Jurisdiction

The signatory organizations to this communication maintain that the conducts described herein rise to the level of crimes against humanity in accordance with Article 7 of the Rome Statute. Given the gravity of these crimes and the complete impunity that is enjoyed by those who commit, order, and tolerate them—particularly those most responsible—these crimes fall under ICC jurisdiction.

¹⁴² "Toma la plaza del 20 regimiento nuevo General". *Larednoticias.com* Noticia del día. Mexico. 10/12/2008. *Available at:* <http://nortedigital.mx/biografia-de-julian-leyzaola-perez/> (Last Accessed: 04/10/2017).

¹⁴³ FIDH, et al, "Report on the alleged commission of crimes against humanity in Baja California between 2006 and 2012," September 12, 2012, *available at:* <https://www.fidh.org/IMG/pdf/mexique642ang2014web.pdf>. On July 23, 2012, General (9), took control of the 5th Military Zone; he replaced Brigadier General (13). "Asume General Gaytán comandancia de la 5ª Zona Militar en Chihuahua". *Zócalo*, Chihuahua. Mexico, Coahuila. 24/07/2012. *Available at:* <http://www.zocalo.com.mx/seccion/articulo/assume-general-gaytan-comandancia-de-la-5-zona-militar-en-chihuahua> (Last Accessed: 04/10/2017).

¹⁴⁴ See Appendix 10, a database of recommendations from the State Human Rights Commission.

The majority of the 35 cases from the time period covered by this communication were documented from the perspective of the obligations of state agents—and particularly, the obligations of the FAM—as imposed by human rights norms. The majority of these cases were documented by the CNDH—the National Ombudsman’s Office—in their files and conclusions that make up their recommendations,¹⁴⁵ while some were documented by human rights organizations and press reports. These cases describe the commission of enforced disappearances, torture, arbitrary detentions, rape, sexual violence, and arbitrary executions; all of these crimes attributed to federal authorities, and particularly to the Mexican army.¹⁴⁶

The study of these crimes, applying the perspective of the obligations of the Mexican State under the Rome Statute, indicates that there is a reasonable basis to conclude that crimes against humanity were committed in Chihuahua, particularly in the context of the OCCH, just as will be described in the upcoming sections. All of these cases are linked to the OCCH, either directly or indirectly, given that they involved military units whose scope of operations (temporal and territorial) coincides with that of the joint operation, and so they operated under the OCCH command chain.

The signatory organizations reiterate that the standard of proof to request that an investigation be opened is to demonstrate a reasonable basis to believe that crimes falling under the jurisdiction of the Court have occurred; this is the lowest burden of proof defined by the Rome Statute.¹⁴⁷ The information contained in this communication clearly meets the threshold of establishing that reasonable basis necessary for this procedural stage.

Through an analysis of the cases, a series of patterns can be deduced that reveal the repeat criminal behavior of members of the military involved in the OCCH, among which should be emphasized: authorities acting with their faces covered; the use of official vehicles and arms to subdue, threaten, hit, and even wound with gunshots individuals at the time of their arrest or transfer; invading the homes of victims without a warrant; systematically denying access to information regarding the place of detention and/or holding of civilians; and allegations by the military that they undertook detentions ‘*in flagrante delicto*.’ Civilians were taken away and held in military facilities, despite being in places where there were civilian authorities in whose custody they could have been placed immediately. Civilians were held in military facilities for an average of 25 hours after their detention and before being brought before civilian authorities. While they were held in military installations or places under exclusive military control, the victims were subjected to torture with tactics that included blows, electric shocks, physiological torture, choking with plastic bags or water—including use of the “*waterboarding*” technique—and sexual torture, including that victims were raped and sometimes subjected to other forms of sexual violence. Military medical staff participated in these acts of torture or resuscitation. The acts of torture had the objective of obtaining or fabricating information about criminal gangs, and/or obtaining information about the location of weapons or drugs or information on third persons. Civilians were routinely presented to media outlets and before the civilian prosecutors with drugs or weapons that had been planted.

¹⁴⁵ See Appendix 2. Appendix 2 to this communication contains a database of the cases that illustrate the patterns of action of the federal authorities, and particularly those that are attributable to the armed forces during the period of 2008 to 2010 in the state of Chihuahua.

¹⁴⁶ See Appendix 2.

¹⁴⁷ ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya”, 31 March 2010, para. 64.

The patterns identified can be visualized in the following table, which explains the proportionality within the universe of cases contained in the present communication, with the exception of two cases documented in the Human Rights Watch report, which did not include the same variables of information and so were not incorporated into this table.¹⁴⁸

Variables	Totals	Percentage	Observations
Number of cases	33	100%	
Number of victims	117	*	On average, 3 victims were involved in each case documented.
Number of troops involved	232	*	On average, 7 troops participated in each case documented.
Participation of Military Doctors	15	45%	
Use of Vehicles	23	70%	In 70% of cases, vehicles were used for the commission of crimes against civilians
Official Vehicles	17	52%	More than half of the time, the vehicles with which crimes were committed were official vehicles.
Use of weapons by the authorities	15	45%	In almost half of the cases some type of weapon was used against the civilian population.
Troops covered their faces	8	24%	
Alleged possession of weapons	22	67%	The victims were detained for alleged possession of drugs and/or weapons that are exclusively for military use
Inconsistencies in the authorities' version of events	27	82%	The version of the authorities differs

¹⁴⁸

See Appendix 7, regarding patterns found in cases documented within the framework of the OCCH.

			from that of the victim
The authorities deny their participation in the events	6	18%	
Arbitrary detention	29	88%	The cases begin with an arbitrary detention
Detention in the home of the victim	16	48%	
Prolonged deprivation of liberty	27	82%	
Holding in military barracks	26	79%	
Torture	30	91%	
Torture in the victim's own home	9	27%	
Torture in military barracks	23	69%	
Psychological Torture	29	88%	
Torture with Electric Shock	15	45%	
Torture with blows	28	85%	
Torture by asphyxiation (bags/objects/water)	16	48%	
Sexual Torture	11	33%	
Disappearance	23	70%	
Disappearance in military barracks	20	61%	
Execution	7	21%	
Persons that were remanded for some crime	20	60.61%	
Seizure of arms or drugs	18	55%	
They make mention of a criminal group to justify the crimes committed by the authorities	8	24.24%	

Figure 9. Made by authors with data from the CNDH.

The cases documented in this communication, as will be demonstrated over the course of this document, do not constitute isolated, sporadic, or spontaneous incidents. To the contrary, the incidents documented in this communication demonstrate clear patterns of action by the authorities, and they even reveal that the highest levels of the military command knew about the commission of international crimes. Some evidence of this includes: the use of military facilities that were governed by the chain of command and military discipline in order to commit acts of torture inside of them; the repeat use of the same methods of torture by the FAM, including the participation of military medical personnel, which implies the use of official resources for the commission of torture. In the context of the operations, where military personnel moved out of their barracks or headquarters, it required ample knowledge up the command chain, regarding their destination, the

use of official resources, weapons, and even drugs that were used to be planted at the moments of transferring individuals who had been detained to the custody of the civil authorities; the holding of the vehicles of persons who had been detained. All of these acts cannot just be attributed to “a few bad apples”; they form part of a chain of criminal acts that were committed under the command of the OCCH.

Of particular note is the participation of military medical personnel, who in different occasions are identified as participating by trying to minimize the fingerprints of torture, reviving victims that became unconscious during torture sessions, or treating the marks of torture in order to avoid consequences. In cases of murder, the pattern of behavior demonstrated in the cases analyzed includes: the exhumation of the bodies of civilian criminals; the “cremation” (or “incineration”) of corpses; or abandoning corpses on less transited roads, with the goal that no one would be able to identify the victims.

The next sections presents extracts of some cases that were documented in the context of the OCCH from 2008 to 2010 and that are emblematic or illustrate the gravity of the crimes committed by the military authorities. As has been explained previously, these cases constitute a reasonable basis to believe that crimes against humanity were committed against the civilian population as part of the an official policy with the objective of showing “results” in the security strategy of the federal government of Felipe Calderón—and particularly of the OCCH—to “finish off” the activity and control of organized crime in Chihuahua.

A. Murders, Article 7(1)(a) of the Rome Statute

Murder of two persons in Nuevo Casas Grandes (2009)¹⁴⁹

On October 18, 2009, two persons (victim 1 and victim 2), were transiting in a white Derby vehicle that was being driven by one of the victims (V1), when they were detained by members of the Municipal Police of Nuevo Casa Grandes Chihuahua. After the alleged discovery of a firearm of exclusive use of the Army, the police turned over the detained persons to the military. The military in turn transferred them to the barracks of the 35th Infantry Battalion, where they arrived at around 13:30.

The testimony relates that when they arrived at the military facility, the infantry major (1), was informed, and that he in turn ordered that the information be relayed to the Infantry Colonel (2). The Captain (3)¹⁵⁰ received orders to bring the civilians to the information platoon (“*pelotón de información*”) so that they could be “worked”; in that platoon they were received by Infantry Soldier (1), who gathered 3 soldiers (1,2,3).

The soldiers blindfolded one of the victims (V1); they stripped him naked, put him on a metal bed, covered his face with a damp cloth, and poured water over him (implementing the torture technique known as “*waterboarding*”). In a short time they noticed that he was not breathing, and realized that it had “gotten out of hand.” One of the soldiers (3) left the platoon area and then returned with the Second Lieutenant for Health Services (9) to try to revive the victim; but the victim no longer had vital signs, as was later corroborated by the military doctor (1).

¹⁴⁹ Mayorga, Patricia. “Sentencian a 33 años de prisión a mandos militares por asesinato de dos civiles”. Proceso. 31/01/2016. Available at: <http://www.proceso.com.mx/427171/sentencian-a-33-anos-de-prision-a-mandos-militares-por-homicidio-de-dos-civiles> (Last Accessed: 03/10/2017).

¹⁵⁰ Currently condemned to five years for the crime of torture.

The infantry major (1) informed the Infantry Colonel (2) of what had happened, who in turn reprimanded the major for what had occurred because he had not supervised “the work.” Then Infantry Colonel (2) ordered Captain (3)—in the presence of the other members of the military who had taken part—regarding the ‘necessity’ of taking the life of the other civilian (V2) by means of blows to the head, and ordered them to dig a deep pit and bury them both there.¹⁵¹

Both victims were transferred to a break in the highway from Janos to Agua Prieta, where they were each shot twice in the head with a MP5 machine gun, even though V1 was already dead. Then they buried them in a clandestine grave.¹⁵²

Murder of two people V1y V2, (2010)

Both victims were detained on January 8, 2010 by members of the 35th Infantry Battalion. The soldiers who detained them requested orders from their superior officers, to which Infantry Colonel (2) of that Battalion ordered them to “work the detainees”; that is to say, to force them to confess by subjecting them to torture.

Both victims were subjected to electric shocks; the lieutenant in charge of the interrogations called Infantry Colonel (2) again to request further instructions, to which the response was “kill them.” The Lieutenant, accompanied by five other soldiers, drove the military “defectors” to an area on the highway where they suffocated them by placing plastic bags over their heads and then burned their bodies.

Torture and murder of V1, torture of V2, Guadalupe y Calvo (2009)¹⁵³

On December 3, 2009, V1 y V2 were looking for cattle in a field in the municipality of Guadalupe y Calvo, Chihuahua, when they were detained by members of the army, who accused them of being the owners of lands where they had found a “drying room for marijuana.” After their detention, the military tied them up, hit them, and threatened to drown them in the river.

The Army abandoned V2 because he was unable to walk as a consequence of the wounds inflicted during the acts of torture, and they took V1 with them. The corpse of V1 was found the following day on the route to Mesa, in the municipality of Tepehuanes, Durango.

B. Severe Deprivations of Physical Liberty, Article 7(1) (e) of the Rome Statute

The cases documented in this communication include severe deprivations of physical liberty in violation of fundamental norms of international law, which are criminal conducts as reflected by article 7(1)(e) of the Rome Statute. The cases here meet the elements as outlined by the Elements of Crimes, which establish:

1. The perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty.
2. The gravity of the conduct was such that it was in violation of fundamental rules of international law.

¹⁵¹ Huerta, Carlos. “Se pasaron los militares con tortura y lo mataron”. Norte Digital, Ciudad Juárez. 21/01/2016. Available at: <http://nortedigital.mx/se-pasaron/> (Last Accessed: 10/10/2017).

¹⁵² Mayorga, Patricia. “Sentencian a 33 años de prisión a mandos militares por asesinato de dos civiles”. Proceso. 31/01/2016. Available at: <http://www.proceso.com.mx/427171/sentencian-a-33-anos-de-prision-a-mandos-militares-por-homicidio-de-dos-civiles> (Last Accessed: 03/10/2017).

¹⁵³ CNDH. Recommendation No. 066/2011.

3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁵⁴

Severe Deprivation of Physical Liberty of a person V1 in Ciudad Juárez, (2008)¹⁵⁵

At approximately 1:00 a.m. on June 11, 2008, soldiers entered the dwelling of the victim V1 in Ciudad Juárez, without a search warrant or an arrest warrant. They took him from his home, stole 1,800 pesos from him, and detained him.

The Army states that it arrested him *in flagrante delicto* on June 14, that is, three days later. In a report presented to the Federal Judicial Power, the Fifth District Court of the State of Chihuahua, “Término 78/2008-v-9”, June 18, 2008,¹⁵⁶ the soldiers testified that after they approached the victim V1 in a public thoroughfare they saw him toss a plastic bag that contained marijuana to the ground. According to the military’s version of events, they immediately arrested him, accusing him of “crimes against health” and “possession with intent to sell.”

During the trial, the evidence presented by the victim’s wife verified the version of the victim V1, showing the detention in the interior of the victim’s home three days before the official detention to have been an illegal and arbitrary detention. Accordingly, the victim was released on September 2008, when a judge dismissed the accusations that had been presented against him.

Severe Deprivation of liberty of two civilians¹⁵⁷

In some cases, the versions of events offered by or to the civilian authorities when the civilians are brought before them are contradicted by the military documents themselves, such as the medical certificates that are completed during the period of arbitrary detention inside of military institutions.

In the case of the victims V1 and V2, the medical certificates for each detained individual were issued at 13:02 the day of their detention. At the same time, when the military brought the detainees before the civilian authorities, they told them that the civilians had been detained at 14:00 that same day, which would be impossible because it would mean that the medical examination took place before their detention. In this case, the civilians were detained for over 95 hours in military installations before they were brought before civilian authorities.

¹⁵⁴ ICC, Elements of Crimes, Article 7(1)(e), para. 1 to 5.

¹⁵⁵ Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico’s War on Drugs* (2011). Available at: https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf (Last Accessed: 05/05/2018).

¹⁵⁶ Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico’s War on Drugs* (2011). Available at: https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf (Last Accessed: 05/05/2018).

¹⁵⁷ CNDH. Recommendation No. 055/2009.

Severe Deprivation of Liberty of 22 state police officials, Ciudad Juárez (2008)¹⁵⁸

The victims of severe deprivations of physical liberty also include local police officers, who for the purposes of this communication are considered to be civilians.

Just one week after the OCCH began, on April 1, 2008, 22 members of the state Ministerial Police and the Police Intelligence of Chihuahua (CIPOL) were inside of the CIPOL offices, having been called there by their respective commanders, supposedly for a ‘Confidence Control’ examination (*examen de control de confianza*). The testimonies agree that one person who identified themselves as part of the special investigations unit of the SIEDO, which is subordinate to the PGR, requested their cooperation in providing information about drug trafficking, and then named certain individuals, apparently at random, and told them that they would be transferred to the Military Barracks in that city, where they would be given the evaluations of the ‘Confidence Control’ examination

The 22 police officials, including four women police officers, were transferred to the 20th Motorized Cavalry Regiment, which is headquartered in Ciudad Juárez. They were taken to a small room where they were forced to stand against the wall for a period of one to two hours; they took away their belongings; two people with black uniforms and wearing hoods asked them their names, posts, ages, places of birth, seniority, and which criminal organization they worked for; they took photos of them from the front and in profile on both sides; and they deprived them of food until the next day. The 22 civilians remained out of contact for over 32 hours.

The interrogations to which they were subjected included the use of blows with blunt objects and electric shocks with Tasers in different parts of the body. Additionally, they were threatened with death if they did not confess their participation in the crimes that they were accused of. The women were stripped and verbally threatened. The civilians were held in those installations until 17:30 on April 2, 2008, when they were placed before the PGR.

Severe deprivation of liberty of three people in Juárez (2008)¹⁵⁹

In this case, members of the 33rd Infantry Battalion, who had their faces covered and were wearing green uniforms, charged at the three victims, who were members of the municipal police. The members of the 33rd Infantry Battalion were riding in five white pick-up trucks and opened fire, without any apparent reason, on the vehicle of the Municipal Police of Ciudad Juárez that the three police officers were riding in.

The military personnel approached the vehicle thinking that the municipal police officers had already died, and then realized that two of them were still alive. They believed that the third, who was gravely wounded, had died. Subsequently the gravely wounded individual was transferred to a hospital, while the other two were transferred to an empty plot where they hit them and threatened them at the same time as they questioned them about objects and weapons that they had no knowledge of. Both individuals were brought before the PGR for crimes against health, and for carrying weapons that are exclusively to be used by the Army.

In all of these cases, the evidence shows that the elements of the crime of severe deprivation of liberty are met, when the civilians were detained or subdued, with the awareness of the perpetrators of the situation (illegality of the detention and the failure to immediately bring the civilians before

¹⁵⁸ CNDH. Recommendation No. 034/2009.

¹⁵⁹ CNDH. Recommendation No. 015/2009.

civilian authorities). The evidence also shows that such crimes were systematically committed during the duration of the OCCH.

C. Torture, Article 7(1)(f) of the Rome Statute

Article 7(2)(e) of the Rome Statute defines the crime against humanity of torture as, “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.”¹⁶⁰

The Elements of Crimes describe the elements of this crime as follows:

1. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons
2. Such person or persons were in the custody or under the control of the perpetrator.
3. Such pain or suffering did not arise only from, and was not inherent in or incidental to, lawful sanctions.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.¹⁶¹

Severe Deprivation of Liberty and Torture of three civilians, Villa Ahumada (2008)¹⁶²

On April 8, 2008, while a group of people was participating in a burial service at the graveyard in Villa Ahumada, a group of soldiers arrived in official vehicles and with two helicopters. These soldiers, who belonged to the 7th Infantry Battalion and were acting under the OCCH framework, detained 7 civilians.

After their detention, the civilians were forced to lie down face down on the ground; they left them in that position for two hours while they took their belongings from their bags. They were then transferred to the military installations of the Fifth Military Zone, where they were held incommunicado for more than 24 hours. While they were inside of the military facility, they were tortured by beatings, use of electric shocks, and suffocation with plastic bags, all “with the objective that they would confess to participating in diverse illegal activities.”

The medical personnel of the 20th Motorized Cavalry Regiment conducted the examination to determine the state of the victims, minimizing the signs of the injuries from torture that were present on the bodies of the civilians.

The detainees were not brought before civilian authorities until 19:00 on April 9, 2009, at which point they opened a criminal case against them for the crimes of carrying weapons and crimes against health.

¹⁶⁰ ICC. Rome Statute, Articles 7(1)(f) and 7(2)(e).

¹⁶¹ ICC, Elements of Crimes, Article 7(1)(f)

¹⁶² CNDH. Recommendation No. 059/2009.

Sexual Violence of a woman V1 in Ojinaga (2008) ¹⁶³

The victim V1 of the case, was removed from inside of her house by military personnel on December 23, 2008 and was subsequently transferred to the installations of the 5th Military Zone in Ojinaga and driven to the artillery room in the last tower.

Inside of the military installations, she was put into a cage with a mattress that she was thrown on, where they then kicked her. She remained in those installations for more than seven days. During that time she was tortured physically and psychologically with the aim that she would confess participation in diverse illegal activities and would give information on other people.

A member of the military told her, “now you are going to sing” and asked her various questions; then he ordered her to remove her pants, he secured her to the cage with handcuffs on both wrists, leaving her hanging, he took off his belt and started to hit her in the legs and the stomach, until she fainted. While he hit her, he asked her how much she valued her freedom, saying that “she should name someone who sold drugs or arms” or that she should give him \$50,000 (fifty thousand Mexican Pesos) and he would let her go. After that she was raped anally by a member of the military. Victim V1 was seen by the medical military staff in order to decrease the evidence of the blows and torture that she suffered.

Torture of two members of the military from the 76th Battalion (2009) ¹⁶⁴

The incidents of torture even reached members of the Army themselves, in the case of two members of the military V1 y V2, who belonged to the 76th Battalion. These two members of the military were subjected to torture in the installations of the Battalion itself.

One barracks official, testified to torture sessions in the “Officers’ Club” inside of his battalion. Because of what he witnessed, he refused to locate other members of the army so that they could be sent to that room. Both members of the military were tortured by members of the military police who came from Mexico City to support the OCCH. The tortures included electric shocks, suffocation with plastic bags, and sexual torture in the form of blows to the genitals.

These acts took place with the knowledge of the commander and second-in-command of the 76th Battalion.

The cases described illustrate the pain and suffering imposed on persons (civilians) under the custody of the military authorities, who intentionally subjected them to pain as a result of systematic illegal conduct that both the direct perpetrators and the high command had knowledge of.

D. Rape, Article 7 (1)(g)(1) of the Rome Statute

The cases documented for this communication include criminal conducts as reflected in article 7 (1) (g) of the Rome Statute and that fulfill the elements specified in article 7 (1) (g) (1) of the Elements of Crimes, which defines the crime of rape as follows:

1. The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.

¹⁶³ CNDH. Recommendation No. 088/2011.

¹⁶⁴ CNDH. Recommendation No. 091/2011.

2. The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.
3. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
4. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

Rape of V1¹⁶⁵

V1 indicated that on December 23, 2008, about eight members of the Mexican Army burst into her home. They immediately hit her, asking for the location of certain illegal objects. Subsequently, they blindfolded her and tied her hands behind her back and put her into a truck, which belonged to the Mexican army, and they transferred her to the Military Barracks in Ojinaga, Chihuahua. Subsequently she was transferred to the facilities of the 5th Military Zone in Ojinaga and driven to the artillery room in the last tower. There they threw her onto some mattresses on the floor inside of a cage and they started to kick her. She remained in that military facility for more than seven days, during which time she was subjected to physical and physiological torture with the aim of forcing her to confess to her participation in diverse illegal activities and to provide information about other people. While they hit her, they asked her about people who sold drugs or arms and they told her that if she would give them \$50,000.00 Mexican Pesos they would release her. **Then a member of the military raped her.** Later on she was given medical attention to try to make the marks from the torture disappear. Ultimately, they told her that they would put three packets on her and they would lie about the day that she was detained, so that she would confess to criminal association and crimes against health. On December 30 she was brought to the office of the Public Prosecutor, where she was remanded for crimes against health. A judge ordered her release because there was not sufficient evidence to prosecute.

Rape of V4¹⁶⁶

At approximately 20:00 on August 11, 2016, the federal police detained the victims while they were on a public thoroughfare in Ciudad Juárez, Chihuahua. They were transferred to the facilities of the Federal Police in Ciudad Juárez. Once there, they were interrogated and subjected to torture, including blows with fists and batons and kicks. **One of the victims, V4, mentioned that she was the victim of sexual abuse along with one of the other victims.** Subsequently, they were taken to the offices of the Federal Police in Mexico City, where they continued to physically assault them. It was not until 17:30 on August 13 of the same year—that is to say, approximately 45 hours after their detention—that they were brought before an agent of the Federal Public Ministry who belonged to the Specialized Investigation Unit on Crimes against Health of the SIEDO, in Mexico City, as alleged perpetrators of organized crime, carrying weapons that are for the exclusive use of the Army, Navy, and Air Force, and crimes against health.

Regarding what V4 testified to, she stated **that when she was with the Federal Police, one of them penetrated her anus with his finger;** she reiterated this accusation in the psychiatric

¹⁶⁵ CNDH. Recommendation No. 088/2011.

¹⁶⁶ CNDH. Recommendation No. 075/2011.

evaluation that she underwent on February 9, 2011 with a medical expert specialized in Psychiatry from the National Commission. The Psychiatrist concluded—applying the criteria arising from the Istanbul Protocol—that the victim presented with Post Traumatic Stress Disorder, depression, and severe anxiety, and was severely impacted by the event. The psychiatrist additionally found that there was consistency between the psychiatric impacts that the victim presented and her story. This situation was delicate, as it constitutes a lascivious act against the victim, which should be investigated by the competent ministerial authorities.

Rape of Two Persons ¹⁶⁷

On October 12, 2012, three persons who were staying in a hotel were surprised in their room. A group of 7 to 8 soldiers assigned to the Third Specialized Infantry Platoon entered by force, hit them, stole USD \$600, \$400 Mexican Pesos, identification, documents, and a Contour sedan. They detained them and put them in a military truck, where they placed them face down and covered them with a tarp. Then, they detained another person who was at the house of a friend. They transferred them to the Ojinaga Military Barracks. At the barracks, they hit them all over their body, they covered their eyes with blindfolds, they tied them up with ropes, and **they penetrated the anuses of two of the victims with the handle of a broom and tied them to a tree**. They interrogated them about where they were keeping weapons and drugs. Subsequently, they were translated to the facilities of the 5th Military Zone in the city of Chihuahua, where they took their photos. Their medical state was evaluated by the captain and first medical surgeon of the Mexican Army, who minimized the signs of torture on the body of the victims. Finally, they were brought before the PGR for crimes against health.

E. Sexual Violence of Comparable Gravity, Article 7 (1)(g)(6) of the Rome Statute

Similarly, the cases documented also satisfy the Elements of Crimes corresponding with article 7(1)(g)(6), which defines the crime of sexual violence as follows:

1. The perpetrator committed an act of a sexual nature against one or more persons or caused such person or persons to engage in an act of a sexual nature by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent.
2. Such conduct was of comparable gravity to the other offences in article 7, paragraph 1 (g), of the Statute.
3. The perpetrator was aware of the factual circumstances that established the gravity of the conduct.
4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

¹⁶⁷

CNDH. Recommendation No. 070/2009.

Sexual violence (blows to the genitals)¹⁶⁸

These acts occurred in the city of Juárez, Chihuahua, on May 9, 2009 around 11:00 in the morning. At that time Q1 was outside of their house selling “second hand” goods, when the military arrived at the house and entered without permission and without presenting a warrant. They detained V1 y and held him within the house until 12:30, immediately afterwards they took him from the building and carried him off under the argument that he had been found smoking marijuana. **From that moment until 21:00 when V1 was brought to the facilities of the PGR, he was hit with pipes, fists, and belts all over his body, including in his genitals.** The next day he was taken to the hospital because his health worsened due to the strong blows he had suffered.

Sexual violence (blows to the genitals)¹⁶⁹

On August 17, 2008, agents of the Judicial Military Police from the Federal District (Mexico City) arrived at the military facilities of the 76th Infantry Battalion. On August 19, V1 (an officer from the barracks) received orders to set up chairs in the Officers’ Club, to cover the windows with newspaper, to close the curtains, windows, and doors and to restrict access to the place. After having done so, V1 noticed that screams of pain and desperation could be heard. Because of this, he refused to find his comrades so that they could be brought to the room. On August 21, V1 was called by four members of the military police to the dormitory of the officers of the Third Company of the 76th Brigade. There, he was subjected to an interrogation where he was threatened and tortured. V1 indicated that [the presumed judicial military police] had brought him to the dormitory of the officers of the Third Company, where they blindfolded him, **and handcuffed him, as well as hitting him in the genitals**, the ears, the abdomen and the back to subject him to an illegal, cruel, and merciless interrogation. He showed the abrasions in his wrists and the contusions on his abdomen and back, which were very notable [...] For his part, V2 (a corporal in the 76th Battalion) indicated that on September 10, 2009, while he was completing his tasks, a military police officer approached him and brought him to the Battalion Officers’ Club, where they interrogated him with violence, hitting him in the face and the stomach. They suffocated him and applied electric shocks, threatening him with planting weapons or drugs on him if he reported the incident.

Sexual Violence (electric shocks in the genitals)¹⁷⁰

On March 29, 2008, members of the Mexican Army affiliated with the 33rd Infantry Battalion, within the context of the Joint Chihuahua Operation, entered into the home of three male victims, in the municipality of Juárez, Chihuahua. The three men were detained; subsequently, they were transferred to military facilities, where they were subjected to severe suffering with the aim of making them confess to various illegal acts. V1 **received electric shocks in the back, head, and feet; V2 received them in the genitals and the calves**, among other denigrating acts that they were subjected to. Additionally, they experienced threats against their physical integrity, humiliation, and intimidation; they were subjected to verbal violence, intimidated with firearms, and threatened that harm would come to their loved ones. V3 was interrogated with his eyes covered, and threats were made against his physical integrity and that of his loved ones. Medical personnel from the 20th

¹⁶⁸ CNDH. Recommendation No. 022/2010.

¹⁶⁹ CNDH. Recommendation No. 091/2011.

¹⁷⁰ CNDH. Recommendation No. 033/2009.

Motorized Cavalry Regiment worked to minimize the wounds and signs of torture. At 1:40 on March 31, 2008 they were brought before the social representation of the Federation.

Sexual Violence (obligated nudity and electric shocks in the genitals)¹⁷¹

V1, V2 and V3 testified that they went to the military facilities of the 30th Military Zone, in Villahermosa, Tabasco in fulfillment of different instructions that each of them had received to go there. Once there, they were detained, V1 and V2 on May 25, 2009 and V3 on May 26, 2009. V4 also recounted that on May 26, 2009, after having received instructions from the 5th Military Zone, which is located in Casas Grandes, Chihuahua, upon leaving that facility he was detained and transferred to the 23rd Infantry Battalion in the city of Chihuahua; in the afternoon, he was transferred to the Military Camp in Mexico City, and the next morning to the aforementioned 30th Military Zone. V5 describes that while he was on his vacation time, on May 29, 2009 he came to collect his bimonthly payment at the facilities of the 17th Infantry Battalion, which was the battalion that he was assigned to and which falls within the indicated military zone. He was also detained after having made him wait several hours. All five were beaten, they put bags over their heads, they threw water at their heads, and they were given shocks; **V3 was beaten in the testicles and forced to remove his clothes, V2 suffered electric shocks in different parts of the body including his testicles, he was also forced to squat and they put a stick between his legs, and V5 was forced to remove his clothes.**

Sexual violence (obligated nudity)¹⁷²

On June 27, 2008, at approximately 11:00 various members of the Mexican Army entered the house of the victim. They questioned the victim regarding the location of marijuana, and during the inspection they found a rifle. For this reason the victim was detained and taken to the military barracks in the Plaza of Ciudad Juárez, where they threatened him, saying that he had to confess or they would take him to the “mattress of death.” Upon arriving at the military facilities, members of the military interrogated him, while kicking him and hitting him with a closed fist in the ribs; **they stripped him** and laid him down on a mattress that they then rolled him up in (in a practice referred to as making him a ‘taco’), they got him wet, and they started to touch him in different parts of his body. Sometime after they gave him something to eat and a saline solution, they made him wash up and the next day they presented him at the PGR facilities.

The women were stripped and verbally threatened. The civilians were held in those installations until 17:30 on April 2, 2008, when they were placed before the PGR.

Sexual violence (obligated nudity)¹⁷³

On April 1, 2008, 22 members of the state Ministerial Police and the CIPOL were inside of the CIPOL facilities, as they had been called there by their respective commanders, supposedly to undertake ‘Confidence Control’ exams (*‘exámenes de control de confianza’*). The testimonies agree that one person who identified themselves as part of the special investigations unit of the SIEDO, which is subordinate to the PGR, requested their cooperation in providing information about drug trafficking. Next, members of the SIEDO named certain individuals, apparently at random, and told them that they would be transferred to the Military Barracks in that city, where they would be given

¹⁷¹ CNDH. Recommendation No. 041/2011.

¹⁷² CNDH. Recommendation No. 028/2009.

¹⁷³ CNDH. Recommendation No. 034/2009.

the evaluations of the ‘Confidence Control’ examination. This happened in the context of the Joint Chihuahua Operation. These persons were subsequently transferred to the facilities of the 20th Motorized Cavalry Regiment, which is headquartered in Ciudad Juárez. On arriving at the barracks, they were taken to a small room where they were forced to stand against the wall for a period of one to two hours; they took their belongings and **forced them to remove their clothes**; two people with black uniforms and wearing hoods asked them their names, posts, ages, places of birth, seniority, and which criminal organization they worked for; they took photos of them from the front and in profile on both sides; and they deprived them of food until the next day. They were also detained incommunicado for more than 32 hours; in that time they were interrogated regarding illegal activities. The interrogations included blows with blunt objects and electric shocks with Tasers in different parts of the body, and threats about what would happen to them if they did not confess to their participation in organized crime. They added that at night they were taken to a room with bunk beds where they spent the night. The victims were held in those installations until 17:30 on April 2, 2008, when they were placed before the Social Representation of the Federation.

Sexual violence (obligated nudity)¹⁷⁴

On February 3, 2010, around 18:30, V1 was leaving his business located in the Plaza Coral, in Ciudad Juárez, Chihuahua, when members of the Mexican army detained him and loaded him up in a truck. He was in this vehicle for approximately half an hour, and during that time they hit him; they gave him electric shocks in the neck, the nose, the mouth, the torso, and near the heart; and they threatened to shoot him. Subsequently, they arrived at a place that he could not identify but would later learn was a military barrack, where **they ordered him to remove his clothing**, they tied his hands and feet and they wrapped him in a mattress, leaving his head outside. Keeping him in this position, they reached their hand inside the mattress and gave him electric shocks in the sides; this happened three times, until they put a bag over his head and he fainted. Subsequently, they moved him to a room where they indicated that he had to say that “he was one of the ones who participated in the events of January 30, 2010”; and they forced him to sign 3-4 pages with his eyes blindfolded, and said there was a public defender present, but he cannot be certain of that because he never saw or spoke to him. Afterwards, they put him in a vehicle and they brought him to four private residences, they asked him about the people who lived there, and when he responded that he did not know them, they hit him and gave him electric shocks. He testified that afterwards they transferred him to some offices where they said his public defender was, but he did not ever find out who that was. They put a camera in front of him and someone asked him questions, and he responded as they ordered him to do, and when V1 forgot what he was supposed to say “he would turn over the pages.”

Sexual violence (obligated nudity)¹⁷⁵

On December 3, 2008, without presenting a warrant from an appropriate authority, members of the Mexican Army belonging to the 10th Military Police Battalion and operating in the framework of the Joint Chihuahua Operation violently entered the home of the victim. They did damage to the furniture as well as other objects that were inside, they pointed their long guns at the family, they took custody of a car that was their property, and they detained the victim and brought him to the Fifth Military Camp in Ciudad Juárez; **in that place, they stripped him, hit him, and applied**

¹⁷⁴ CNDH. Recommendation No. 049/2011.

¹⁷⁵ CNDH. Recommendation No. 073/2009.

electric shocks in various parts of his body. They also put clothespins on his tongue and nose, and they asked him about the location of weapons and drugs. He added that the application of these treatments continued in the same way until December 5, 2008. In that place, medical personnel from the 20th Motorized Cavalry Regiment examined him and minimized the information regarding injuries and signs of torture in the victim. The victim was illegally held for 64 hours; his family could not find him until December 5th, when he was located in the facilities of the Office of the National Attorney General (PGR) in Ciudad Juárez.

Sexual violence (obligated nudity)¹⁷⁶

On May 4, 2009, a group of members of the military arrived at the home of the victim in Ciudad Juárez. One of the victim's stepchildren opened the door and let them inside. They were looking for another one of his stepchildren, because they had information that he sold drugs. The victim took them to the back part of the building, to a construction area, where they found 35 bundles of marijuana. For this reason, they detained him and transferred him to the command post of the Joint Chihuahua Operation. There, they tortured him, blindfolding him, **putting him in handcuffs, and stripping him.** He was hit (he did not give further specifications) with the aim of getting him to say who provided the marijuana that they had found. He was brought before the MP 2 hours after having been detained.

Sexual violence (obligated nudity)¹⁷⁷

On August 25, 2009, a group of soldiers belonging to the 96th Infantry Battalion and operating in the framework of the Joint Chihuahua Operation entered the home of one of the victims. They threatened the victim with a gun to the head and searched the house, creating damage and taking the contents of the safe. They loaded the victim into a military vehicle and also took with them a truck that belonged to the victim's brother. Subsequently, they passed by the house of his brother, where they also caused damage. They loaded the two victims into a vehicle and brought them to the military facilities. There, **they removed their clothing**, slapped them, hit them in the head, got them wet and gave them electric shocks, hit them with a wet belt in the legs, and threw water in their noses and covered their heads with plastic bags. Later they were brought before the MP.

E. Enforced Disappearance of persons, Article 7(1)(i) of the Rome Statute

Article 7(2)(i) of the Rome Statute defines an enforced disappearance 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.” While the Elements of Crimes further develop each of the elements that conform this crime against humanity,¹⁷⁸ which are reflected in the acts documented in this communication, as they are described in this section.

¹⁷⁶ CNDH. Recommendation No. 063/2009.

¹⁷⁷ CNDH. Recommendation No. 061/2009.

¹⁷⁸ ICC, Elements of Crimes, Article 7(1)(i).

Enforced Disappearance of two people in Ciudad Juárez (2008)¹⁷⁹

On November 14, 2008, during an operation that included the participation of soldiers from the 20th Motorized Cavalry Regiment of the Mexican army, members of the Federal Preventative Police (PFP), and one agent from the municipal police in the colony of Independencia II in Ciudad Juárez, two brothers were removed from their home and transported in military vehicles with an unknown destination.

Despite complaints filed by the family members, the authorities denied the detention of the brothers on repeat occasions. While the declarations of local authorities confirm the detention by members of the army, the whereabouts of the brothers is still unknown.

The investigation of this case was open before the federal civil authorities and was referred to the military authorities.

Enforced Disappearance and subsequent murder of a man and two women in Buenaventura (2010)¹⁸⁰

On December 29, 2010, the victims—who were 18, 30, and 31 years old at the time—were detained in two separate incidents by a group of soldiers belonging to the 35th Infantry Battalion.

Two of them were in vehicle 1, outside of their family home, when a group of soldiers wearing khaki colored uniforms and carrying high-caliber weapons entered the vehicle. The soldiers detained them and took them away with an unknown destination."

For her part, the other victim was at the home of her mother, a witness to the events, when, minutes after the detention of the first two victims, she was detained by a group of soldiers that entered the house by force. They caused damage and shut the witnesses in the bathroom of the house, including the brothers of the victim, who were 13 and 11 years old, respectively. They carried off the victim with an unknown destination."

On December 30, the family members were informed by the Office of the Public Prosecutor of the civil courts of Buenaventura that the victims were being held in the 35th Infantry Battalion in Nuevo Casas Grandes. Nevertheless, the family members were unable to locate the victims in that place, and since then their whereabouts are unknown.

Torture, Enforced Disappearance, and Subsequent Murder of a person (2008)¹⁸¹

On October 21, 2008, the victim was detained, along with nine other persons, by soldiers assigned to the 5th Military Police Battalion in the district of Delicias in Ciudad Juárez. Upon arriving at her house, the victim's wife found that a radius of three blocks around her home was enclosed by military personnel.

She testified about how they loaded her husband and other persons in an Army pick-up truck. When she asked the authorities executing the operation where they were taking them, they told her that they would take them to the PGR. Nevertheless, when she went to the PGR, they informed her that

¹⁷⁹ CNDH. Recommendation No. 044/2009.

¹⁸⁰ CNDH. Recommendation No. 043/2011.

¹⁸¹ Velez, Juan. "Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua". Proceso. Special Report. Mexico. 03/10/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua> (Last Accessed: 13/07/2017).

“it was very soon” for them to bring detained civilians to the PGR, since “the soldiers take two or three days to turn detainees over to the civilian authorities.”

“[One of the witnesses] recounts that the soldiers took him with the victim. They were both held in the barracks of the military garrison of Ciudad Juárez” for five days. During this time, they were victims of torture, held incommunicado, and the authorities denied their detention to their family members. For five days, they were blindfolded, they received electric shocks in their testicles, they received blows, and they put them in an outdoor cool box, all while asking them about weapons and about other people that they did not know.

On October 25, the military personnel brought the detained persons before the PGR. The victim was not among the persons who were presented to the PGR.

They accused those brought before the PGR of crimes against health, carrying weapons that are for the exclusive use of the Army, and organized crime, and they indicated that the detention was executed *in flagrante delicto*. The vehicle that belonged to the victim remained in their custody.

The whereabouts of the victim was unknown until March 5, 2009, when a mummified corpse was found on the highway from Casas Grandes to Ascensión, at a break known as El Zorrito, at kilometer 68. The body matched the physical characteristics and tattoos of the victim.

Despite criminal proceedings that are open against military personnel directly involved in the events, no high-ranking member of the military has been punished.

Enforced Disappearance and Torture of a person in Ojinaga (2009)

On March 5, 2009, the victim at his home in Ojinaga, Chihuahua, together with his wife. The soldiers knocked and entered, separating them and hitting the victim. When they left, his wife saw how they carried him in the back of a Ford pick-up truck that was a military green color. Another soldier drove a car that had been lent to her husband. When she went to look for her husband at the III CINE, they told her that her husband was not detained there, that he had been brought to the Public Ministry, although she noticed that the car that the soldiers had taken was at that facility. When his wife went to the offices of the Public Ministry of the PGR, they told her that the victim was not detained, because of which she lodged a complaint for disappearance.

The victim recounts that when they arrived at the military facilities they threw him to the ground and they kept him in that position for a prolonged period of time in a place that they called “the cabin.” He was beaten, threatened with death, and humiliated.¹⁸² They tortured him by means of asphyxiation with plastic bags and electric shocks all over his body, including his testicles, anus, and nipples.

Subsequently, members of that unit arrived with three detained civilians. The victim knew one of them. They were tortured in the same way, they kept them blindfolded and at all times they continued aggressions of a sexual nature. At the time they forced the victim to testify against one of the detained civilians. The victim recalls that they brought four more civilians to that unit’s facilities, including an 82-year-old man and a former member of the military.

The military gave a different version to the civil authorities. They affirmed that the victim had been detained during a military patrol in the urban area of Ojinaga at 12:40 on April 6, one month later. They maintained that he was detained under the Federal Law on Firearms and Explosives as well as

¹⁸²

The soldiers told him, “Your fucking old woman already came to cry for you, fucking cowardly old man.”

under the Permanent Campaign against Drug Trafficking, in the framework of the Joint Chihuahua Operation.

One month after his detention and disappearance, the victim was brought by members of the III CINE before the Public Ministry. The soldiers insisted that the detention had taken place hours before during a patrol.

As described in the cases above, the individuals were detained, in the majority of cases illegally; the authorities denied their detention to their family members, even when some of them were present for the detention; and in the cases where they were brought before civilian authorities, the soldiers falsified information about the detention such as the place or time. It is worth emphasizing that in the cases of some individuals detained by the military, their remains have been found in the wilderness or places that are not very transited, or their whereabouts continue to be unknown.¹⁸³

F. Crimes attributed to the “death platoon” (“pelotón de la muerte”)

Some of the murders attributed to the Third Specialized Infantry Platoon (III CINE), who refer to themselves as the “death platoon”, were committed by soldiers assigned to the OCCH.

31 soldiers that belonged to the Third Specialized Infantry Platoon and operated under the command of Major (2) were known as the “death platoon.” They have been accused of a series of abuses committed against the civilian population. The cases where we have documented their participation include the following:

Torture and murder of a person in Ojinaga (2008)¹⁸⁴

The victim was detained on June 22, 2008 by members of the III CINE. Mayor (2), who was in charge of the operation, ordered the transfer of the victim to the facilities of the III CINE to “work him over.”

In the military facilities, one soldier reported that he heard the screams of the victim in the torture sessions until another soldier came to tell him that they had orders to fill the truck with fuel because “the torture got out of hand and it was necessary to get rid of the body...” They loaded the body in the vehicle and moved out in the direction of Camargo. After an hour on the road they turned off into a ditch and proceeded to burn the body of the victim.

The soldiers that had been traveling in the truck bed dismantled a straw roof (“*palapa*”)¹⁸⁵ to make wood. They built up a stack about one meter high. An Infantry Soldier (2) went to the vehicle for the diesel, while the two corporals took down the body. Later they sprayed the body and the wood with fuel. A corporal (1) went to get dry grass, and he lit it with a lighter and threw it on the pile.

¹⁸³ We have knowledge that Infantry Lieutenant Colonel (4) was given a five-year sentence for the case of enforced disappearance and torture of a victim. A Brigadier General (10) elaborated the General Operations Order II. “Opn. Conj. Chihuahua”, in accordance with the “*Directive for the Comprehensive Fight Against Drug Trafficking 2007 – 2012*.” He was sentence in 2016 to 52 years in prison for severe violations of human rights committed by members of the Third CINE, which fell under his jurisdiction. These punishments are related to the case presented.

¹⁸⁴ All of the infantry arms. Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report. Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last accessed: 09/10/2017).

¹⁸⁵ ‘*Palapa*’ is a rustic and open construction, made with sticks or logs, and with a palm roof. It is common in very hot places. Oxford Living Dictionaries Spanish. Palapa. Available at: <https://es.oxforddictionaries.com/definicion/palapa> (Last consulted: 14/02/2018).

“It took between five and six hours for even the bones of the corpse to be consumed. They loaded the ashes from the fire into the truck and then dispersed them along the route with shovels. Later, with a bundle of herbs, they cleaned the truck bed.”¹⁸⁶

Torture and murder of civilians in Ojinaga (2008)¹⁸⁷

In the early morning of July 25, 2008, the murder of a soldier from the Quartermaster Corps—which had occurred hours before in a bar in the center of Ojinaga—led to the detention of 8 civilians by the military. A group from the Third Specialized Infantry Platoon (hereinafter, “III CINE”), under the command of Infantry Lieutenant (6), with four soldiers as his bodyguards, left in a Hummer towards the house of the soldier that had been killed. Once there, they detained the brother, cousin, and sister-in-law of the victim, as well as another woman. They brought them back to the III CINE headquarters. By orders of the Second Infantry Captain (4), the same group of soldiers left with the detainees to look for the alleged perpetrators of the murder, and returned with several more civilian detainees. Then, the Major (2) ordered the Infantry Lieutenant (6) and the Sargent (1) that they should translate the civilians to the “palapa”, and that his “death platoon” would arrive in a bit. According to the Sargent (1), that group was made up of five persons with ranks of Sargent, Corporal, and Soldiers. As soon as the platoon arrived they started to drench the civilians with buckets of water and give them electric shocks, while questioning them about the death of the soldier.

They began to torture a former member of the military, until he began to foam at the mouth, so they transferred him to the health unit. Subsequently, and apparently at random, they selected one of the detained civilians who had been identified as belonging to the “michoacanos,” a man of just 18 years of age. They tied his hands to a post that was in the middle of the *palapa* structure. They bound his whole body and one of the soldiers began to give him electric shocks, many of them and on an ongoing basis in the testicles. After a few minutes, the detainee began to convulse and stopped moving. His death was confirmed by the first captain medical surgeon (2). Once confirmed, they proceeded to move him to an unpopulated place to burn the body and then throw his remains in the river.

The Corporal (2) assured the Public Ministry that many civilians were detained at the CINE for that crime: “some were in the third floor company pen and others were in the cabin. They were approximately 15 civilians, without being able to specify what happened to them. The only thing I came to know was that they tortured them with electric shocks, and that the Corporal (3) took charge of that, together with the Major (1) and the Infantry Lieutenant (7).”

Torture and murder of a person in Ojinaga (2008)

On August 5, 2008 the victim, a civilian was detained near the hamlet of “El Almagre” during a patrol in which members of the III CINE participated; specifically: el Major (2), the Lieutenant (9), the Second Sargent (2), Corporal (1), Corporal (3) and Corporal (4).

The members of the FAM burned the trucks that belonged to the victim. They brought him to his house, which had already been raided, because allegedly he had offered them 250 thousand pesos to let him go.

¹⁸⁶ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

¹⁸⁷ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

Major (2) told him that he was going to kill him “for being a traitor” and they headed towards the ranch, “Thirteen” (“*El Trece*”). When they were close, the Corporal (1) brought him down from the truck. They tortured him, throwing gasoline near him. They returned to the CINE around 5:00 to refill the truck with gas and to bring more as a reserve. The soldiers took the victim by highway towards Camargo, and around the kilometer 221 they turned off and went about 15 kilometers, to a place where there was a gap and an abandoned house. In the house, the soldiers suffocated the victim to death, and the burned his remains and threw the ashes in a pit.¹⁸⁸

The Corporal who drove recalls: “We brought the civilian that was known as Campitos to kilometer 221 in the highway that goes towards the city of Camargo, and after having traveled about 15 kilometers I took a dirt road which we traversed for about 15 or 20 minutes more.” They arrived at a spot where there was an empty room, without a roof. Near that place there was a crevasse and a hill from which a militar kept watch for a sign from the major. Near the crevasse they made a wooden bed. Corporals (1) and (2) put a rope around the neck of the detainee and passed it over the doorframe of the abandoned house. They began to raise it to about 30 centimeters above the floor until they had hung him. They put the body in the wooden bed, threw gasoline on it and set it on fire. When the body was burned, the Corporal (4), the Second Sargent (2) and the Corporal (1) threw earth on top to put out the fire. Later, the Corporals (3) took a shovel and threw the ashes in a nearby pit. Later, the major ordered them to return to the CINE.¹⁸⁹

These cases describe murders committed directly by members of the military, as well as murders resulting from severe sessions of torture that civilians were subjected to while in the absolute custody of the military.

G. Cases attributed to non-state actors

As was mentioned in the introduction to this communication, organized crime and criminal gangs with a presence in Chihuahua, have committed severe crimes that could also rise to the level of crimes against humanity. Nevertheless, in these cases, the signatory organizations do not have any information other than that which is publically available, principally in media reports. As an example, this section will relate one of the most representative cases that took place during the period covered by this communication, which is attributed to criminal organizations, and which reverberated through Mexican society.

Multiple Murders (massacre) in Villas de Salvárcar, Ciudad Juárez (2010)¹⁹⁰

In the case known as the Villas de Salvárcar Massacre, 18 young people, the majority of them students, were murdered. They were attacked by an armed group while at a party in a poor neighborhood in Ciudad Juárez.

On the night of January 30, 2010, a group of approximately 60 students from different educational institutions were at a party in a house in the subdivision of Villas de Salvárcar in Ciudad Juárez,

¹⁸⁸ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

¹⁸⁹ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

¹⁹⁰ Proceso. “Corte ordena liberar a joven por matanza de Villas de Salvárcar.” Proceso Magazine, Editorial. 06/10/2013. Available at: <http://www.proceso.com.mx/357236> (Last Accessed: 03/10/2017).

Chihuahua. They were attacked when an armed group of approximately 20 persons arrived in 7 vehicles and shot them. The young people were between 15 and 20 years old.

In that place, 15 students were killed and 12 more were injured. Among those wounded, three died in the days that followed, bringing the total number of people killed to 18.

The official reactions, including from the Federal Executive, were consistent with the official discourse that the authorities maintained throughout the administration: that the people died because of the actions of organized crime, and they attributed it to the victims' membership in criminal gangs. This discourse was applied by the authorities without interceding investigations that to give foundation to their conclusions. When such investigations were in fact carried out, the results showed that the students were civilians without any ties to criminal gangs. Among those public statements made regarding the case, some that stand out:

“it is about a settling of scores among gangs”: Felipe Calderón Hinojosa.¹⁹¹

“They called my children gang members. That is a lie. One was in high school and the other was in the university, and they didn't have time to be in the streets. They studied and they worked.” -mother of two of those murdered-.¹⁹²

Combined with this emblematic case, it is worth emphasizing that during the OCCH, various clandestine graves were found in the state of Chihuahua, which, according to the authorities, are attributable to the acts of organized crimes. The most important grave was discovered in February 2008 in Ciudad Juárez where, in just one clandestine grave, the remains of 47 people were found.¹⁹³

Also attributable to the actions of organized crime is the forced displacement of the entire populations of some municipalities, such as the case of Villa Ahumada, during the timeframe of the OCCH. In that case, the out-of-control violence by criminal organizations led the authorities to quit their positions, and, after that, the population of the municipality was forced to leave their homes.¹⁹⁴

¹⁹¹ Coria, Carlos. Villas de Salvárcar aún le duele a Ciudad Juárez. *Excelsior*. January 30, 2011. <http://www.excelsior.com.mx/node/709327>.

¹⁹² Herrera Beltrán Claudia. “Discúlpeme, Presidente, no le puedo dar la bienvenida: madre de dos ejecutados”. *La Jornada*, México. 12/febrero/2011. Available at: <http://www.jornada.unam.mx/2010/02/12/politica/005n1pol> (Last Accessed: 09/10/2017).

¹⁹³ “Identificados, solo 117 de 601 cuerpos en fosas”. Mosso, Rubén. *Milenio*. 03/04/2015. Available at: http://www.milenio.com/policia/Identificados-solo-cuerpos-fosas_0_493150699.html (Last Accessed 09/10/2017).

¹⁹⁴ “Villa Ahumada, una ciudad de México desierta que aterriza hasta a la policía”, *La Voz de Galicia*. Available at: http://www.lavozdegalicia.es/mundo/2008/05/24/0003_6845000.htm.

VII. Elements of the Crimes Against Humanity

The organizations maintain that the crimes contained in the present communication, omitted within the context of the security policy or “war on drugs”, in particular of the OCCH, meet the elements of crimes against humanity as defined by Article 7 of the Rome Statute and Elements of Crimes. This will be further laid out in the following section.

A. Attack against the Civilian Population

According to Article 7(2)(a) of the Rome Statute, an “attack” against the civilian population is defined as, “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.”¹⁹⁵ The Elements of Crimes indicate that the course of conduct should be pursuant to or in furtherance of the policy to commit an attack, for which “the act need not constitute a military attack”.¹⁹⁶

In the context of the OCCH, between 2008 and 2010, there is evidence of multiple acts of murder, severe deprivations of liberty, torture, rape, sexual violence, and enforced disappearance of persons, which constitute a *course of conduct* on the part of the members of the FAM that were involved in the military operation against civilians. The FAM alleged that those civilians had links with criminal bands that operated in Chihuahua and systematically accused them of crimes against health or of carrying weapons that are of exclusive use of the army. All of this occurred in the context of the so-called “war on drugs” with the objective of showing the effectiveness and efficiency of the operation in dismantling the organized crime groups and recovering control of the state, and justifying it by saying it would bring an end to the violence generated by those groups. These actions targeted lower class or working class civilians,¹⁹⁷ including young people and the elderly, who lived in poor neighborhoods under the constant threat of being labeled by the FAM as persons suspected of contributing to drug trafficking groups.

The cases documented in this communication refer to crimes *against the civilian population*, just as has been defined by the Pre-Trial Chamber II of the ICC, in terms of their opposition to the FAM or any other actor who international humanitarian law (IHL) would recognize as a combatant;¹⁹⁸ for these purposes it is not necessary that all of the civilian population in a given geographic area be the object of the attack, but it is necessary that the civilian population be the objective itself and not just an accidental victim.

¹⁹⁵ ICC. Article 7 of the Rome Statute.

¹⁹⁶ ICC. Article 7 of the Elements of Crimes, para. 3.

¹⁹⁷ Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's War on Drugs* (2011) at page 6. Available at: https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf (Last Accessed: 05/05/2018).

¹⁹⁸ ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya, 31 March 2010, para. 82.

Of the victims in the cases documented, 10 are women, 82 are men, and in 26 cases the information available does not specify their gender.¹⁹⁹ Every one of them is a civilian. At the time of the detentions and the torture, they were accused of having some connection with drug trafficking, and/or of having information regarding the location of drugs or individuals with connections to organized criminal groups. The operations have clear objectives; the civilian victims cannot be considered collateral damage to the strategy. To the contrary, these acts clearly fall within the description of an attack against a civilian population, as described in Article 7.2 (a) of the Rome Statute.

The sample of cases documented in this communication includes cases where the victims were members of the ministerial police that were also subjected to the aforementioned crimes, especially severe deprivation of liberty and torture,²⁰⁰ and in some cases the victims were former members of the military who had deserted, who for the effects of the study of the situation should also be considered civilians.

It is worth recalling what has been stated in prior communications: that from the Presidency of the Republic and the executive secretaries of the administration of Felipe Calderón, a discourse was developed which supported ‘filtering’ or ‘purifying’ the police forces, taking as given the involvement of the police with criminal gangs. This attitude generated a policy of encouragement and acquiescence among military personal to take action against the police. This policy included placing the command of local police in the hands of retired military personnel; Chihuahua was not an exception in that regard. With the nomination of Lieutenant Colonel (8), a retired member of the military converted in a “hard line” police officer, military tactics came to be used in the municipal police corporations in undertaking public security tasks.²⁰¹

The civil nature of the police is established in contrast to the FAM and other legitimate combatants. According to the Constitution, the police, as a public security force, are organizations that are civilian in their composition and their formation. Article 21 of the Constitution establishes that the prevention, investigation, and prosecution of crimes, as well as punishment for administrative infractions, are functions of the institutions of public security, which should be “of a civilian, disciplined, and professional nature.” In the same way, the Constitution itself excludes the police when it references the armed forces.²⁰²

The abuses committed against former members of the military follow the same course of conduct in the commission of torture, severe deprivations of physical liberty, and enforced disappearances. And this conduct was similarly aimed at showing results achieved by the FAM in their actions. Civilians were systematically presented before the media and before the PGR as members of criminal gangs and accused of crimes against health, even though those accusations were not supported by sufficient proof to show their involvement, which is why the majority of cases were dismissed.

¹⁹⁹ With regards to their ages, we know that at the times of the crimes 6 people were between 18 and 29 years old and one person was older than 82 years old.

²⁰⁰ CNDH. Recommendation No. 055/2009.

²⁰¹ Abuses committed by the police corporations operating under the command of retired members of the military were documented by the State Human Rights Commission and describe episodes of torture and abuse of authority, among other crimes; while this communication does not include a detailed analysis of those crimes, they are included in the appendices of this communication so that the OTP may read about them. See Appendix 10.

²⁰² Political Constitution of the United States of Mexico, Article 73(XIV).

In light of what has been described in this communication, the cases documented that occurred in the context of the OCCH cannot be considered isolated cases, because they were in keeping with the course of conduct that was repeated across numerous criminal acts (as have been described), that fulfilled a state policy (as is described in the relevant part), and which was tolerated and promoted out of the necessity of “showing results.”

b) Systematic Nature

As has been documented by diverse international mechanisms, the use of murder, torture, severe deprivation of liberty, and arbitrary detention has been a recurring practice by the Mexican authorities, including the army. Nevertheless, the systematic use of these practices has been built up in the context of the “war on drugs,” with the joint operations as an essential component of that official strategy, responding to the need to show results and legitimize the security strategy in the face of the lack of any legal framework that would justify the actions of the military authorities in public security tasks. The intention of the government was to show its effectiveness, whatever the cost, and recover control of the territory.

For the ICC, the systematic character of an attack can be proven by “organized nature of the acts of violence and the improbability of their random occurrence;”²⁰³ by the existence of a landscape of crimes that demonstrates the deliberate and regular repetition of similar criminal behaviors;²⁰⁴ where there exists a pattern of crimes whose similarity is not accidental;²⁰⁵ and where there are elements that speak to its organized nature, its regular pattern, its execution based on a common policy, and/or the use of public or private resources.²⁰⁶

The cases documented clearly show a landscape of crimes that are deliberately repeated in similar situations, which indicted the improbability of their random occurrence.

In the context of a military operation, such as the OCCH, there is no place for repeat conduct, if that conduct is not part of the known military actions. The existence of one or a few violent cases could be perhaps be put forward as chance, but when the criminal acts show a *repetition of patterns*—which is shown in the cases documented during the OCCH, where there is evidence of a similarity among multiple acts—the notion that it is chance should be out of the question. The cases documented in this communication which took place during the OCCH, demonstrate how the military authorities: deliberately and regularly deprived civilians of their liberty without a warrant; held civilians in military facilities or spaces under exclusive military control for hours and even up to days, without any legal or factual reason that they could not have immediately transferred the civilian detainees to the appropriate civilian authorities to investigate the alleged criminal acts that they accused them of, and in violation of the legislation, the Military Directive and General Operations Order II II OPN. CON. CHIHUAHUA; they subjected civilians to similar acts of torture, only to then present them to the civilian authorities with charges of crimes against health or carrying a weapon of exclusive army use.

²⁰³ ICC-01/04-01/07-3436, The Prosecutor v. Germain Katanta, Judgment pursuant to article 74 of the Statute, para. 1123.

²⁰⁴ ICC-01/04-01/07-3436, The Prosecutor v. Germain Katanta, Judgment pursuant to article 74 of the Statute, para. 1123.

²⁰⁵ ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya, 31 March 2010, para. 96.

²⁰⁶ ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya, 31 March 2010, para. 96.

Over the course of the OCCH, military personnel made numerous arrests of civilians during their operations, even though their detention was only authorized in exceptional cases: “Only those alleged guilty of the commission of a crime for which they are caught *in flagrante delicto* may be detained, proceeding then to bring them before the appropriate judicial authority immediately.”²⁰⁷

Nevertheless, not only were civilians not immediately transferred to the custody of the appropriate authority, but rather *deliberately and regularly*, detained civilians were repeatedly subject to similar torture methods; in some cases, the torture was so severe that victims lost their lives, and members of the FAM got rid of their body, as they also did when victims were directly murdered. Multiple cases were documented in which the armed forces raped and committed acts of sexual violence against women and men during the arrests. In the commission of the crimes, military resources (such as vehicles, weapons and military installations) were used. As described in the following passages, the pattern that these cases show is not accidental.

One of the elements of the crime against humanity of serious deprivation of liberty, is that it constitutes a prolonged detention for a period of time. In the documented cases there are illegal detentions in military facilities that range from two hours long to several days long; these detentions constitute an illegal conduct that was deliberately and regularly repeated. The illegality of the conduct is derived from the obligation to bring civilian detainees before the civilian authorities immediately. For example, in the case of the severe deprivation of liberty of two civilians, they were held in the 20th Military Regiment, and were brought before civilian authorities 70 hours after they were detained.²⁰⁸

In another case, a victim was held 60 hours in the 76th Infantry Battalion in Ciudad Juárez; while three civilians were held for 58 hours in the III CINE facilities. In the case of another person, she was held for more than 7 days in the 5th Military Zone in Ojinaga, where she was victim to criminal conducts including torture.²⁰⁹ All of these cases concur in that the evidence demonstrates that they entailed obviously excessive periods for holding a civilian without legal or factual justification.

The documented cases show that the practice of depriving civilians of liberty in military facilities, or in spaces under military control,²¹⁰ had in common long detention periods. This practice was known by the federal authorities, and even local ones, who recognized that the military “turned over” civilians who had been “detained” several days later. The detention was generally carried out by soldiers who were participating in patrols or checkpoints. However, when the detainees were taken to barracks or “military bases,” including the OCCH command base, their entry was known to high-level commanders in charge of these military facilities, as these sites operate under the chain of command and military discipline.

“[The detainees] were received by [C]apitán [(2)], in his capacity as deputy chief of the Joint Chihuahua Operation Staff.”²¹¹

²⁰⁷ See Annex 9, “General Operations Order II OPN. WITH. CHIHUAHUA ”

²⁰⁸ CNDH. Recommendation No. 055/2009, at p. 2

²⁰⁹ CNDH. Recommendation No. 088/2009.

²¹⁰ Some of the battalions sent to Chihuahua under the OCCH were placed in civilian facilities that were under military command. For example, the Fifth Military Police Battalion was established in a sports field in the Delicias area of Ciudad Juárez.

²¹¹ Case of enforced disappearance.

“All the seizures of people, drugs or weapons were brought to the command post to later be made available.”²¹²

"[Brigadier General (1)] ordered that any civilian who was arrested be transferred to the command post and that once there his people would take care of everything."²¹³

Additionally, both the military command and the federal civilian justice authorities recognized and tolerated the military's practice whereby when they brought civilians before the civil authorities in 'allocations' (*consignaciones*), they informed those authorities that the detentions were undertaken 'in flagrante delicto' and carried out during patrols and/or at checkpoints, only hours before the civilians were brought before civilian authorities, thereby pretending that the detention had been carried out under the only legal figure allowed.

However, in a significant number of cases, the victims were detained in their homes, in front of witnesses, and despite this, the military reported that the civilians were detained in the street "for suspicious attitude", in their vehicles, or in other places different from where they were actually arrested. Even in those cases where the relatives searched for the detainees, after having witnessed their detention by members of the military, the military systematically denied their detention in military facilities or alleged that they had already been put at the disposal of civil authorities, to discourage family members from looking for people detained in military facilities. The *similarity* of these cases describes a pattern of regular action by military authorities under framework of the OCCH that is not accidental.

The need felt by the federal authorities to demonstrate the effectiveness of the official strategy, and in particular of the OCCH, not only encouraged the repeated severe deprivation of the liberty of civilians by the military, but also led to absurd situations such as what occurred in the case of another victim, who was detained when members of the military could not find her stepson—an alleged low-level drug trafficker—in their home when they had come to detain him, so they chose to take the victim, who was then accused of selling marijuana.²¹⁴

The policy that promoted this context of criminal behavior led in its extreme to accusations made against civilians of being involved in low-level drug trafficking, where despite the investigations or criminal cases then opened against the civilians, they were subsequently released by the judicial authorities for a lack of sufficient evidence to support these accusations. The case of a victim of severe deprivation of physical in Ciudad Juárez, (2008), as documented in this communication, is a clear example.²¹⁵

As described above, the pattern of action by military personnel who subjected civilians that they were holding in military facilities or facilities under military control to severe torture includes a

²¹² See also: Veledíaz, Juan. "Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua". Proceso. Special Report. Mexico. 03/10/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua>. (Date accessed: 13/07/2017).

²¹³ See also: Veledíaz, Juan. "Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua". Proceso. Special Report. Mexico. 03/10/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua>. (Date accessed: 13/07/2017).

²¹⁴ CNDH. Recommendation No. 063/2009.

²¹⁵ Human Rights Watch, *Neither Rights nor Security: Killings, Torture, and Disappearances in Mexico's War on Drugs* (2011) at page 72. Available at: https://www.hrw.org/sites/default/files/reports/mexico1111webwcover_0.pdf (Last Accessed: 05/05/2018).

pattern of use of similar techniques of torture to obtain information. The cases describe beatings, electric shocks, the so-called "death mattress"—whereby a naked and wet person is rolled up in a mattress and subjected to electric shocks—suffocation using plastic bags, covering the face with a cloth and pouring water over it ("*Waterboarding* "), and even sexual torture. These methods of torture demonstrate the *organized character of the behaviors*, which can hardly be considered as sporadic or coincidental cases, and where their similarity is not an accident. The same can be said of the cases of rape and sexual violence documented in this communication.

One constant that is repeated in the cases of people who suffered severe deprivation of physical liberty by military, are the allegations of having been subjected to similar torture sessions by the military with the intention of forcing them to recognize their participation in certain crimes or their membership in criminal gangs, or to give information about the location of weapons or drugs about other persons allegedly linked to selling drugs. The torture sessions described by the testimonies denote the organized nature of the acts of violence, since they required specific logistics that would allow civilians to be held within a military facility governed by the chain of command and military discipline, and to be subjected to serious abuses constituting torture, which required the use of resources.

Some of the elements that reveal the organized nature of the criminal acts constituted by these torture sessions of civilians detained in military facilities or facilities under exclusive military control include: the torture sessions required a place where civilians could be submitted to such torture and even the use of other material resources in the techniques used; for example, the application of electric shocks requires a source of electricity, be that an electric current or the use of a battery to power the shocks; asphyxiation with objects such as plastic bags or *waterboarding* technique requires that the military have the necessary items (bags, water and rags respectively). Others, such as the so-called "mattress of death" or "taco" require greater elements, such as the mattress itself (in addition to water and electricity to generate the electric shocks), among other things. All this in addition to the use of human resources: mainly those responsible for carrying out torture or—as it is referred to in the testimony—"the work", but also the use of military doctors who participated in resuscitating victims after the torture sessions, "tending to" the signs of torture in order to reduce them, and issuing medical certificates where the injuries caused to the detained persons were minimized. The testimonies denote a deliberate and regular repetition of criminal conduct.

"he was taken to a warehouse where he was stripped and beaten [...] by soldiers who arrested him and beat him, told him that they were going to plant drugs on him so that the authorities would sentence him to various years in prison and, on the other hand, told him that if he accepted being a drug trafficker they would stop hitting him." ²¹⁶

The crimes documented in the context of the OCCH include acts of rape and sexual violence involving blows and electric shocks to the genitals and forced nudity. The pattern of action revealed by the cases contained in this communication, refers to how civilians held in military barracks were forced to strip, where in addition to the psychological torture that implies being held, incommunicado and exposed. The testimonies coincide in indicating that once they were naked, civilians were subjected to electric shocks on the genitals, and in some cases to sexual violations.

²¹⁶ CNDH. Recommendation No. 022/2010, at p. 8.

“They took us to the barracks and there they held us. They mistreated us and they kept us blindfolded around, they gave us electric shocks in the parts.”²¹⁷

“they stripped him and laid him down on a mattress that they then rolled him up in (in a practice referred to as making him a ‘taco’), they got him wet, and they started to touch him in different parts of his body.”²¹⁸

Another case of sexual violence is that of two people who were both subjected to forced nudity²¹⁹ while they were deprived of their physical liberty by the military. A similar situation is documented in the case of another victim, who was also forced to strip naked before being subjected to physical and psychological torture.²²⁰

Other testimonies even describe acts of rape.

“they penetrated the anuses of two of the victims with the handle of a broom and tied them to a tree”.²²¹

“she was raped anally by a member of the military.”²²²

Another pattern of deliberate and regular criminal behavior of the military authorities within the context of the OCCH that arose in cases of severe deprivation of physical liberty of civilian held within military facilities, is that where there are proven facts of torture, it has also been verified that the military medical personnel participated. Repeatedly, Military medical personnel significantly underestimated the injuries to civilian victims in their medical reports, and in the medical certifications issued by military institutions, they did not offer any logical conclusions as to how the injuries and the marks attributable to torture were sustained.

“he was beaten on different parts of the body [...] with the objective of making him say who was the person who had found the marijuana that they found; later, a military doctor said that it was him who had hit himself, and not the members of the military that detained him.”²²³

“a military doctor that examined them told the soldiers that they should not hit them in the face anymore, it would be better to hit them somewhere else.”²²⁴

“a military doctor was ordered to issue a death certificate where they blamed the death on an overdose.”²²⁵

²¹⁷ Veledíaz, Juan. “Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua”. Special Report. Proceso. Mexico. 05/01/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua> (Last Accessed: 23/11/2017).

²¹⁸ CNDH. Recommendation No. 028/2009, p. 9.

²¹⁹ CNDH. Recommendation No. 061/2009.

²²⁰ CNDH. Recommendation No. 073/2009.

²²¹ CNDH. Recommendation No. 070/2009, p. 5.

²²² CNDH. Recommendation No. 088/2011, p. 16.

²²³ CNDH. Recommendation No. 063/2009, p. 4.

²²⁴ CNDH. Recommendation No. 070/2009, p. 5.

In the case of three detained persons, a soldier with the rank of First Captain Medical Surgeon performed medical examinations on the detainees, and despite the visible marks caused by the torture sessions, including rape with a broomstick, he minimized the significance of those marks on the medical certificates issued on the health of these civilians.²²⁶

In the case of the detention of three other victims, the military doctor reduced the seriousness of the injuries presented by the 3 victims by reporting that they had minor injuries that do not endanger the lives of the victims.²²⁷ While in a case regarding the torture of two members of the military, the military doctor failed to declare the injuries that the two detainees presented.²²⁸

The repeat participation of military medical personnel assigned to the 20th Motorized Cavalry Regiment was documented in several cases. It is indicated that after the torture sessions were finished, military doctors from this unit would examine civilian detainees to write medical reports and “attend to” the marks left by torture, in order to reduce them or cover them. Such is the case of two brothers who were examined by a military doctor from the 20th Motorized Cavalry Regiment in Military Camp C-5. That doctor minimized the injuries that they had received in the torture sessions they were subjected to while under military custody.²²⁹

Similarly, in the case of the 8 civilians detained in the Villa Ahumada Pantheon, on April 8, 2008 in the context of the OCCH, medical personnel also attached to the 20th Motorized Cavalry Regiment examined the civilians after they had been subjected to torture in the facilities of Military Camp C-5, where they were detained for about 24 hours. These doctors also downplayed the extent of the injuries.²³⁰

In the case of the torture of another individual, the medical personnel assigned to the 20th Motorized Cavalry Regiment are again identified having certified the physical state of the detained civilian, stating that he had no injuries.²³¹ A similar situation occurred in the case of the torture of two additional victims,²³² and in the case of three victims also detained and subjected to torture in military facilities who refer to the “Major Medical Surgeon of the army” as the person who would issue certificates of physical wellbeing where he would refrain from mentioning all of the injuries.²³³ In the same way in another case documented, after the victim was subjected to diverse sessions of torture in military facilities, medical personnel from the 20th Motorized Cavalry

²²⁵ Hernández, Alan. “El general mexicano que lideró “el pelotón de la muerte irá a prisión por tortura y asesinato”. Vice News. 02/05/2016. Available at: <https://news.vice.com/es/article/general-mexicano-lidero-peloton-muerte-prision-tortura-asesinato> (Date Accessed: 10/10/2017).

²²⁶ CNDH. Recommendation No. 070/2009, p. 14-17.

²²⁷ CNDH. Recommendation No. 041/2009, p. 8-9

²²⁸ CNDH. Recommendation No. 091/2011, p. 20

²²⁹ CNDH. Recommendation No. 033/2009, p. 16

²³⁰ CNDH. Recommendation No. 059/2009, p. 20-21

²³¹ CNDH. Recommendation No. 028/2009, p. 10.

²³² CNDH. Recommendation No. 061/2009, p. 11-12

²³³ CNDH. Recommendation No. 053/2009, p. 15.

Regiment examined the victim and minimized the information regarding injuries and signs of torture on the victim.²³⁴

The omissions of the military doctors were reiterated and repeatedly disputed by medical opinions issued by forensic doctors attached to the PGR. The civil authorities, when the civilians were brought under their custody, issued new medical certificates as are routinely issued when an “alleged perpetrator” enters the custody of the PGR, after having been “turned in” by the military. This practice is to determine what state the civilian detainees were in when presented by the military.

The process of “turning over civilians” also systematically conducted according to orders from the commanders of the distinct military units, including the Brigadier General, commander of the OCCH Command Post,²³⁵ demonstrating another elements of knowledge on the part of high-ranking commanders regarding the actions of their subordinates.

Another pattern of practice that that the cases documented in this communication show reflects how military personnel participating in the OCCH systematically denied to family members that their relatives had been detained and subsequently held in military facilities, even when there were people who were witnesses to the detention and the use of military vehicles in the detention. Here, a number of crimes overlap, including enforced disappearance.

In some cases, these disappearances were followed by the military turning over detainees to the civil authorities. However, in other cases, after the enforced disappearance, the bodies of the detained civilians were found dead; while in others, family members still do not know the fate or whereabouts of the detained civilians.

The cases show that places where civilians were held inside of military facilities were used repeatedly, which makes it unlikely that the high-ranking commanders in control of these facilities did not know. Some testimonies even reference certain names that were commonly assigned to some of these detention centers within barracks or military facilities, where military control and discipline reigned. Some of these places were also used for the torture sessions of the detained civilians, as is the case of the places identified as the “*palapa*” or “the cabin”.

One of the victims stated before a ministerial authority that he had been detained in a place in the III CINE that was called “the cabin”, where he was subjected to different torture sessions including the use of electric shocks, which were placed on his finger, his ribs, his rectum, his tongue, and a nipple.

The same victim detailed how other civilians were taken to the same place and were also tortured in his presence.

²³⁴ CNDH. Recommendation No. 073/2009, p.12.

²³⁵ CNDH. Recommendation No. 059/2009, p. 11

“They sat me on a chair and they put a plastic bag on me several times until I almost suffocated. I almost passed out.”²³⁶

The cases documented in this communication show how soldiers not only carried out acts of enforced disappearance of persons, in order to then subject the detainees to torture sessions with the goal of obtaining confessions, but also committed murders. The cases in this communication describe how the bodies of people who could not hold up against the injuries caused in the torture sessions were murdered, and even incinerated by soldiers.

c) State Policy

In light of what is established by Article 7 of the Rome Statute, a necessary component of crimes against humanity is that the criminal conduct forms part of a systematic or generalized attack against the civilian population, “pursuant to or in furtherance of a State or organizational policy to commit such attack”.²³⁷

In accordance with the Elements of Crimes, it is understood that a finding of a policy to commit this attack requires that the State or organization “actively promote or encourage such an attack against a civilian population.”²³⁸ Additionally, it is required that the policy be implemented through the action of the State or organization, although in exceptional purposes it can be demonstrated by a deliberate failure to act that indicates a conscious encouragement an act of that type, which cannot be found exclusively based on the organization or government’s failure to act.²³⁹

The Pre-Trial Chamber of the ICC has interpreted that the requirements of this policy imply that the attack would follow a regular pattern, and that it may be implemented by a group of persons who govern a specific territory or by an organization that has the capacity to commit a generalized or systematic attack against the civilian population, and while that plan does not have to be formalized, it should be planned, directed, or organized and not spontaneous or made up of isolated acts of violence.²⁴⁰

In the decision of the ICC in the case of Germain Katanga, the judges indicated the importance of demonstrating the systematic nature and the policy, in the sense of establishing that an individual act constitutes a link in a chain that unites the system or plan.²⁴¹ This in turn to demonstrate that the course of conduct is undertaken in the application or pursuit of a policy, without it then being

²³⁶ Carrasco Araizaga, Jorge. “Operativo Chihuahua: Castigo a militares... Hasta cierto punto”. Proceso. Reportaje especial. México. 18/03/2017. Available at: <http://www.proceso.com.mx/478470/operativo-chihuahua-castigo-a-militares-cierto-punto> (Date Accessed: 03/10/2017).

²³⁷ ICC. Rome Statute. Article 7(2)(a).

²³⁸ ICC. Elements of Crimes. Article 7, para. 3.

²³⁹ ICC. Elements of Crimes. Footnote on page 6.

²⁴⁰ 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 Gombo, June 15, 2009, para. 81. See also ICC-01/04-01/07-717, Pre Trial Chamber I, The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Decision on the confirmation of Charges, September 26, 2008, para. 396.

²⁴¹ ICC-01/04-01/07-3436, The Prosecutor v. Germain Katanta, Judgment pursuant to article 74 of the Statute, para. 1112 y subsequent paragraphs.

necessary to demonstrate the relationship between the course of conduct and the operation with the State, nor to match the criminal intent of those responsible for the acts themselves with the criminal policy.²⁴²

Having demonstrated the systematic nature of the attacks, we proceed to further develop how the criminal behavior referenced in this communication was carried out in accordance with the existence of a policy set in place by the administration of Felipe Calderón Hinojosa. That plan promoted an attack on the civilian population with the objective of breaking down criminal organizations, and of imposing government control over a territory that was dominated by criminal organizations, through whatever means necessary, even means that would have terrible consequences, including: torture, rape, sexual violence, enforced disappearances, and even murder. These crimes were committed against all those determined to seem like a criminal, and those considered to have cooperated with criminal organizations or to have decided to join one of them. This policy was justified as a security strategy, without constitutional grounding, through which tasks that should fall exclusively under the ambit of the police were placed in the hands of the military. This laid the ground for the failure to punish members of the security forces, including soldiers, who committed criminal acts.

Although the Rome Statute does not require demonstrating that the policy had a written or manifest basis, the signatory organizations have been able to identify elements of the policy and formal documents that guided the actions of military personnel within the context of the OCCH. One of the fundamental documents of the official security strategy is the *Directive for the Comprehensive Combat of Drug Trafficking 2007-2012*. This Directive left open to the interpretation of the commanders which methods and means should be used to fulfill the vision contained in that document, which contained orders from the maximum military commander to combat drug trafficking without regard for the cost. Oral instructions given by the former Secretary of Defense (1) and Military High Command themselves constituted another link in the chain that connected the criminal acts and the military authorities to the plan, by requesting that commanders under their control would “innovate in the work and operation methods.”²⁴³

While the General Operations Order II OPN. CONJ CHIHUAHUA describes a part of the OCCH, this cannot be considered as an adequate legal framework that would lend legal certainty to the actions of the FAM in participating in public security tasks. It also does not provide control mechanisms to prevent that this broad interpretive power on the part of the commanders of Military Regions, Military Zones, barracks, and military units would lead to the commission of crimes in the abuse of their functions. This lack of an appropriate framework, coupled with a lack of training capacity in the logic of public security tasks, and faced with the organized actions and reactive capacity of the organized criminal groups, guaranteed that the policy would be implemented with pressure to show results and without precise written orders or effective punishments or model trials of military commanders that would condemn criminal conducts as a means of reaching the objective. This created a context where deliberate omission also formed part of the criminal policy, by encouraging the effects sought by the commission of crimes by the members of the military responsible for the plan's implementation.

²⁴² ICC-01/04-01/07-3436, The Prosecutor v. Germin Katanta, Judgment pursuant to article 74 of the Statute, para. 1115 and

1116.

²⁴³ Carrasco Araizaga, Jorge. “Las rémoras del Operativo Chihuahua”. Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

The actions of the military reveal a policy that promoted and facilitated the commission of these acts, in such a way that they demonstrated a single mode of action and fulfilled the intention of attacking civilians who they accused of belonging to criminal organizations to demonstrate the “achievements” of the security strategy to public opinion. It is not about isolated or sporadic behaviors by State officials, even if there were corrupt motivations for some of those who implemented the plan, because it was a policy that promoted and encouraged reiterated actions within a supposedly legal course of conduct, that was fortified by the orders of the High Command and met with a failure to punish those responsible for committing crimes.

The policy on military actions in public security is more clearly reflected in the recently passed Interior Security Law. The law not only raises problems regarding the constitutional incompatibility of the Mexican legal order, but also is incompatible with international human rights law and the principles of every democratic State where rule of law governs. The Law creates a lack of transparency in the military actions that are undertaken under the pretext of the preservation of interior security. At the same time, it gives the military the ability to act without any type of civil control; it gives the FAM the authority to detain people and secure crime scenes and proof; and it legitimizes the use of lethal force to combat organized crime, without regard for the regulations of use of force under international humanitarian law, nor for those regulations applicable for state officials charged with fulfilling the law.

The policy on military actions in public security tasks is more clearly reflected in the recently passed Internal Security Law. The Law raises not only problems of constitutional incompatibility of the Mexican legal order, it is also incompatible with the international law of human rights and with the principles of every democratic State of law. The Law generates opacity in military actions that are conducted under the pretext of the preservation of internal security. It also empowers the military to act without any civilian control, empowers the FAM to arrest people, secure crime scenes and evidence, as well as legitimize the use of lethal force to deal with organized crime without respect the rules of use of force established in international humanitarian law, nor those applicable to law enforcement officials.

As described above, the arrests made by military personnel were systematically justified on the basis that they were conducted after the civilian was caught, ‘*in flagrante delicto*’²⁴⁴ and that the detainees were charged with crimes against health, organized crime, and/or carrying weapons that are of exclusive military use. Nevertheless, civilians were also systematically released by the judicial authorities for lack of evidence to criminally prosecute them for these crimes.²⁴⁵

The military's practice of detaining and holding civilians in military facilities or in places under military command for hours, and even days. This practice was well known even though it was not released under any of the circumstances that supposedly “permit” the military to take exceptional actions outside of the regulations that require the military to bring civilian detainees before civilian authorities immediately. Those exceptional circumstances include, for example: 1) that the distance of the place of detention did not allow the civilians to be brought before civilian authorities immediately; 2) when necessary as a security measure; or 3) depending on the availability of modes of transportation or transfer for the civilians.²⁴⁶

²⁴⁴ SEDENA. Public Information Access Request, Folio Number: 0000700038617.

²⁴⁵ CNDH. Recommendation No. 059/2009, 11.

²⁴⁶ CNDH. Recommendation No. 059/2009, 13-14.

The excerpts from the documented cases show how these criminal acts were links in the chain that shaped this policy and denote how the use of military facilities and public resources indicates active institutional participation that, in the implementation of the aforementioned directive, led to the commission of crimes falling under the jurisdiction of the ICC, as described in the section on criminal conduct in this communication

In the case of one of the detained persons, when his wife went to look for the detainees, including her husband, she was told at the PGR that “it was very soon” since the military “usually take two or three days to turn detainees over to the civilian authorities.”²⁴⁷

In another case when the family members went to look for civilians detained by the soldiers, an agent from the Public Ministry confirmed that it had knowledge that those persons were detained in the 35th Infantry Battalion in Nuevo Casas Grandes, Chihuahua, but that they should wait several days before taking any action.²⁴⁸

In the terms laid out by the Rome Statute, the policy in this case entails the use of resources in implementing the policy that includes criminal conduct, including the use of the military facilities and of resources allocated to the OCCH.

This policy, and its interpretation and implementation by military commanders, led to such extremes as the creation and toleration of special groups to attack the civilian population, such as the so-called, “death platoon.” According to the sources that were used to write this communication, this platoon operates from within the III CINE in Ojinaga, under the command of Infantry Lieutenant Colonel (4). The group is led by Major (2) and the high-ranking commanders of the OCCH know of its existence.²⁴⁹

While the military was in command of the OCCH, a regime of terror was installed in the region, which affected the attempts of the civilian authorities to investigate the allegations of abuse, in a clear demonstration of the abuse of power and control that the military had in the region during the operation. The existence of death squads charged with “giving results” that would demonstrate the “effectiveness” of the strategy was tolerated by the high-ranking commanders.

Additionally, the discourse of the authorities during the OCCH, demonstrates this vision and policy of the high commanders. As an example, General (2), first commander of the OCCH, was known by phrases such as, “I would like that instead of saying to me ‘one more’, they would say to me, ‘one less’”, in connection to the civilian deaths resulting from confrontations with the criminal gangs.

²⁴⁷ Veledíaz, Juan. “Desaparición forzada, uno de los saldos perversos de la Operación Chihuahua”. Special Report. Proceso. Mexico. 05/01/2017. Available at: <http://www.proceso.com.mx/468757/desaparicion-forzada-uno-los-saldos-perversos-la-operacion-chihuahua> (Last Accessed: 23/11/2017).

²⁴⁸ Human Rights Watch. *Mexico’s Disappeared: The Enduring Cost of a Crisis Ignored* (2013) at page 134. Available at: <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>. (Last Accessed: 03/05/2018).

²⁴⁹ Events described in the military criminal case 1982/2009, occurring in the Tribunal for the Third Military Region, which is based in Mazatlán, Sinaloa. See also, Carrasco Araizaga, Jorge. “Las rémoras del Operativo Chihuahua”. Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

Nevertheless, given the magnitude of the criminal events, the high commanders were forced to accept the termination of the operation and withdraw from the security chain-of-command in Chihuahua.

All indications demonstrate the existence of a policy undertaken during the government of Felipe Calderón Hinojosa, under which the commission of criminal acts that were committed systematically and fall under the jurisdiction of the court were recorded. The expression of that policy can be observed in the joint operations; for example, in the Joint Tijuana Operation which was the subject of a communication to the Office of the Prosecutor of the ICC in 2014.

d) Tolerance and Promotion of the Policy

In the commission of the aforementioned crimes, the military commanders not only knew about these practices, they tolerated them and in some cases even promoted them. An example of how this tolerance and responsibility on the part of superior officers was demonstrated is the open criminal proceeding against Lieutenant Infantry Colonel (4), who in 2017 was found guilty for acts of torture committed under his command.²⁵⁰ Nevertheless, even in this case, the high-ranking commanders of the Military Zone in which the unit that was commanded by this Lieutenant operates were not investigated in relation to these act, even though the OCCH operated under a chain of command as has been explained in previous sections: that the military received difficult and ambiguous orders from their superiors in executing the operation.

A number of sources also describe the existence of an “elite group” operating under the command of Brigadier General (1), which is responsible for various crimes contained in this communication, including enforced disappearances and murders. Human Rights organizations have requested that the authorities investigate that General.²⁵¹

The available information indicates that the 6th Special Forces Battalion from Plaza de Nogales, Sonora, undertook “high impact” operations in support of the OCCH. Inside of this group a special group known as “The Mechanics” or “the Patrollers” exists, which is under the command of Major (3).²⁵² Other testimonies speak of the existence of the “GAFE” group as responsible for the commission of grave crimes.²⁵³

²⁵⁰ Carrasco Araizaga, Jorge. “Operativo Chihuahua: Castigo a militares... Hasta cierto punto”. Proceso. Reportaje especial. México. 18/03/2017. Available at: <http://www.proceso.com.mx/478470/operativo-chihuahua-castigo-a-militares-cierto-punto> (Date Accessed: 03/10/2017).

²⁵¹ Mayorga, Patricia. “Sentencian a 33 años de prisión a mandos militares por asesinato de dos civiles”. Proceso. 31/01/2016. Available at: <http://www.proceso.com.mx/427171/sentencian-a-33-anos-de-prision-a-mandos-militares-por-homicidio-de-dos-civiles> (Last Accessed: 03/10/2017).

²⁵² Huerta, Carlos. “Usaban grupo de élite para desaparecer y matar civiles” Norte Digital de Cd. Juárez. Juárez, Chihuahua. 07/05/2015, Available at: <http://nortedigital.mx/usaban-grupo-de-elite-para-desaparecer-y-matar-civiles/>. (Date Accessed: 10/10/2017).

²⁵³ Mayorga, Patricia. “Sentencian a 33 años de prisión a mandos militares por asesinato de dos civiles”. Proceso. 31/01/2016. Available at: <http://www.proceso.com.mx/427171/sentencian-a-33-anos-de-prision-a-mandos-militares-por-homicidio-de-dos-civiles> (Last Accessed: 03/10/2017).

The existence of the so-called “death platoon”²⁵⁴ is the clearest example of how the security policy allowed for the commission of abuses in order to present results regarding the “effectiveness.” It is also an example of how the authorities not only did not prevent this criminal behavior, but rather they tolerated it. In some cases attributed to the “death platoon”, the soldiers buried the bodies of individuals who had been deprived of their liberty.²⁵⁵

““It took between five and six hours for even the bones of the corpse to be consumed.”

“After about four and a half hours, because diesel takes a long time to burn off, they put the ashes in the truck, and on the way back to the military unit, they threw them in a stream.”

“They put the body in a wooden bed, they threw gasoline on it and they lit it on fire. When the body had been burned, [two corporals and a sergeant] threw dirt on top to put out the fire. Later, a soldier took a shovel and threw the ashes in a nearby pit.”

These killings also reached former members of the military, who were accused of deserting and becoming part of criminal groups.

“I remember that he ordered me: “We have to get rid of [the deserters], and I remember that I asked him the form in which we should add that, to which the boss responded, “kill them.”²⁵⁶”

The military itself experienced this case as a threat to themselves and their families,²⁵⁷ which suggests that the policy that was implemented had the intention, not only of imparting terror on the civilian population and the organized crime groups, but also within the members of the military and former members of the military themselves.

One pattern that can be deduced from the cases documented in this communication indicates how the military authorities repeatedly referred to the detention of the civilians as detentions that had taken place ‘*in flagrante delicto*’ or motivated by a “suspicious attitude.”²⁵⁸ The SEDENA itself affirms that “military personnel of this institution execute detentions only in cases of *in flagrante delicto*,”²⁵⁹ given that there is no legal framework that authorizes the FAM to detain people; that is to say, this is the only way that the armed forces can arrest persons, the same as any citizen, in accordance with the constitutional norms. Repeatedly, the civilians were accused of belonging to

²⁵⁴ Hernández, Alan. “El general mexicano que lideró “el pelotón de la muerte irá a prisión por tortura y asesinato”. Vice News. 02/05/2016. Available at: <https://news.vice.com/es/article/general-mexicano-lidero-peloton-muerte-prision-tortura-asesinato> (Date Accessed: 10/10/2017).

²⁵⁵ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

²⁵⁶ Case of Mario Alberto Guerrero León, “El Janos”, and Mario Alberto Peralta Rodríguez, “El Capulina”. “Ordena Coronel ejecutar desertores en Nuevo Casas Grandes”. El Diario MX, Estado, Juárez, Chihuahua. Mexico, Federal District. 14/02/2012. Available at: http://diario.mx/Estado/2012-02-14_3f423609/ordena-coronel-ejecutar-desertores-en-nuevo-casas-grandes/ (Date Accessed: 03/10/2017.)

²⁵⁷ “Ordena Coronel ejecutar desertores en Nuevo Casas Grandes”. El Diario MX, Estado, Juárez, Chihuahua. Mexico, Federal District. 14/02/2012. Fecha de consulta: 03/10/2017. Available at: http://diario.mx/Estado/2012-02-14_3f423609/ordena-coronel-ejecutar-desertores-en-nuevo-casas-grandes/ (Date Accessed: 03/10/2017.)

²⁵⁸ CNDH. Recommendations No. 033/2009, 055/2009, 015/2009, 059/2009, 028/2009, 061/2009, 053/2009, and 070/2009, Caso Saúl Becerra Reyes, Caso Jesús Torrijos Barrón.

²⁵⁹ SEDENA. Public Information Access Request, Folio Number: 0000700038617. March 29, 2017 (Date Accessed: Feb. 14, 2018).

organized crime groups. Additionally, the testimonies of the military authorities indicate that as a result of the detentions, arms and drugs were seized from the civilians, which were then given to the civilian authorities at the same time that the detainees were transferred to civilian custody.

In many of these cases, despite having open criminal cases against civilians, based only on the version of events recounted by the military and the evidence that the military provided, the civilians were released for the illegality or falsity of the evidence. For example, in the case of two people that were charged with crimes against health based on the version of events recounted by the soldiers, they were subsequently released for a lack of proof.²⁶⁰ A similar situation was experienced by a woman who, after having been disappeared and detained for 7 days in military facilities, where she was also the victim of sexual violence, was accused of crimes against health, and subsequently released for a lack of evidence despite the fact that there “exist three packets of marijuana” that the soldiers had alleged were hers at the time that she was detained.²⁶¹

In some of the cases described, in addition to the military personnel that integrated the OCCH, members of the Ministry of Public Security (SSP) also participated in the criminal acts described. An example is the case of three people arrested and disappeared, as mentioned above.

Coupled with this scenario of organized crimes and deliberate and regular repetition of actions, throughout the OCCH military personnel also repeatedly exceeded the use of lethal force at checkpoints. . For example, in one case a military officer indicated to a person to stop, when that person, who was driving under the influence of alcohol and feared that the armed personnel would confiscate his mother's vehicle, decided to turn left to avoid getting caught. As he continued on his way he heard gunshots, after which he felt heat and a lot of pain in his left hip, which forced him to stop.²⁶²

The excerpts from the cases documented in this communication clearly describe the systematic nature, since they show a landscape of crimes that it is unlikely are happening by chance. This in the presence of a general framework of violence where the organized nature of such criminal behaviors, whose practice was inserted in the context of a security policy that directly effected the poor and middle class civilian population, with the objective of linking those people to organized crime and showing the success of the security strategy to media outlets and thereby legitimizing it to society in genera and where public resources were use to achieve this end.

In addition, several testimonies coincide in pointing out that, during the OCCH, the military not only maintained the practice of illegally breaking into private homes, performing searches, and detaining people without warrants; they also stole valuables, vehicles and money that civilians had in their homes:

“30 or 40 members of the Mexican Army, hooded and carrying long arms, came into the house at an ungodly hour and without a warrant [...] while they searched the house, causing damage and taking with them the contents of the safe, \$7,000 in cash that was the result of the sale of their businesses [...], as well as jewelry with a value of \$8,00, cell phones,

²⁶⁰ CNDH. Recommendation No 070/2009.

²⁶¹ CNDH. Recommendation No 088/2009.

²⁶² CNDH. Recommendation No 081/2010.

decorations, and \$1,000 that was in a safe registered to one of the businesses.”²⁶³

“[the soldiers] left the neighborhood with a television, a fan, provisions, and clothes that they threw into the truck.”²⁶⁴

“[the soldiers] took 1,400 pesos they were carrying.”²⁶⁵

“[the soldiers] stole USD\$ 600, 400 Mexican pesos, identification documents, registration documents for the two vehicles, one of them a Contour that they took with them.”²⁶⁶

“The soldiers searched through their things and took a 1993 model Mitsubishi vehicle.”²⁶⁷

In the case of two people arrested while driving on the street in a car, they were taken to military facilities where they were “tortured by soldiers, beaten, given electric shocks, plastic bags were placed on their faces to suffocate them”; both describe how they were humiliated and intimidated, causing severe physical and psychological damage in order to obtain information.²⁶⁸

Additionally, within the OCCH, the military used not only military vehicles but also cars that had been seized from civilians, which were “painted” to look like military vehicles. In the case of the murder of a victim, the use of a “Wolf pickup truck that had been seized from drug traffickers and painted over in military green with a number 8013148” was documented.²⁶⁹

“They went in “the evil Wolf” (*“la Lobo del mal”*), as [M]ajor [(2)] baptized the cursed Army truck.”²⁷⁰

e) Knowledge by high commanders and degrees of participation

Having demonstrated the systematic nature of the attack, the situation of the civilian population as the target of that attack, and the existence of the policy, we proceed to highlight the evidence of knowledge of the actions of the soldiers charged with implementing the OCCH on the part of the high commanders, as an additional element to confirm that the acts described herein constitute crimes against humanity.

During the OCCH, the high command not only tolerated these acts, but encouraged them and

²⁶³ CNDH. Recommendation No 061/2009.

²⁶⁴ Case of enforced disappearance.

²⁶⁵ Carrasco Araizaga, Jorge. “Operativo Chihuahua: Castigo a militares... Hasta cierto punto”. Proceso. Reportaje especial. México. 18/03/2017. Available at: <http://www.proceso.com.mx/478470/operativo-chihuahua-castigo-a-militares-cierto-punto> (Date Accessed: 03/10/2017).

²⁶⁶ CNDH. Recommendation No 070/2009, p. 4.

²⁶⁷ CNDH. Recommendation No 054/2009, p. 8.

²⁶⁸ CNDH. Recommendation No 050/2010, p. 11.

²⁶⁹ Facts described in the military criminal case 1982/2009, occurring in the Tribunal for the Third Military Region, with headquarters in Mazatlán, Sinaloa. See also, Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

²⁷⁰ Carrasco Araizaga, Jorge. “El pelotón de la muerte”. Proceso. Special Report, Mexico. 12/01/2013. Available at: <http://www.proceso.com.mx/330426/el-peloton-de-la-muerte> (Last Accessed: 09/10/2017).

allowed the use of state resources to obtain the expected "effects" of the policy, to demonstrate the effectiveness of the strategy in general and of the OCCH in particular.

Even just the entry of people into military facilities, or into facilities that functioned as military sites during the OCCH, did not occur unnoticed by the security controls and high command. The arrival of civilians deprived of their liberty through the use of military resources (such as vehicles), their being held in these facilities for hours and even for days, and the subjection of these persons to torture and mistreatment, as well as acts to get rid of the bodies of civilians that lost their life as the result of torture, also did not occur unbeknownst to the high-ranking military commanders in these institutions, as well as their superiors in the chain of command that governed the joint operation.

It is important to remember that the OCCH operated under a clearly defined command structure and that its highest-ranking officials held various meetings where the performance and "effectiveness" of the operation were analyzed. In these meetings, the high commanders came to know of the practices tolerated by the operatives responsible for implementing the Directive, which by the terms of that directive were the commanders of the Military Regions.²⁷¹ In the case of Military Region XI, the commander was subordinate only to the Secretary of National Defense and the Head of the Federal Executive in his role as head of the FAM.

It is known that in these meetings the high commanders were informed not only of the reading that the commanders gave to the military instruction contained in the Directive; but of the strategies used with the objective of implementing the presidential order, of the security strategy in general, and of the OCCH in particular. Available information indicates that on May 9, 2008, a meeting of the national security cabinet was held in which the then Secretary of the Interior participated to evaluate the progress of the Joint Chihuahua Operation.²⁷² Similarly, there is information about a meeting held in Torreón, in Military Region XI based in Coahuila, which occurred in September 2008, with the participation of SEDENA personnel, including its head, the Secretary of National Defense (1) and the High command of the Army, in addition to members of Military Region XI, the commander of the 5th Military Zone who was directly responsible for the OCCH, the leaders of the 6th Military Zone and the 42nd military Zone, plus the Regional Garrison (including the commander of the Ojinaga Garrison, who wrote General Operations Order II OPN. COJN. CHIHUAHUA²⁷³).

According to the information consulted, it is known that in that meeting the ex Secretary of Defense reinforced the "hardline" orders in the fight against organized crime, giving imprecise instructions regarding the way to do so but requesting results. As an example of the level of detail regarding the operations of the OCCH that were known to the High Command, it is known that Brigadier General (10) told the director of the SEDENA that as part of the innovations ordered by the high command, they were using trucks seized from organized crime during operations, and that those trucks were

²⁷¹ Facts described in the military criminal case 1982/2009, occurring in the Tribunal for the Third Military Region, with headquarters in Mazatlán, Sinaloa. *See also*, Carrasco Araizaga, Jorge. "Las rémoras del Operativo Chihuahua". Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

²⁷² *See* Appendix 1 regarding the sources used in preparing this communication.

²⁷³ *See* Appendix 9, "General Operations Order II OPN. CON. CHIHUAHUA",

painted and marked as if they were part of the Army,²⁷⁴ thereby making known to the high command the use of actions outside of the law in order to implement the policy.

“For this, the Military Zone [Brigadier General (1)] was previously told verbally and in a work meeting that was held with my general secretary in the city of Torreón. He even authorized us to use fuel in the seized vehicles, “stated the [Brigadier] General (10) in testimony given before the military Public Ministry on August 19, 2009. He added that [Brigadier] General (1) told him that they could do it, but it was not officially authorized.”²⁷⁵

Not only did the authorities know about the methods used to “bring about results”, they also knew about the conditions in which the orders to achieve results would be implemented. For example, the fact that some of the vehicles that the OCCH had were not adequate for the tasks of the operation, led to an explicit authorization of the use of private vehicles that had been seized. This situation doesn’t only demonstrate the knowledge of the high commanders in the illegal action of the forces under their control, but also the exactitude with which, even given limited and insufficient resources, they expected that those executing the OCCH would generate “overwhelming” results.

Having already occurred diverse criminal events in the context of the OCCH, in the month of September 2008, the then Secretary of the Interior (Minister of the Interior) Juan Camilo Mouriño visited Ciudad Juárez. After having evaluated the advances, he gave a press conference where he affirmed that:

“[...] it is an obligation of the Mexican state, that is why we are fighting [...] it is a fight that is not ending, a victory that still cannot be declared, but it is advancing.”²⁷⁶

On February 25, 2009, the Federal Security Cabinet met again in Ciudad Juárez, where adjustments were made to the OCCH, including the agreement on a single command in coordination with the Commander of Military Region XI, Brigadier General (11).

In early 2009, the Governor of Chihuahua and the Municipal President of Ciudad Juárez met in Ciudad Juárez with the “National Security Adviser of the Presidency” to evaluate the results of the operations, particularly in Ciudad Juárez.

On February 11, 2010, in view of the OCCH's evident failure to contain the violence attributed to the criminal gangs, mainly in Ciudad Juárez and after the murder of the 15 young people in Villas de Salvácar, Felipe Calderón, as head of the federal executive and Supreme Chief of the FAM, along with members of his security cabinet, made the first of three visits to Ciudad Juárez²⁷⁷ with the intention of adjusting the operations in the state. Two years after the start of the OCCH, in a situation where a high degree of violence persisted and in a context plagued by abuses on the part of

²⁷⁴ Carrasco Araizaga, Jorge. “Las rémoras del Operativo Chihuahua”. Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

²⁷⁵ Carrasco Araizaga, Jorge. “Las rémoras del Operativo Chihuahua”. Proceso. Mexican Edition, Special Report. 15/01/2013. Available at: <http://www.proceso.com.mx/330700/las-remoras-del-operativo-chihuahua-2> (Last Accessed: 03/10/2017).

²⁷⁶ Date Consulted: 03/10/2017. <https://www.youtube.com/watch?v=mo-pliHLHck>.

²⁷⁷ Maureen Meyer. *Abused and Afraid in Ciudad Juárez: An Analysis of Human Rights Violations by the Military in Mexico*. WOLA. Centro Prodh. 2010. p. 10. Available at: https://www.wola.org/sites/default/files/downloadable/Mexico/2010/WOLA_RPT_Juarez_FNL2-color.pdf. (Last Accessed: 03/05/2018).

members of the military against the civilian population, the decision was made to withdraw the main command of the operation from the army, and to move the army towards being only a source of support for the civilian authorities. That was how the federal police came to command the next stage of the operation.

The use of the Federal Police to continue with the security strategy in Chihuahua did not go hand-in-hand with a proper investigation of the documented cases of military abuse, nor with the withdrawal from positions of high command-chain responsibility and corresponding punishment of those acts. To the contrary, the official position that effective actions against crime were the cause of the violence continued to be the strategy.

In addition to the above, it is worth highlighting how the military high command that was involved in the operation of the OCCH, instead of having been duly investigated and sanctioned by the civil authority in the face of documented and serious cases, were in fact promoted in their different military careers ²⁷⁸ demonstrating again that this chain of action was not only tolerated, but encouraged by the highest leaders, including civilian leaders.

Such is the case of the General (2), who was commander of Military Region XI during the first months of the OCCH and first commander of the operation who was promoted to occupy the third most important position within the structure of SEDENA; a similar situation occurred with the Commander (1) from Military Region XI who was promoted to Division General during his commission within the context of the OCCH; as well as other commanders of the operation, like General (7), then commander of the Military Garrison of Ciudad Juarez, who was promoted to Commander of the 42nd Military Zone, to later be named chief of the General Staff of Military Region XI, as well as the case of another commander who was promoted to Division General. All of these senior commanders involved in the OCCH, and thereby involved in the acts described in this communication, were “awarded” for their actions within the fulfillment of a policy that promoted the commission of crimes falling under the jurisdiction of the ICC.

All of the above demonstrates the knowledge of the military high command regarding the attack on the civilian population, as part of a policy that was tolerated and promoted by the highest commanders, both military and civilians.

²⁷⁸

See Appendix 6.

VIII. Admissibility

The organizations recognize that it does not correspond to the initial analysis stage, at least within the first phases of the preliminary examination, to explore in depth the elements that may prove the possible admissibility of the situation before the ICC, including the complementarity analysis.²⁷⁹

However, in accordance with paragraph 1 of article 17 of the Rome Statute, the signatory organizations recognize that admissibility requires the evaluation of complementarity (sections a), b) and c of article 17) and severity (section d of article 17). For this reason, the signatory organizations provide to the Office of the Prosecutor the information available to them about those persons who seem to have the greatest degree of responsibility for the crimes documented in this communication, where potential cases are identified, and which cases, in light of the necessary probative standard for opening a preliminary examination, are considered sufficient to conclude that the situation described meets the conditions of admissibility required for this procedural stage before the ICC, in accordance with the appropriate statutory requirements.

In the same way, the signatory organizations impress upon the Office of the Prosecutor the importance of requesting additional information from the Mexican government that can provide a more complete picture of the actions taken by the Mexican criminal justice system, regarding the investigations and their respective criminal proceedings or sentences that have been derived from each of the cases documented in this communication and that the organizations have identified; as well as any other case that may exist and that has not been documented in this communication.

A. Complementarity

The organizations reiterate that, at this stage, where it is requested that the Office of the Prosecutor uses its ex officio powers to decide to open an investigation, and accordingly undertake a preliminary analysis of the situation described herein, proof of individual criminal responsibility is not required, as has been indicated by the Pre-Trial Chamber II of the Court.²⁸⁰ Nevertheless, the signatory organizations have made an effort to document the few investigative actions of the Mexican criminal justice system regarding those directly responsible for each of the cases contained in the communication, through information available in official documents or publicly available sources. This information shows the scant investigations, trials, or sentences that have been issued, in comparison with the seriousness of the crimes and the systematic nature of their commission. Despite these ongoing procedures, we can affirm that there is an absence of genuine national procedures,²⁸¹ investigations, or prosecutions against those persons who, according to what has been described, have the greatest responsibility for the crimes committed in the context of the OCCH.

²⁷⁹ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013.

²⁸⁰ ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya, 31 March 2010, para. 29.

²⁸¹ Situation in the Republic of Kenya, Request for authorization of an investigation pursuant to Article 15, ICC-01/09-3, November 26, 2009, paras. 55 y 78; ICC-01/09-19, PTC II, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation in the Situation in the Republic of Kenya, 31 March 2010, para. 50.

Additionally, organizations believe that the various proceedings identified can not be considered as authentic proceedings or as proceedings that would satisfy the statutory standards of the ICC, since they do not constitute a process (neither in terms of investigation or punishment) regarding the responsibility of those most responsible for the criminal conducts undertaken as a part of a defined policy, as has been described in the previous sections. That is to say, the few actions underway in the national justice system are constituted by investigations, prosecutions, and punishment of direct perpetrators (soldiers accused of being directly responsible for the criminal conduct) but not of those high-ranking officers who planned, tolerated, and failed to punish the commission of crimes in the context of the OCCH in Chihuahua from 2008 to 2010 that fall under the jurisdiction of the ICC.

In light of the available information, it appears that there are 16 cases in which criminal proceedings were opened for acts committed within the temporal scope of the OCCH, 14 of which were initiated under the jurisdiction of military courts. The available information indicates that although they are investigating the participation of military personnel, including in some of the cases described in this communication, there is not evidence of criminal investigations or proceedings resulting in a condemnatory sentence against those high-ranking officers in charge of the OCCH or the operations that constituted it, on the basis of the actions of their subordinates or on the basis of their direct involvement in conducts that could constitute crimes against humanity under the Rome Statute. Some of the cases only reach the level of responsibility of the military unit,²⁸² as the highest ranking entity that has been sentenced for these acts.

Additionally, it is important to highlight the unsuitability of the of the military courts, where the majority of the investigation and prosecution processes are carried out, because they lack the guarantees of independence and due process, since all of the members of those authorities act and fall under the military hierarchy and chain of command.²⁸³ However, this communication includes references to those cases that are open before military courts for the OTP's knowledge.

Such is the case with a proceeding brought before military authorities where the enforced disappearance of a 21-year-old victim is being investigated. This victim was detained between 10:00pm and 11:00pm on February 26, 2009, while eating at a stand on a public thoroughfare in Ciudad Juárez. The victim's family learned of his detention by the military through two friends of the victim, who informed them that they had been arbitrarily detained by soldiers that same night, and were taken to a military base and tortured so that they would given information regarding drug trafficking cartels. In that place, they saw when the victim was beaten by soldiers. Upon learning these facts, the victim's father went immediately to different authorities in order to check if his son was detained; he presented complaints before civil and military authorities, and he was told that the case had been transferred to agents at the Military Public Ministry for their investigation. Since it was presented, the case has been reassigned at least 5 times to different military public ministries, who finally asked the victim's family not to come to military facilities so frequently.²⁸⁴ To date, the

²⁸² In the original, military ranks that have been prosecuted and found guilty were mentioned.

²⁸³ For a detailed analysis regarding the characteristics of the so-called, 'military jurisdiction', and its limitations or deficiencies, see: Human Rights Watch. *Uniform Impunity: Mexico's Misuse of Military Justice to Prosecute Abuses in Counternarcotics and Public Security Operations (2009)*; CMDPDH Report on Military Justice; Inter-American Court of Human Rights (2009) Case of Rosendo Radilla Pacheco v. Mexico.

²⁸⁴ Human Rights Watch. *Mexico's Disappeared: The Enduring Cost of a Crisis Ignored* (2013) at page. 147. Available at: <https://www.hrw.org/report/2013/02/20/mexicos-disappeared/enduring-cost-crisis-ignored>. (Last Accessed: 03/05/2018).

case has not advanced in the military investigations regarding those alleged responsible for the detention and subsequent disappearance of the victim, and the whereabouts of the victim remain unknown.

Infantry Colonel (2), former commander of the 35th Infantry Battalion which was headquartered in Nuevo Casas Grandes, was investigated by the military justice, in Criminal Case No. 181/2010 of the Fifth Military Court of the First Military Region, for the murder of two persons, two members of the military that deserted and allegedly worked for the criminal group, “The Line” (“La Línea”).

Another of the military criminal cases known to be ongoing in reaction to the criminal behavior described in this communication is the Military Criminal Case No. 1982/2009 of the Court of the Third Military Region, in Mazatlán. Publicly available sources indicate that 31 soldiers who formed part of the III CINE are detained in military prisons.²⁸⁵

The number of cases in civil courts is minimal when compared to the severity and number of incidents documented in the context of the OCCH. For example, in 2015, six years after the OCCH, it transpired that one of the main commanders in charge of the operation, Brigadier General (1), would just be called to testify before the PGR regarding his alleged participation in 29 murders committed by his subordinates between March 2008 and June 2010, and that he would have open investigations for acts of torture and kidnapping, including in relation to cases contained in this communication.²⁸⁶

Similarly, Criminal Case No. 93/2013 was instituted against 18 soldiers accused of various crimes, including six of them accused of enforced disappearance and the subsequent murder of a person. However, no high-ranking officials are under investigation for these acts.

“According to the investigation, Major (3)... ordered the disappearance of the brothers ..., and the captain (5) was the one who shot one of them after the other one had already been tortured in the military facilities by the sergeants and died... It is not known if the latter person has been detained.”²⁸⁷

In an exceptional case for the Mexican criminal justice system, an Infantry Colonel (2) was sentenced to 33 years in prison by the Judge of the Fourth District of Chihuahua, along with lower ranking members of the military ... for crimes of torture, homicide and clandestine burial, against two people, in December 2009 when the colonel led an operation in Buenaventura, Chihuahua.²⁸⁸ In this same proceeding, two other soldiers were also sentenced for the crime of torture.

Another case also known to be attributable to the 35th Infantry Battalion and the Municipal Police of

²⁸⁵ Mosso, Rubén. “Corte niega amparo a teniente condenado por desaparición forzada”. Milenio. 8/03/2017 Available at: http://www.milenio.com/policia/jose_julian_juarez_ramirez-peloton_de_la_muerte-desaparicion_forzada-noticias_0_916108670.html (Date accessed: 03/10/2017).

²⁸⁶ Silva, Mario Héctor. “PGR Investiga a Felipe de Jesús”. Politikkon.com Periodismo en su punto. México, Chihuahua. 25/05/2015. Available at: <http://politikkon.com/investiga-pgr-a-felipe-de-jesus/>. (Last Accessed: 03/10/2017)

²⁸⁷ Huerta, Carlos. “Usaban grupo de élite para desaparecer y matar civiles” Norte Digital de Cd. Juárez. Juárez, Chihuahua. 07/05/2015. Available at: <http://nortedigital.mx/usaban-grupo-de-elite-para-desaparecer-y-matar-civiles/>. (Date Accessed: 10/10/2017).

²⁸⁸ “Sentencian a Coronel de la SEDENA a 33 años de prisión”. Express, Editorial, Mexico, Chihuahua. 20/01/2016. Available at: <http://www.chihuahuaexpres.com.mx/2016/01/20/sentencian-a-coronel-de-la-SEDENA-a-33-anos-de-prision/> (date accessed 3/10/2017).

Nuevo Casa Grandes Chihuahua, is the case that occurred in Nuevo Casas Grandes included in previous sections. Criminal Case No. 175/2012-I was opened for these crimes in the Seventh District Court for the State of Chihuahua. According to publicly available sources, a sentence was issued in this case on July 16, 2014, but no further details are known.

It stands out that the colonel in command of the 35th Infantry Battalion involved in the three causes described above (two before civil authorities and one before the military authority), was under the direct command of the 5th Military Zone, which in turn is under the command of Military Region XI. Nevertheless, none of the high-ranking officials in this military chain have been investigated or punished for the facts investigated in these criminal cases.

Those most responsible within the chain of command that operated during the OCCH, have not been subject to investigations or trials, never mind sentences, for the crimes documented in this communication; to the contrary, several of them were promoted in their military careers,²⁸⁹ despite the allegations and the documentation of criminal conduct. This demonstrates not only the lack of will of the Mexican state to punish these commanders, but also the appropriateness that it be the Office of the Prosecutor of the ICC that conducts a thorough investigation to determine the responsibilities of the high-ranking commanders and put an impunity that currently reigns with regards to crimes that fall under the jurisdiction of the ICC.

The organizations reiterate that the OCCH functioned under the military command chain and discipline system, so the high-ranking commanders had a decisive role in encouraging and tolerating the commission of criminal acts. Not only did these high-ranking officials issue instructions where they demanded overwhelming results in relation to the implementation of the policy to stop criminal organizations and recuperate territorial control without regard for the cost; they also encouraged “innovative” ways of putting the presidential instruction into practice; in addition to using “the results” of those actions in order to demonstrate the effectiveness of the official strategy rather than preventing said conducts and containing them; as well as not playing a key role in the punishment of these criminal conducts.

At the least, the actions of the high-ranking commanders were permissive with regards to the criminal conduct. The events described in this communication show how these high-level commanders contributed directly and indirectly to the commission of the crimes by tolerating them, whether they had a decisive participation or not. The high-ranking commanders, as has been shown, supported the promotion of officers who played a decisive role in the prevention or punishment of the actions of their subordinates, by not taking action to avoid or punish the crimes. This chain of responsibilities thus touches the highest-ranking military commanders and even the highest civil authorities, to which the military authorities report.

The highest-ranking leaders, in addition to being responsible for their complicity in providing practical assistance by permitting the use of military facilities or military resources like vehicles or weapons; by encouraging or giving their moral support, by labeling all of the “downcast” as members of organized crime, by denying the importance of the so-called “collateral victims,” and by issuing verbal orders to implement a hardline approach and use creative ingenuity in the methods used to achieve results without adopting a regulatory framework that would include control and

²⁸⁹

See Appendix 6.

punishment. All of these factors had a substantial impact on the perpetration of the crimes documented herein in the context of the OCCH. Even their inaction had a decision impact by omission in the commission of these crimes. In addition the omission to punish or prevent these crimes, the military command itself used the results of the criminal actions described to “show the effectiveness” of the OCCH and the use of the join operations in general.

It is striking that two of the top military commanders responsible in the chain of command for the Joint Chihuahua Operation²⁹⁰ were killed years after the end of the same and when they held various positions, outside the state of Chihuahua. Also striking are the promotions that diverse members of the military who participated in the OCCH received during or upon finishing their tasks in that operation, despite the complaints of abuse committed during that period.

Finally, it should be noted that the administration of Felipe Calderón systematically attributed the violence and crimes committed in Mexico to members of organized crime. Nevertheless, in the extraditions that have been carried out from Mexico to the United States of criminal bosses detained between December 2006 and 2012—as well as those that followed in the current administration, including most recently “Chapo Guzmán”—the crimes of murder, enforced disappearances, severe deprivation of liberty in violation of international norms, torture, kidnapping, and extortion that were attributed to those groups were not included in the extradition. By excluding those crimes from those for which the extradition is authorized, those crimes cannot be investigated in courts in the United States.²⁹¹ That means that in the best case, those cases will remain pending investigation and punishment by the Mexican authorities, who have to wait for the conclusion of a trial in another country to then request that person be extradited back to be prosecuted. This situation leave the crimes in total impunity, since it is improbable that Mexico would request their return for such a purpose.

B. Gravity

With the goal that the Office of the Prosecutor of the ICC open a preliminary investigation to eventually decide whether to exercise its *ex officio* powers and initiate an investigation regarding the situation in Mexico, particularly in relation to the crimes described in this communication. The gravity analysis requires an evaluation of “the scale, nature, and manner of commission of the crimes, and their impact.”²⁹²

The OTP has determined that the scale of the crimes can be “assessed in light of, *inter alia*, the number of direct and indirect victims, the extent of the damage caused by the crimes, in particular the bodily or psychological harm caused to the victims and their families, or their geographical or temporal scope.”²⁹³

This communication presents a sample of the broader situation of crimes falling under the jurisdiction of the International Criminal Court that have been committed in the context of the so-called War on Drugs, which began in December 2006 and continues in force under the interior

²⁹⁰ Division General and General.

²⁹¹ Article 6 of the Extradition treaty between the United States and Mexico provides that the alleged guilty party can only be tried in the country that requests the extradition with regards to the trials or crimes that drive that request.

²⁹² ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 9 and 61.

²⁹³ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 62.

security policy which even has been codified in legislation as of December 2017. As previously explained, the OCCH was the fifth joint operation, and its culmination was followed by the Coordinated Operation under principal responsibility of the Federal Police, to then ultimately leave public security, at least in Ciudad Juárez, in the hands of a retired member of the Army, in keeping with the same security strategy and fight against organized crime. In the distinct stages of these operations,²⁹⁴ there are serious abuses documented by the CNDH or the State Commission for Human Rights, as has been demonstrated in the appendices to this communication.²⁹⁵

In this regard, although the sample of the abuses committed within the OCCH contained in this communication cover around 120 direct victims. This statistic can only be considered in light of the under-registration of complaints and the absence of precise official registries regarding the number of cases of torture and enforced disappearance in the country in general and in Chihuahua in particular. As such, the first National Survey on Victimization and Perception of Public Safety (ENVIPE) which was elaborated by the National Institute for Statistics and Geography (INEGI) in 2011, reported that in 2010, 92% of crimes went unreported on a national level.²⁹⁶ This situation shows that the number of abuses reported are relatively small in relation to the number of crimes that are not reported, which could give an idea of the extent of the quantity of victims affected by the OCCH who did not present a complaint.

Additionally, the Office of the Public Prosecutor says that damage caused not only to the direct victims of these crimes, but also to the indirect victims, including the families and the community to which they belong should be considered. In the context of the OCCH, the signatory organizations have described how civilians were victims of severe deprivation of physical freedom, physical and psychological torture, including torture of a sexual nature, enforced disappearances, and murders. All these criminal conducts took place within a period of a little less than two years (from March 27, 2008 to January 16, 2010) in municipalities of Chihuahua where the OCCH took place. It should be noted that the very nature of the criminal acts committed during the period covered by the communication goes hand-in-hand with the type of damage suffered, making it meet the gravity criteria as defined by the Office of the Prosecutor.

With regards to the nature of the crimes, the Office of the Prosecutor has established that “[t]he nature of the crimes refers to the specific elements of each offence such as killings, rapes and other crimes involving sexual or gender violence and crimes committed against children, persecution, or the imposition of conditions of life on a group calculated to bring about its destruction.”²⁹⁷

The OCCH cases include acts of torture that by their very nature, by denying human dignity, entail an *erga omnes* obligation to be investigated and punished; as well as international crimes such as the enforced disappearance of persons, where the serious, ongoing harm caused to the families in the face of the uncertainty generated by not knowing the whereabouts or destination of their disappeared family members has been recognized.

²⁹⁴ See Appendix 4, which the outline of a timeline of the OCCH during the period of military participation.

²⁹⁵ See Appendices 2, 3, and 10.

²⁹⁶ National Institute of Geography and Statistics (INEGI). National Survey on Victimization and Perception of Public Security. Available at: www.beta.inegi.org.mx/proyectos/enchogares/regulares/envipe/2011.

²⁹⁷ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 63.

On the other hand, the Office of the Prosecutor has determined that the manner of the commission of the crimes can be evaluated in light of certain factors such as: “means employed to execute the crime, the degree of participation and intent of the perpetrator (if discernible at this stage), the extent to which the crimes were systematic or result from a plan or organized policy or otherwise resulted from the abuse of power or official capacity, and elements of particular cruelty, including the vulnerability of the victims, any motives involving discrimination.”²⁹⁸

Needless to say, the cruelty involved in acts of torture in the face of contempt for human dignity, in and of itself demonstrates the gravity of the commission of the crimes. In addition, the cases described speak of cruel torture sessions with diverse methods. In several sessions, those episodes led to the victim losing their life after having been subjected to severe physical and psychological suffering. In the case of severe deprivation of the physical liberty of civilians in military facilities or areas under military control, there is evidence of the use of public resources as means to systematically commit that crime. This denotes a degree of participation by those directly responsible, but also by the command chain in order to obtain confessions and bring before civilian authorities those “allegedly responsible” so as to be able to present to Mexican society successes in the strategy that was part of a organized policy entailing abuse of power by members of the military.

In addition, the fact that torture was used against civilians, who detention without the appropriate monitoring of the civilian authority left them in a situation of particular vulnerability, constitutes the gravity that the Office of the Prosecutor of the ICC mentions in its *Policy Paper on Preliminary Examinations*. It is important to mention the gravity that within the context of the security policy, in particular in the OCCH, multiple rapes and other crimes of sexual violence were committed in an extended way and as part of a pattern of behavior regarding the treatment of persons illegally detained. The gravity of the situation described is also accented by those cases in which civilians were murdered and their bodies were buried or abandoned in deserted roads, further evidence of the total disregard for human dignity on the part of military personnel.

In connection to the impact that these crimes had on the victims and the society in Chihuahua, the organizations recalls that which the Office of the Prosecutor has said regarding the impact of the crimes, which can “be assessed in light of, *inter alia*, the sufferings endured by the victims and their increased vulnerability; the terror subsequently instilled, or the social, economic and environmental damage inflicted on the affected communities.”²⁹⁹

In the acts of torture described in this communication, the victims experienced grave damage to their physical integrity, which generated physical and psychological consequences that they will have to live with for the rest of their lives. In cases of forced disappearance, the persons detained by members of the FAM, as well as the victims of torture, found themselves under the absolute control of the military personnel, facing a situation of complete vulnerability.

The suffering of the direct victims extends to third parties, since it is not only are the direct victims that suffer after the protection of the law has been withdraw, but also their family members who have to confront the perpetrators as they are the ones who “should guarantee” their security, but their families do not know their fate or whereabouts.

²⁹⁸ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013.

²⁹⁹ I ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 65.

In the case of enforced disappearances, the family members of the victims have to take on looking for the whereabouts of their family members by their own means, dealing with the absence and loss of mourning, while living with the constant hope that their family members will be found alive.

As the product of these abuses in the hands of military personnel that were deployed to improve the security of a state like Chihuahua, the population suffered the fear of violence produced not only by the criminal gangs, but also through the unpunished abuses of the military. A sign of this fear is reflected in the alarming number of internally displaced people in the country due to the violence in Ciudad Juarez alone.

In all cases, both direct and indirect victims have faced suffering that go beyond criminal acts, in that they have been subjected to social stigmatization, being falsely accused themselves or their relatives of belonging to a criminal gang in the media and in front of their communities, neighborhoods, or neighbors. Added to this is the suffering that is produced by the effect that the institutions that are responsible for investigating crimes do not do so for lack of will

In light of the foregoing, the organizations maintain that the facts contained in this communication, within the context of the OCCH, meet the criteria defined by the Office of the Attorney General regarding gravity, taking into account the scale, the nature of the conduct, the impact caused, and the form of the commission of the crimes.

Finally, regarding the interests of justice, the signatory organizations recall that the Prosecutor's Office has determined that the OTP “will proceed unless there are specific circumstances which provide substantial reasons to believe that the interests of justice are not served by an investigation at that time.”³⁰⁰ This is not the case here – to the contrary, the possibility that the Office of the Prosecutor would open an investigation is at present the only possible way to bring an end to the impunity enjoyed by those persons with the greatest responsibility for the crimes committed in the context of the OCCH. Furthermore, the investigation would incentivize the national authorities to genuinely fulfill their primary responsibility for investigating, prosecuting, and punishing those responsible for the commission of crimes against humanity in Mexico from December 2006 through the present.

IX. Conclusions requests to the International Criminal Court

The signatory organizations conclude that this information, presented in light of the Rome Statute and the probative standard of establishing a reasonable basis, is updated to consider that in the in the context of the OCCH between March 27, 2008 and January 16, 2010, crimes against humanity of murder, torture, severe deprivation of physical liberty, rape, sexual violence, and enforced disappearances were committed in Chihuahua, Mexico as part of a systematic attack against the civilian population within the framework of a state policy aimed at confronting the drug trafficking organizations head-on, as well recovering the territories dominated by organized crime groups.

The policy of recovering the territory at any cost, included the imposition of dire consequences on

³⁰⁰ ICC-OTP. *Policy Paper on Preliminary Examinations*. November 2013. Para. 67.

anyone who was identified as a member of the organized crime groups present in Chihuahua during the time that OCCH lasted, or who the military attributed to have supported these groups; because of this, during almost two years, the military committed systematic and grave crimes, in particular: torture, severe deprivation of physical liberty, enforced disappearances and murders, that could constitute crimes against humanity falling under the jurisdiction of this court, with a systematic nature that includes regular patterns of action and organized interventions, just has been demonstrated in this communication.

Despite the commission of grave crimes, the Mexican judicial system has not criminally prosecuted any high-ranking military official, despite the presence of legal proceedings and in some cases, sentences that corroborate the commission of crimes by subordinates under their command. For this reason the case fulfills the admissibility requirements, that would eventually be evaluated by the ICC in accordance with Article 17 of the Rome Statute, by showing the lack of will among the justice system to confront impunity. Similarly, the elements of gravity and the question of whether the opening of an investigation by the Office of the Prosecutor would result in the interests of justice are also satisfied.

The organizations also recognize the seriousness of the crimes committed by non-state actors who, in order to terrorize the population of Chihuahua during the years when the OCCH was in force and control "the plaza", committed international crimes. However, due to our nature of work, capacity, and security considerations, the organizations have put forward for the consideration of the Office of the Prosecutor paradigmatic facts that could motivate pertinent investigations regarding the inclusion of these groups in a preliminary examination on the situation in Mexico, particularly during the period described in this communication.

In a context where the military continues to participate in public security tasks, it is necessary, considering that the national justice system is not acting to genuinely investigate and punish the high command of the OCCH, that the ICC open an investigation.

In conclusion, the signatory organizations consider that there is a reasonable basis to believe that crimes falling under the jurisdiction of the ICC have been committed in Mexico, particularly in the state of Chihuahua, during the pendency of the OCCH between March 27, 2008 and January 16, 2010. Accordingly, we submit this information to the Prosecutor of the Court for her consideration, with a view toward deciding whether to open an investigation in accordance with article 53 of the Rome Statute and exercise the complementary jurisdiction of the CPI.

For all of the above, the organizations request that the Office of the Prosecutor of the ICC:

- a) Receive the information contained in this communication, on the possible commission of crimes falling under the jurisdiction of the ICC;
- b) Determine the temporal, material, territorial and personal jurisdiction of the Court over the facts contained in this communication, together with the other communications sent in 2012, 2014 and 2017, in accordance with the statutory requirements that the Prosecutor's Office must meet for this stage;
- c) Exercise the powers of the Office of the Prosecutor, in accordance with Article 15 of the Rome Statute, and announce the opening of a preliminary examination regarding the situation in Mexico.

- d) Conduct a mission to Mexico to undertake consultations with the appropriate national authorities, the impacted communities, and other interested parties such as civil society organizations.
- e) Send a request for additional information to the Mexican authorities, in order to further analyze the seriousness of the information that has been presented for the OTP's consideration, and with the goal of enriching this analysis in an informed way. In particular, the OTP should request information regarding:
 - i. Open criminal files for the cases described in this communication. Information regarding open investigations and criminal proceedings intended to bring to justice those allegedly responsible for the cases that are presented in the documents contained in Appendix 6, including the criminal files related to the prosecution of members of the military for the diverse crimes mentioned in this communication.³⁰¹
 - ii. Request a list of the commanders and soldiers that formed part of the OCCH, as well as all pertinent information regarding the ranks and positions held by those members of the military at the time of the OCCH and those that they currently hold.
 - iii. Request information regarding the serious crimes perpetrated by criminal organizations operating in the period covered by the OCCH, including the cases mentioned in this communication, as well as information regarding open investigations and criminal proceedings to punish those responsible.
- f) Evaluate, at the appropriate time and in accordance with Article 53 of the Rome Statute, the possible admissibility, as well as the interests of justice, with regards to the Office of the Prosecutor opening an investigation related to the facts contained in this communication, on the basis of the evidence provided herein as well as that received from the government of Mexico, all evaluated in light of the threshold requirement corresponding to this stage of the proceedings in the ICC: that there be a "reasonable basis" to proceed in such a way.

³⁰¹ For example, the military criminal case 1982/2009, occurring in the Tribunal for the Third Military Region, which is based in Mazatlán, Sinaloa, and the Verdict on Writ of Constitutional Protection (*amparo*) No. 151/2010 of the 10th Court of the District of Mazatlán, Sinaloa; Criminal Case No. 93/2013 in the Sixth Court of the District of Chihuahua against a Colonel (1), Major (1), Captain (1), three other officials, and 12 troops that belonged to the Fifth Battalion of the Military Police, for the enforced disappearance and subsequent murder of one victim.

X. Glossary

BFP	<u>Parachute Riflemen Brigade</u>
CIDE	Center for Economic Investigation and Teaching
CINE	Specialized Infantry Platoon
CMDPDH	Mexican Commission for the Defense and Promotion of Human Rights
CNDH	National Human Rights Commission
Constitution	Political Constitution of the United States of Mexico
EC	Elements of Crimes
FAM	Mexican Armed Forces
FIDH	International Federation for Humana Rights
GAFE	<u>Special Forces Air Mobile Group</u>
GANFE	Amphibious Special Armed Forces
HRW	Human Rights Watch
ICC	International Criminal Court
INEGI	National Institute for Statistics and Geography
México	United States of Mexico
OCCH	Joint Chihuahua Operation
PGR	National Attorney General's Office
RNPED	Nataional Registry of Missing or Disappeared
RS	Rome Statute of the International Criminala Court
SEDENA	Secretariat of National Defense
SEMAR	Mexican Secretariat of the Navy
UIDPM	Investigatory Unit on Crimes against Migrants
U.S.A.	United States of America

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