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LITIGIO ESTRATÉGICO EN DERECHOS HUMANOS, A.C.

Situation of impunity in Mexico

We call on the Mexican State to recognize the existence of crimes against humanity in Mexico and refer the situation of Mexico to the International Criminal Court

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Introduction

Impunity not only impedes the course of justice and the punishment of those responsible, it also prevents the gathering of knowledge to uncover, understand and above all prevent such crimes from happening again. Lack of justice protects power structures and shields those most responsible for serious crimes. Therefore, impunity is a key factor in the reproduction of violence.

So what can be done to combat impunity and effectively avoid the prevalence of violence in Mexico? So far, several alternatives have been tried in Mexico, such as the creation and reform of specialized laws and institutions, as well as self-defeating initiatives such as increasing penalties and the catalogue of offences that warrant pretrial detention.

Good institutional design and an adequate regulatory framework are essential, but the key to transforming law enforcement is to install effective criminal investigation methodologies aimed at sanctioning those most responsible.

Since 2011, the International Federation for Human Rights (FIDH), together with several Mexican non-governmental organizations (including CMDPDH and Idheas) have documented and denounced crimes against humanity that have been committed such as enforced disappearances, homicides, and torture in specific periods and territories in Mexico:

- In 2014, information was submitted to the Prosecutor's Office of the International Criminal Court on the alleged commission of crimes against humanity in Baja California between 2006 and 2012;¹
- In 2017, a communication was submitted over murders, disappearances and torture committed in Coahuila de Zaragoza;²
- In 2018, a report was submitted on the alleged commission of crimes against humanity in Chihuahua, between 2008 and 2010.³

Our approach is based on the premise that a regional analysis is essential to understand the dynamics that have led to the commission of these crimes. These dynamics frequently include collusion between state authorities, law enforcement, and drug cartels. The analysis of the modus operandi in the commission of many of these crimes has also led us to conclude that part of these crimes constitutes crimes against humanity as defined in the Rome Statute of the International Criminal Court. Herein lies an essential key to a drastic reduction in the levels of impunity in Mexico.

Until today, the judicial authorities do not recognize the possible existence of crimes against humanity and, therefore, they do not use the appropriate investigation standards, nor do they inquire about the intellectual authors, the chain of command, the hierarchical superiors and those who are most responsible.

This note focuses on describing the mechanisms of impunity in Mexico. Impunity has been the common denominator in the reported situations and a painful consequence of the inability and / or lack of will of the Mexican State to investigate and prosecute the perpetrators of these crimes.

1. FIDH, *Mexico Report on the alleged commission of crimes against humanity in Baja California between 2006 and 2012*, No. 642e, October 2014. Available at: https://www.fidh.org/IMG/pdf/rapport_mexique-ld2-1-2.pdf This was also presented to the Mexican State during various meetings and publicly during a hearing at the IACHR: <https://youtu.be/cua6zJpGcTo>

2. FIDH, *Mexico: Murders, disappearances and torture in Coahuila de Zaragoza constitute crimes against humanity*, No. 295e, June 2017. Available at: <https://www.fidh.org/IMG/pdf/rapport-mexique-num-5-3.pdf> This was also presented to the Mexican State during various meetings and publicly during a hearing at the IACHR: https://www.youtube.com/watch?v=IIrnJuzf0_8

3. FIDH, *Communication in accordance with article 15 of the Rome Statute of the International Criminal Court on the alleged commission of crimes against humanity in Chihuahua, Mexico, between 2008 and 2010*, No. 715e, June 2018. Available at: https://www.fidh.org/IMG/pdf/mexique715e-2_final.pdf

1. Figures on Impunity

Mexico has suffered a crisis of serious human rights violations and suffered the impacts of violence from the security strategy in the fight against organized crime, which has been adopted since 2006. The Inter-American Commission on Human Rights has identified state actors and organized crime - which it has regarded as "a true parallel power structure" - as the main sources of violence; because of corruption and impunity in the Mexican Republic.⁴

Statistics are absolutely frightening: around 300,000 murders, 61,000 missing persons, 36,000 unidentified bodies and countless human remains, almost 4,000 clandestine graves, 11,000 federal reports of torture and nearly 340,000 forced by violence in the country.

Overall, the impunity rate on crimes known to the authorities is 94.6% at the federal level and 96.14% in states.⁵ Of the total cases that did not result in impunity, only half were resolved through a conviction (2%, approximately).⁶

This statistic is even more serious given that "the black figure, i.e. the level of unreported or reported crimes that did not lead to prior investigation or a research folder, was 93.2% nationally during 2018."⁷

a) Enforced disappearances

The Ministry of the Interior revealed on January 7 of 2020 that there are 61,137 missing persons (97% of cases from 2006 to date), 5,184 so far in the six-year term. 2016, 2017 and 2018 were the years with the most disappearances.⁸

More than ten people have been disappeared each day on average for almost a decade and a half. Approximately 11,000 are girls, boys, or adolescents.⁹ So far, the registry database has not been accessible. For its part, until January 2019, the Mexican State reported a total of 36,000 unidentified deceased people; the registry has not been updated since then.¹⁰

Likewise, the National Human Rights Commission (CNDH) has indicated that 3,760 bodies and 165,431 human remains found in 1,306 clandestine graves have been exhumed;¹¹ meanwhile, other sources have denounced the discovery of more than 2,000 clandestine graves in the country¹²

4. OAS, *Situation of human rights in Mexico*, OEA / SER.L / V / II.Doc, 2015. Available at: <http://www.oas.org/es/cidh/informes/pdfs/Mexico2016-es.pdf>, pages 34-39.

5. México Evalúa, *Findings 2018: Monitoring and evaluation of the criminal justice system in Mexico*, 2019. Available at: <https://www.mexicoevalua.org/2019/08/07/hallazgos-2018-seguimiento-evaluacion-del-sistema-justicia-penal-en-mexico/>, page 121.

6. *Ibidem*, page 116.

7. INEGI, *National Survey of Victimization and Perception on Public Security (ENVIPE) 2019*. Press release no. 463/19. September 24, 2019. Available at: https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2019/EstSegPub/envipe2019_09.pdf

8. La Jornada, *Ministry of the Interior: 61,137, total number of missing persons*. January 7, 2020. Available at: <https://www.jornada.com.mx/ultimas/politica/2020/01/07/gobernacion-61-mil-637-cifra-total-de-desaparecidos-3869.html>

9. *Ídem*.

10. It should be noted that the groups of relatives of disappeared people, in conjunction with civil society organizations, have promoted the creation of the Extraordinary Forensic Identification Mechanism, which aims to inject resources to combat the lag in the identification of deceased persons. This notwithstanding, to date it has not been implemented and despite the efforts of families and civil society, an alarming lag in the matter continues and, due to the incessant violence, unidentified bodies and remains continue to accumulate. The MEIF creation agreement is available at: http://www.dof.gob.mx/nota_detalle.php?codigo=5589797&fecha=19/03/2020

11. CNDH, *Through newspaper sampling the CNDH reveals the finding of at least 163 clandestine graves in the country between 2017 and 2018, of which at least 530 bodies were exhumed*, press release DGC/257/18. Available at: https://www.cndh.org.mx/sites/all/doc/Comunicados/2018/Com_2018_257.pdf

12. Marcela Turati, Alejandra Guillén, Mago Torres, *The country of two thousand graves*, A dónde van los desaparecidos (Where the disappeared go) and Quinto Elemento Lab, November 12, 2018. Available at: <https://adondevanlosdesaparecidos.org/2018/11/12/2-mil-fosas-en-mexico/>

and almost 4,500 bodies.¹³ Civil society organizations have identified inconsistencies, opacity and methodological difficulties in order to make a calculation in the country; despite the above, for several years these were the only sources that approximated an estimate of the number of graves and bodies/human remains found in these clandestine graves.

It was not until August 2019 that the Ministry of the Interior stated that, since 2006, 4,974 bodies had been located in 3,024 clandestine graves;¹⁴ nevertheless, in January of 2020, the Ministry of the Interior warned that the final count is 3,631 clandestine graves.¹⁵ From December 2018 to January 2020, 873 graves and 1,124 bodies were located.¹⁶ In other words, on average two graves are being located per day in Mexico. In contrast, due to the discovery of the clandestine graves, only 381 investigation files have been opened and only 59 people have been punished.¹⁷



Leticia Hidalgo, member of Fuerzas Unidas por Nuestros Desaparecidos en Nuevo León (FUNDENL) prepares a drone to search for missing person remains through ortho photogrammetry- to fly over the «Las Abejas» cooperative land, in the municipality of Salinas Victoria, Nuevo León state, on February 24, 2020. © Julio César Aguilar/AFP

13. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 23.

14. El País, *The Mexican government puts the clandestine graves at more than 3,000*. August 30, 2019. Available at: https://elpais.com/internacional/2019/08/30/mexico/1567173416_337248.html

15. XEU Noticias. *In Veracruz, in 4 years had been accumulated 432 clandestine graves*. February 20, 2020. Available at: <https://www.xeu.mx/nota.cfm?id=1077520>

16. El Financiero, *9,000 cases of disappearance were registered in Mexico during 2019*. January 6, 2020. Available at: <https://www.elfinanciero.com.mx/nacional/se-registraron-9-mil-casos-de-desaparicion-durante-2019>

17. Iberoamericana University Mexico City Campus, *Pending accounts regarding the investigation of the disappearance and clandestine burial in Mexico*, July 3, 2019. "Unfortunately, based on the information requested and which can be accessed via transparency mechanisms, it is not possible to know more about the quality of the investigations or the quality of the processes in terms of the guarantee of procedural rights". Available in: https://ibero.mx/prensa/analisis-cuentas-pendientes-en-materia-de-investigacion-de-la-desaparicion-y-la-inhumacion-clandestina-en-mexico#_ftn5

The Attorney General's Office (FGR) claimed to have initiated, from 2006 to 2018, 1,144 criminal investigations at the federal level for crimes of enforced disappearance and disappearance committed by individuals; however, during that period, only 19 criminal proceedings have been brought to trial.¹⁸ In 2019, only 4 cases were taken to trial (0.29%) and there was no judgment.¹⁹ For its part, at the federal level, the Federal Judicial Council has indicated that there are only 31 convictions and 12 absolutions for the crime of enforced disappearance.²⁰ Derived from requests for access to public information, we know that there are only 28 sentences in the common jurisdiction. In other words, there is barely approximately one sentence for every thousand missing persons in Mexico.

The UN Committee against Enforced Disappearances has noted in its concluding remarks to the Mexican State in November 2018 that it "deeply regrets that a situation of widespread disappearances is maintained in a large part of the territory of the State party and that impunity and revictimization prevail."²¹

In this sense, IDHEAS has presented a case in 2019 to the CEDAW Committee with the aim of highlighting the lack of due diligence and implementation of the gender perspective in the search and investigation of cases of missing women. "This is the first case presented before this international body for the disappearance of women against the Mexican State and seeks to make visible the particularities of the context of gender violence in which these disappearances are circumscribed."²²

However, an example that proves the lack of will due to collusion between organized crime and the Mexican State is the Ayotzinapa case, which clearly shows the State's intention to cover up the truth and hinder the progress of the case.

In September 2014, 43 students from the "Isidro Burgos" Normal Rural School of Ayotzinapa were disappeared in Guerrero state, after being arrested by the municipal police. Following the demand of family members, the Interdisciplinary Group of Independent Experts (GIEI) was created through a collaboration agreement of the Mexican State with the Inter-American Commission on Human Rights [IACHR]. GIEI had a budget of 1.75 million dollars and was comprised of international experts from diverse disciplines.²³

The Attorney General of the Republic (PGR) publicly announced that "the historical truth" of the case was that the students were transferred and cremated in the landfill in the town of Cocula. This version was also supported by the CNDH. The GIEI denied this official version and scientifically demonstrated through independent expertise that it was impossible for this to have happened.

The GIEI in its second report²⁴ informed the torture of numerous detainees in the case and also that the discovery of a bag on the banks of the San Juan River with skeletal remains of Alexander Mora, the only student whose whereabouts have been determined, presented serious irregularities such as that:²⁵ (i) the day before the official date of the discovery of the bag, authorities in charge of the investigation were present at the scene in the company of a detainee, who according to medical reports had multiple injuries despite the fact that his arrest was peaceful. None of this was

18. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 21.

19. FGR-FEMDH, *Annual activity report 2019*. Page 18.

20. Request for access to information no. 0320000433819. Official response letter from the Federal Judicial Council CJF/SECNO/DGEJ/5532/2019 of August 16, 2019. Information from December 1, 2006 to June 30, 2019.

21. UN Committee against Enforced Disappearance, *Concluding and follow-up observations of the Committee on Mexico, CED/C/MEX/FU/1*, November 19, 2018. Available at: https://www.hchr.org.mx/images/CED_C_MEX_FU_1_33066_S.pdf, paragraph 3.

22. IDHEAS, *press release "IDHEAS presents case before the UN Committee for the elimination of discrimination against women"*, October 22, 2019. Available at: <https://www.idheas.org.mx/comunicaciones-idheas/sala-de-prensa-idheas/comunicados/idheas-presenta-caso-ante-el-comite-de-la-onu-para-la-eliminacion-de-la-discriminacion-contra-la-mujer/>

23. OAS, *Financial Report of the IACHR to 2018*. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2019/067-03.pdf>

24. GIEI, *Ayotzinapa Report II*, April 2016. Available at: <https://centroprodh.org.mx/wp-content/uploads/2017/12/giei-informeayotzinapa2.pdf>

25. Aristegui Noticias, *Ayotzinapa Case: The hidden video of the PGR (VIDEO)*, April 25, 2016. Available at: <https://www.youtube.com/watch?v=RqepIB7Zlzl>

documented in the case file, but revealed through journalistic photographs that show the detainee looking towards the river just in the direction where the bag of bone remains appears the next day; (ii) that day, the Argentine Forensic Anthropology Team was blocked from passing with a patrol from the Attorney General's Office on the road parallel to the riverbed at the time that the channel were being inspected by a forensic surveyor and several collaborators, who collected evidence and put it in a bag; (iii) the next day, the bag was found by a navy diver at the same coordinates as the detainee was the day before; and (iv) a photograph taken by official expert services of the bag with the remains indicates that it was found the day before the official discovery. All of the above points to the fact that the discovery of the remains of the only student located was a PGR setup.

Moreover, the GIEI recommended a serious investigation of the Federal Police and SEDENA, because of the evidence that suggested their possible participation in the facts directly or by inaction.

These are just some of the multiple and significant anomalies and irregularities reported by the GIEI, which are symptomatic of an altered, deficient official investigation, based on the torture of the accused and in which it was impossible to rely.

Therefore, it was not surprising that after being exposed once again in the second GIEI report, the Mexican State decided in April 2016 to notify the IACHR of the decision not to renew the group's mandate.²⁶

The IACHR "deeply [deplored] that the Mexican State has expressed its position not to extend the mandate of the GIEI and to terminate the agreement, even though the objectives of the agreement remain unfulfilled, mainly to locate the missing students."²⁷ Previously, the GIEI had made public the obstacles and intimidation it had faced by the State to carry out its work,²⁸ including espionage on its members through government software.²⁹

In September of 2019, 77 of the 142 detained persons linked to the Ayotzinapa case were liberated due to irregularities in the investigation.³⁰ The Office of the United Nations High Commissioner for Human Rights had already pointed out arbitrary detentions, torture and other due process violations used by the then PGR in the course of the investigation.³¹

The federal government's unfortunate response was to question the judiciary over the release of the detainees and to undertake a smear campaign against the judge.³² Instead of criticizing the work of the judiciary, the government should have acknowledged the serious irregularities in the investigation that resulted in the invalidation of the judicial process, as well as expressed a commitment to strengthening lines of investigation and gathering evidence in respect for due process and the absolute prohibition of torture.

It is noteworthy that the government that has been in power since December 2018 represents a new opportunity for access to truth and justice in the case because it is the opposition party in the six-year period that the events occurred. So far, an ad hoc special unit has been created in the FGR for the case, the reinstallation of the GIEI has been formalized, and apprehensions of 3 officials who probably participated in acts of torture against the detainees have been carried

26. Excelsior, *Mexico notifies the IACHR that concludes the mandate of the GIEI*, April 14, 2016. Available at: <https://www.excelsior.com.mx/nacional/2016/04/14/1086404>

27. IACHR, *IACHR concludes the 157th Session, press release no. 049/2016*, April 15, 2016. Available at: <https://www.oas.org/es/cidh/prensa/comunicados/2016/049.asp>

28. Centro ProDH, *Advances and challenges, press release*, February 21, 2016. Available at: <https://centroprodh.org.mx/GIEI/?p=229>

29. R3D, *Two years of spy government: a chronology of impunity, June 19, 2019*. Available at <https://r3d.mx/2019/06/19/gobierno-espia-cronologia/>

30. Proceso, *24 people more linked to the Ayotzinapa case are released; there are only 65 detained from 142*, September 15, 2019. Available at: <https://www.proceso.com.mx/599826/liberan-a-24-personas-mas-ligadas-al-caso-ayotzinapa-quedan-solo-65-detenido-de-142>

31. OHCHR/OACNUDH-México, *Doubleinjustice: Report on human rights violations in the investigation of the Ayotzinapa case*, March 2018. Available at: https://www.hchr.org.mx/images/doc_pub/20180315_DobleInjusticia_InformeONUDHInvestigacionAyotzinapa.pdf

32. Proceso, *op. cit.*

out. The arrests correspond to elements of the Federal Ministerial Police (Criminal Investigation Agency) and the Navy. Likewise, an arrest warrant was issued against the former director of the Criminal Investigation Agency, Tomás Zerón (one of those responsible for the operation of the San Juan River that we have referred to).³³ These detentions and arrest warrants against authorities for mounting, manipulating evidence or obtaining it through the practice of torture go on to confirm that there are no genuine investigations in Mexico.

Despite the progress made, more than 5 years after the events, the emblematic case with the greatest visibility, relevance, resources and accompaniment, which has shocked nationally and internationally, remains in impunity and the whereabouts of the students remain uncertain.

Por otro lado, el Estado Mexicano ha sido sentenciado por la Corte IDH en el caso Alvarado Espinosa en el 2018, por la desaparición de tres personas de la familia Alvarado en el año 2009 por parte de agentes estatales (militares) en el estado de Chihuahua. La Corte IDH atribuyó la desaparición al Estado Mexicano a partir de los testimonios de los familiares leídos a la luz del contexto imperante de inseguridad y violencia, violaciones graves a derechos humanos por parte de autoridades castrenses y de haber acreditado de manera contundente la existencia de un patrón de impunidad en México.

On the other hand, the Mexican State was sentenced by the Inter-American Court in the Alvarado Espinosa case in 2018, for the disappearance of three members of the Alvarado family in 2009 by State (military) actors in the state of Chihuahua. The Inter-American Court attributed the disappearance to the Mexican State based on the testimonies of the next of kin read in the light of the prevailing context of insecurity and violence, serious human rights violations by the military authorities, and having conclusively proven the existence of a pattern of impunity in Mexico.

In its judgment, the Inter-American Court of Human Rights: "has reported alleged serious human rights violations associated to the activities of military personnel within the framework of these strategies, which included enforced disappearances, arbitrary detentions and extrajudicial executions, along with chronic impunity, all common basic patterns in the cases where the participation of State agents has been established."³⁴ It also stated that: "according to the obligation for a guarantee laid down in Article 1.1 of the American Convention, the State has the duty to avoid and combat impunity".

Notwithstanding the above, the first meeting to monitor the compliance of the judgment was widely criticised by the victims and NGO's because of the absence in the meeting of decision-makers and high-level officials. One year after the sentence was given, there has been no progress in ascertaining the whereabouts of the people who disappeared and in determining those responsible³⁵.

In January 2020, the families and their legal representatives condemned the null progress in the case and that "the actions of the Mexican State in the present case has been defined by excessive bureaucracy, lack of coordination, flagrant obstruction from some authorities and a slowness that revictimized families".³⁶

In these paradigmatic cases, widely visible, with a high capacity for advocacy and momentum from civil society, there have been no significant advances in terms of truth and justice, simultaneously demonstrating the lack of will and capacity of institutional framework in Mexico.

33. Proceso, *Office of the United Nations High Commissioner for Human Rights welcomes progress by the FGR in the Ayotzinapa case*, March 19, 2020. Available at: <https://www.proceso.com.mx/622503/la-onu-dh-celebra-avances-de-la-fgr-en-caso-ayotzinapa>

34. Inter-American Court of Human Rights, *Alvarado Espinosa and others v. Mexico Case*, judgment on the merits, remedies and costs, series C 370, November 28, 2018. Available at: http://www.corteidh.or.cr/docs/casos/articulos/seriec_370_esp.pdf, paragraph 176.

35. CEDEHM, *With significant absences, 1st meeting on fulfilment of Alvarado sentence, press release*, May 20, 2019. Available at: <https://redtdt.org.mx/?p=13365>

36. CEDEHM, *10 years after the disappearance of members of the Alvarado family and one year after the Inter-American Court of Human Rights ruling, there is no progress in the case*. January 7, 2020. Available at: <https://cedehm.blogspot.com/2020/01/a-10-anos-de-la-desaparicion-de.html>



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b) Murders

In the 2006-2018 period, 288,502 murders in the country have been counted. Whilst, in 2006, 30% were committed using firearms, now the rate is 66%, more than double the rate at that time.³⁷ In 2018 alone, 35,964 murders were recorded (29 murders for each 100 thousand inhabitants), three times more than in 2006.³⁸ This figure is even higher than the number of violent deaths that occurred in 2018 in Venezuela (23,047)³⁹ and Colombia (12,458)⁴⁰ added together.

From 2006 to 2017, there were 211,926 criminal proceedings for intentional homicide. One file comprises almost exclusively the report and certain insubstantial bureaucratic formalities. There are practically no proceedings with relevant investigation activities, apart from cases identified by the media or that concern political interests, and even these usually suffer from fabrication in the investigations, irregularities or institutional resistance to investigations.

The federal prosecution agents filed charges in only 16% of the investigations for homicides that were opened between 2009 and July 2015.⁴¹ Between 87.5%⁴² and 95%⁴³ of intentional homicides have gone unpunished. For his part, the Special Rapporteur for Extrajudicial, Summary or Arbitrary

37. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 24.

38. INEGI, *Preliminary data reveal that, in 2018, 35,964 murders were recorded*, press release 347/2019, July 25, 2019. Available at: <https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2019/EstSegPub/homicidios2018.pdf>

39. El País, *Venezuela becomes the most violent country in Latin America*, December 28, 2018. Available at: https://elpais.com/internacional/2018/12/27/america/1545936541_507318.html

40. RCN Radio, *Homicides in Colombia increased in 2018, says the Public Prosecutor's Office*, January 13, 2019. Available at: <https://www.rcnradio.com/judicial/homicidios-en-colombia-aumentaron-en-2018-dice-fiscalia>

41. Open Justice Society Initiative, *Undeniable atrocities: confronting crimes against humanity in Mexico, executive summary*. Available at: <https://www.justiceinitiative.org/uploads/cd668ecb-d129-428d-b44f-3406129ee696/undeniable-atrocities-execsum-esp-20160602.pdf>, page 4.

42. Impunidad Cero, *Impunity in relation to intentional homicide in Mexico: 2018 report*. Available at: <https://www.impunidadcero.org/uploads/app/articulo/87/contenido/1541455707N85.pdf>

43. Animal Político, *Killing in Mexico: Impunity guaranteed*, graphs. Available at: <https://www.animalpolitico.com/muertos-mexico-homicidios-impunidad/graficos.php>

Executions stated his concern that only 1% to 2% of the offences give rise to convictions⁴⁴. Furthermore, the record shows only 48 convictions and 18 acquittals for the crime of intentional homicide committed by public servants⁴⁵.

c) Torture⁴⁶

According to the FGR, from 2006 to 2018, a total of 10,787 criminal investigations have been started,⁴⁷ of which almost 5 thousand are still being processed.⁴⁸ In an official survey conducted of 64 thousand people in prison, 64% said that they had suffered physical violence when they were arrested, 36% that they had been choked, asphyxiated or submerged in water and 19% that they had received electric shocks.⁴⁹

The Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment stated in his 2014 report that torture in Mexico is a general practice and he expressed his concern on knowing that the CNDH had received 11,608 complaints about torture and poor treatment between 2006 and April 2014, for which there were only five convictions between 2005 and 2013 and only two of these were final.⁵⁰

According to government figures, between 2006 and 2014, 1884 federal investigations were conducted into torture with only 12 charges and 6 convictions. In the state jurisdiction (local level) exist 7 convictions in the 2007-2012 period and, in the military justice system, 15 investigations, without convictions.⁵¹ Recently, the Federal Judicial Council reported that, from 2006 to 2018, only 34 convictions and 15 acquittals were handed down⁵². This means that, in only 1 of every 300 investigations that had been started, was a conviction obtained. In 2019, there was just only one conviction in the FGR.⁵³

At the present time, because of the militarised public security strategy, there are 62,954 soldiers deployed in the country⁵⁴. The Department of National Defence (SEDENA) has been involved in 4,495 confrontations from 2006 to 2018⁵⁵. The Army death rate year after year from 2007 (1.6 civilians dead for each civilian injured) to 2012 (14.7 civilians dead for each civilian injured). This means that, for each civilian injured in a confrontation, there were nearly 15 civilians dead⁵⁶. The CNDH has

44. General Assembly of the UN, *Report of the Special Rapporteur for Extrajudicial, Summary or Arbitrary Executions, Mission to Mexico*, April 28, 2014. Available at:

<https://www.acnur.org/fileadmin/Documentos/BDL/2015/9931.pdf>, paragraph 11.

45. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 25.

46. As a result of the work and advocacy of civil society organizations, the publication of the General Law to Prevent, Investigate and Punish Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was achieved in June 2017. The law provides for the right to offer independent expert opinions based on the Istanbul Protocol; however, the prosecutors continue to deny or hinder the exercise of this right. Proof of this is that IDHEAS has had to litigate cases such as that of Nancy Saavedra, where a District Judge granted her protection by recognizing Nancy's right "to undergo a psychological medical evaluation by independent experts outside the Prosecutor's Office, since, to consider the opposite transgress the right to prompt and expeditious justice". Statement on the ruling available at: <https://www.idheas.org.mx/wp-content/uploads/2019/05/nancy-saavedra-2.pdf>

47. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 17.

48. UN Committee Against Torture, *Final observations on the seventh periodic report of Mexico, approved at its 66th session period*. Available at: https://www.hchr.org.mx/images/doc_pub/CAT_C_MEX_CO_7_34944_S.pdf, paragraph 25.

49. Human Rights Watch, *2018 World Report, Mexico Chapter*. Available at: <https://www.hrw.org/es/world-report/2019/country-chapters/326034>

50. UN Commission on Human Rights, *Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment, Mission to Mexico*, visit in April and May 2014. Available at: <https://revistas.juridicas.unam.mx/index.php/reforma-judicial/article/view/8858/10909>

51. Open Justice Society Initiative, *Undeniable atrocities: confronting crimes against humanity in Mexico*, 2016. Available at: <https://www.justiceinitiative.org/uploads/5d386d17-57aa-4b74-b896-43883af55574/undeniable-atrocities-esp-2nd-edition.pdf>, page 47.

52. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 19.

53. FGR-FEMDH. *Annual Activity Report, 2019*. Página 17.

54. *Ibid*, page 6.

55. *Ibid*, page 9.

56. Gutiérrez, Rodrigo, *et. al, Death rate. Fewer confrontations, greater impenetrability*, Nexos, 1 July 2015. Available at: <https://www.nexos.com.mx/?p=25468#ftn2>

revealed that there are 5,711 complaints against the SEDENA and against the Navy Department (SEMAR) for torture and cruel, inhuman and/or degrading treatment⁵⁷. Of the complaints filed with the CNDH for torture and poor treatment, more than half blame the SEDENA (56%)⁵⁸. For its part, the Prosecutor's Office Specialising in Investigation of the Offence of Torture has reported that there are a total of 2,467 criminal investigations against SEDENA and SEMAR for the offence of torture⁵⁹.

The official figures indicate that, in the 2012-2016 period, 505 civil investigations were commenced against soldiers, more than half (268 files) for torture or offences connected thereto. Of the 505 investigations, there are only 16 convictions, so 96.8% of the cases remain unpunished.⁶⁰

d) Forced displacement

Finally, it is calculated that, up until December 2018, 338,405 people have been victims of forced internal displacement by reason of the aggravated violence in the country.⁶¹

e) Attacks against journalists and human rights defenders

The IACHR has pointed out that "without ignoring that Mexico is going through a serious crisis of violence and security that affects various sectors of the population, violence against journalists has reached alarming levels, has intensified in recent years."⁶²

During the 2012-2018 period, at least 161 defenders and 40 journalists were killed;⁶³ among them, the murder of Miroslava Breach or Javier Valdez. In 2019, Mexico found itself at the level of Syria in murders of journalists and reaffirmed itself as the most dangerous "at peace" country in the world to practice journalism.⁶⁴

The groups of relatives of disappeared persons have also been subjected to threats and attacks for their work in defense of human rights. IDHEAS has accompanied some of these cases before the Mechanism for the Protection of Human Rights Defenders, but there are undoubtedly many challenges for the implementation of effective protection measures that guarantee the life and integrity of victims of human rights defenders.

57. FIDH, IDHEAS, CMDPDH, *op. cit.*, page 10.

58. *Ibid*, page 19.

59. *Ibid*, page 10.

60. WOLA, *Forgotten Justice, The impunity in relation to infringements of human rights committed by soldiers in Mexico*, November 2017. Available at: https://www.wola.org/wp-content/uploads/2017/11/WOLA_MILITARY-CRIMES_RPT_SPANISH.pdf, page 17.

61. CMDPDH, *Episodes of mass forced internal displacement in Mexico*, 2018 report. Available at: <http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-episodios-de-desplazamiento-interno-forzado-en-mexico-informe-2018.pdf>, page 15.

62. IACHR. *Silenced areas: regions of high danger to exercise freedom of expression*. OEA/Ser.L/V/II CIDH/RELE/INF.16/17, March 15, 2017. paragraph. 37. Available at: http://www.oas.org/es/cidh/expresion/docs/publicaciones/ZONAS_SILENCIADAS_ESP.pdf

63. Red TDT, press release *161 human rights defenders killed in six-year term that ends, sowers of hope: Red TDT*, November 29, 2018. Available at: <https://redtdt.org.mx/?p=12409>

64. CNN, *Mexico, at the level of Syria in murders of journalists in 2019, according to Reporters Without Borders report*, December 17, 2019. Available at: <https://cnnespanol.cnn.com/2019/12/17/mexico-al-nivel-de-siria-en-asesinatos-de-periodistas-en-2019-segun-informe-de-reporteros-sin-fronteras/>

2. The inability and unwillingness to prosecute

The lack of capacity and willingness on the part of the Mexican State to investigate crimes against humanity takes the form of habitual obstacles in terms of security and justice which are confronted by tens of thousands of Mexicans tormented by impunity. It is difficult to distinguish the lack of willingness from the lack of capacity because the boundaries between them are blurred and to play a simultaneous crucial role in cases ending in impunity. It is also necessary to note that lack of capacity is usually used in discourse to conceal the absence of will.

According to the World Justice Project in its Rule of Law world ranking, Mexico is in the 99th place of the 126 countries and ranks at 26 of 30 American countries. It is in position 115 of 126 in terms of criminal justice (below the Ivory Coast, the Philippines, Colombia, Uganda and Nigeria) and in position 117 of 126 as regards absence of corruption (surpassed by Colombia, Venezuela, the Ivory Coast, Ukraine and Nigeria) and also in terms of order and security (with worse rankings than the Ivory Coast, Colombia, Honduras, the Philippines and Uganda)⁶⁵. As we can see, the issue of security and justice are red flags in the country.

Here, we must highlight the limited amount of resources made available for justice. The FGR presented a reduction of 1,500 million pesos in the budget in the last year. The Prosecutor's Office Specialising in Investigation of Offences of Forced Disappearance only has a budget of 0.11% of the FGR total and the Specialised Unit for Investigation of the Offence of Torture only has 0.005% of the total FGR budget. This means that, there are 158 pesos to conduct the investigation for each torture investigation file. There are 43 people working for the National Search Commission⁶⁶ and this means that, if they were all in charge of searching each of them would have one thousand disappeared people to search for.⁶⁷

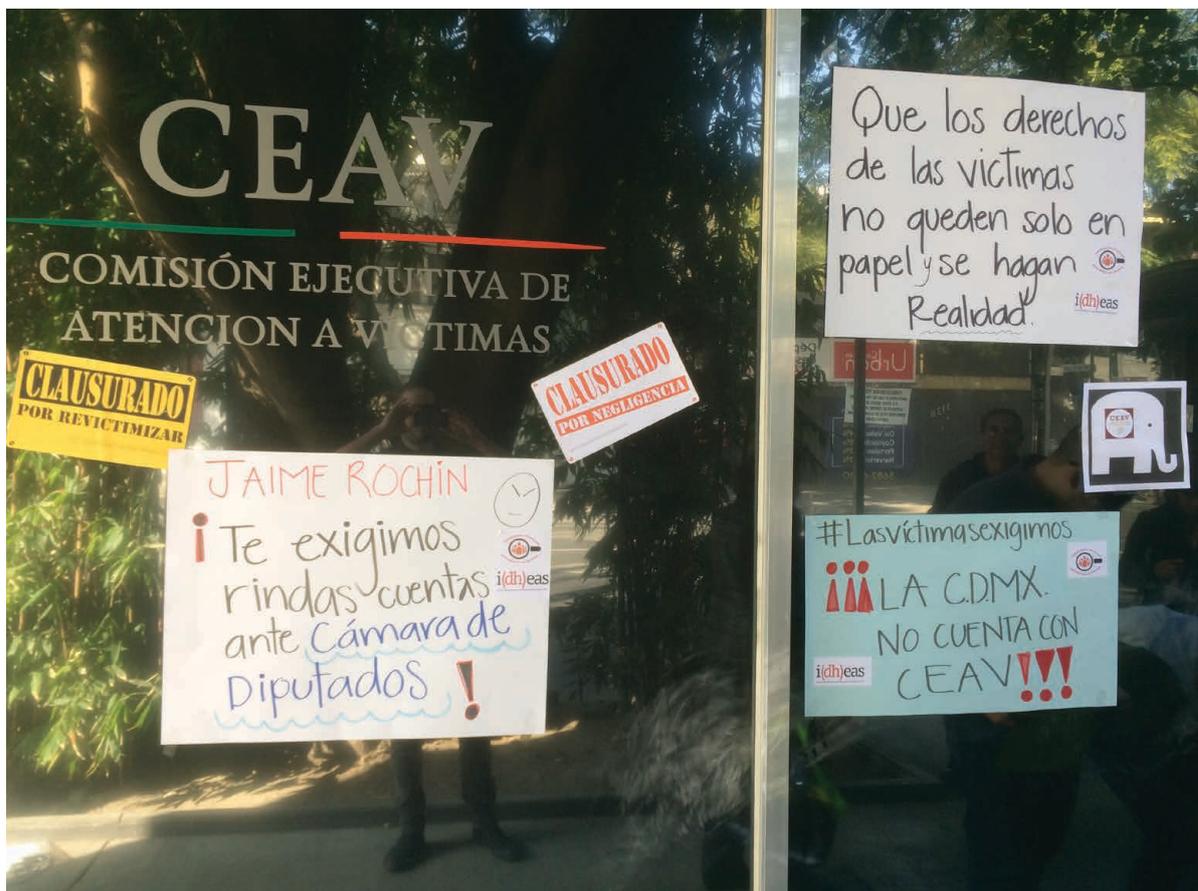
In addition to the above, as has been reported by multiple organisations defending human rights and victim groups, at the present time, the National Commission for Victims has 152 legal advisers and, as of March 2019, a total of 15,927 files. This means that each legal adviser has the impossible task of monitoring an average of 105 cases⁶⁸.

65. World Justice Project, *Rule of Law Index*, 2019. Available at: <https://worldjusticeproject.org/sites/default/files/documents/ROLI-2019-Reduced.pdf>

66. The relevance of the participation of families in the processes of designation of authorities that lead the search and investigation should be highlighted. In the case of the National Search Commission, the appointment of Karla Irasema Quintana Osuna was carried out within the framework of a participatory consultation process ordered in the General Law on Disappearance. It is essential that said process be verified in the appointment of specialized prosecutors and search premises commissions.

67. IDHEAS, Strategic Litigation in Human Rights, *In order to strengthen the budget of the National Search Commission, it is of prime importance to address the disappeared persons humanitarian emergency*, public letter, 23 September 2019. Available at: <https://www.idheas.org.mx/comunicaciones-idheas/noticias-idheas/fortalecer-el-presupuesto-de-la-comision-nacional-de-busqueda-es-fundamental-para-atender-la-emergencia-humanitaria-de-personas-desaparecidas-carta/>

68. Citizen Observatory of Victims' Rights, et. al, *Request for thematic hearing to the 174th session of the IACHR on "The crisis in the area of care for victims of human rights violations in Mexico"*, August 29, 2019. Available at: <https://www.idheas.org.mx/wp-content/uploads/2019/09/audiencia-cidh-ecuador.pdf>



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The insufficient resources applied to this issue reveals a lack of will that results in a lack of capacity on the part of the institutions engaged in providing responses in matters of justice.

As regards the fundamental work of these institutions, we have found numerous obstacles and flaws. Those of us who accompany and fight cases on behalf of civil society have shown for years that, in investigations: There is no method for investigating complex cases or cases relating to macro-criminality (macro-cases), the contextual analysis method is not used in investigations,⁶⁹ the authorities do not acknowledge the existence of crimes against humanity and so they do not apply the proper standards of investigation to clarify events and determine those responsible in cases, nor is there any investigation of the intellectual perpetrators of the offences, the chain of command or the hierarchical superiors. Similarly, there is currently no adequate regulation in the country on the benefits of effective collaboration between defendants, convicts, and witnesses, despite the fact that, in comparative experience, they have been fundamental for truth, justice, and reparation processes for victims.⁷⁰

69. As a clarification, it is necessary to point out that thanks to the demand, the impulse and the contributions of the relatives of disappeared persons and of civil society organizations, the General Law on the Forced Disappearance of Persons, Disappearance committed by Individuals was drafted and of the National System for the Search of Persons, which was published in November 2017. This law establishes a series of competences and relevant obligations for the search and investigation in cases of disappearance of persons and, inter alia, indicates the duty of the committees of search and specialized prosecutors offices to have context analysis units. However, so far, the vast majority of specialized prosecutors' offices and search commissions do not have these units, or, although they exist formally, in reality, context analysis methodologies are not incorporated to identify patterns, modus operandi, practices, victimological analysis or criminal structures. This means that not only do the investigations become fruitless by not incorporating new and proven methodologies, but also that the law has been systematically breached, which shows a weakness of the Rule of Law in Mexico.

70. Although there are some antecedents and benefits regulated in a few laws, it is necessary to generate a broad discussion with the participation of victims and civil society organizations in order to establish regulations according to the urgent need for effective collaboration in time, proportional to benefits, comprehensive, non-cumulative, relative (not exclusive of penalties), with revocable and conditional benefits. This could result in obtaining vital information on the whereabouts of missing persons and essential to achieve the sanction of those most responsible for the crimes.

In this regard, the GIEI of the IACHR, in the case of 43 student teachers who were disappeared from Ayotzinapa, listed and analysed in its second report (mentioned above) the principal problems identified in the investigations of infringements of human rights in Mexico. In this report, it set out the common patterns that, whilst fighting such cases, we have noticed in organisations and people defending human rights: i) the formality and bureaucracy in the Mexican criminal system; ii) the preponderance of witness evidence and confession; iii) failings in taking statements; iv) the dependency of expert services; v) poor ability to analyse evidence; vi) the absence of contextual analysis; vii) failure to investigate all offences and infringements of human rights; viii) the investigation of infringements of human rights under the heading of organised crime; ix) the efficiency of investigations is measured by the number of arrests; x) the fragmentation of proceedings into different sections, proceedings or jurisdictions; xi) failure to observe the right to truth and to information for victims; xii) public communication and leaks by prosecutor's offices regarding investigations; xiii) limitations and obstructions in investigation; xiv) failure to investigate potential liability of hierarchical superiors; xv) the absence of technological resources in the search for disappeared persons; xvi) defects in disinterment, interment and conservation and handing over of skeletal remains; xvii) re-victimisation, criminalisation and failure to provide proper care or attention to victims; xviii) defective medical reports and absence of medical guarantees during detention; and xix) a haughty attitude towards international cooperation.⁷¹

The GIEI was convincing when it concluded that all the barriers existing in investigation –including delay in producing evidence, absence of formalities along other lines of investigation and the bureaucratic insubstantiality applied to conduct investigations and thus condemn them to failure– “cannot be read as simple improvised or partial obstacles. These various situations display not chance but structural barriers to investigation”.⁷²

In addition, civil society have stated as obstacles to investigations the denial and belittling of atrocities, blame placed on victims, resistance to international authorities, concealment of information, absence of a case prioritisation system, torture as a habitual practice, opposition to submission of accounts by the armed forces, judicial proceedings and politicised forensic services, lack of protection for witnesses and insubstantial bureaucratic and symbolic initiatives, such as the creation of authorities and rules or policies. All the above constitutes an authentic policy of impunity.⁷³

Likewise, further evidence of the failure to investigate senior commands for organised crime is that a chaotic operation was recently carried out in the city of Culiacán with a view to the arrest by a special group of the SEDENA of Ovidio Guzmán López, the son of Joaquín Guzmán Loera, the “Chapo Guzmán” (leader of the Sinaloa Cartel). No strategy was devised for this operation and the repercussions were not assessed. It was executed in an untidy and improvised manner. Hours later, Ovidio Guzmán was released. This was after “the wave of violence that was unleashed in Culiacán, which left 13 people dead, and involved 14 armed clashes, 19 blockades, 47 prisoners on the run out of the 55 who escaped from Aguarruto prison, after they were released by the Sinaloa Cartel during the shoot-outs”.⁷⁴

This violent episode is a clear picture of the incapacity and submission of the Mexican State when it comes to confronting organised crime. In contrast, organised crime demonstrated in its reaction territorial control, weapon power and operational, organisational and strategic capacity. Even though this event was highly visible, it simply revealed the daily reality of numerous territories that have been controlled by organised crime for decades, where the State is silent, inefficient and an accessory.

In FIDH, we have observed all this in the cases presented to the International Criminal Court. For example, in Coahuila, in cases in which there are no national investigations or trials against the

71. GIEI, *Ayotzinapa Report II*, April 2016. Available at: <https://centroprodh.org.mx/GIEI/?p=236> pages 577-605.

72. *Ibid*, page 597.

73. Open Justice Society Initiative, *op. cit*.

74. *Animal Político*, *What should have happened? Failings in the arrest of Ovidio Guzmán*, 19 November 2019. Available at: <https://www.animalpolitico.com/2019/11/fallas-operativo-ovidio-guzman-culiacan/>

perpetrators of crimes against humanity, we can state that the respective inactivity of the courts derives from the absence of an adequate legislative framework and also from the lack of political will and judicial capacity.

Furthermore, in cases in which there are national investigations or trials against the perpetrators of crimes against humanity in Coahuila, these are contaminated by a lack of will to really carry out the proceedings with the proper guarantees or they are not directed against the people with the greatest degree of responsibility for the crimes. The following failings have been found:

- a) *National investigations or trials that have been conducted with a view to extracting the accused from his criminal liability:*
 - Manifestly insufficient measures, put into practice by the courts, are adopted to address the refusal of the members of the security corporations to accept that they have been served and to appear to answer charges against them.
 - Evidence is overlooked or insufficient weight is attached to it by classifying acts as crimes of lesser seriousness, thus hindering the investigation.
 - There is constant intimidation of victims, witnesses or court staff so as to avoid the commencement or advancement of investigations or trials [and this] has been a constant factor in cases that involve members of the security corporations as perpetrators.
 - Fabricated evidence is admitted and also manipulated statements or statements that have been extracted by duress in the proceedings.

- b) *National investigations or trials subjected to unjustified delay, since it is alarming to note the number of cases that remain at a standstill for years without being tried, comprising files with hardly any pages and little information or files with thousands of pages that are completely lacking substance and that are padded out with bureaucratic and fruitless formalities; and*

- c) *National investigations or trials conducted by authorities with no independence and impartiality:*
 - in terms of independence, we can mention as a pointer the clear involvement of the State apparatus in the commission of crimes against humanity;
 - in terms of impartiality, it is possible to establish connections between the suspects and the competent authorities in charge of the investigation, the trial or the sentence in respect of crimes against humanity.

3. The past and the present in Mexico: a continuum of impunity in relation to those who bear the greatest responsibility

Just one indicator of the complicity between the government authorities and organised crime is that, in 2017, at least 17 former governors were prisoners, fugitives or under investigation,⁷⁵ 15 of whom governed in 2010 and/or 2011. These figures show that, of the 32 federal entities, half of the governors during that period were accused of offences relating to corruption. The leaders of the federal entities were accused of organise crime, transactions with resources derived from unlawful sources, diversion of resources, embezzlement, money-laundering, fraud, among others. For example, Javier Duarte, former governor of Veracruz State, alone was accused of diverting resources of more than 35 thousand million pesos⁷⁶. Apart from these former governors, 7 former municipal presidents were also in prison and 70 under investigation.

In 2019, the Human Rights Committee of the United Nations Organization condemned the Mexican State for the first time for enforced disappearance in three historical cases: that of Christian Téllez Padilla, Jesús Israel Moreno and Víctor Manuel Guajardo.⁷⁷ In all three cases, the Committee ordered, among other measures of reparation, "to carry out a prompt, effective, and exhaustive investigation, independent and impartial, and transparent on the circumstances of the disappearance."

However, so far there has been no substantial progress in the investigations or in the measures of reparation; on the contrary, the Mexican State has denied the binding nature of the Committee's resolutions in a manifest violation of international human rights law. International justice is the last door to which the victims have been able to go in these serious cases, but they have encountered the lack of will and capacity of the State to comply with the decisions of international organizations.

Likewise, in June 2017, the FIDH together with Mexican civil society organizations presented a communication before the International Criminal Court in which it is stated that between 2009 and 2016 crimes against humanity were committed in Coahuila that are the jurisdiction of the court, such as torture and enforced disappearances.⁷⁸ Both the Allende Massacre -carried out in broad daylight and without the authorities doing anything- and the atrocities committed in the Piedras Negras prison -which was under control and used as a Zetas operation center- show clearly the State of Coahuila as a State co-opted by organized crime.

Finally, another example that shows the co-optation of the State and the lack of will and capacity of the Mexican justice was the arrest of Genaro García Luna in Texas in December 2019 by the United States, head of the Ministry of Public Security in Felipe Calderón's six-year term (2006-2012) for having accepted bribes from the Sinaloa Cartel. The former ambassador of the United States in Mexico declared in May 2020 that "[t]he Mexican government knew as much as we did, if not more, and never took action at the time and therefore I find it a bit naive to blame United States for not taking action."⁷⁹ Who had the duty to investigate organized crime is now accused of working in

75. Milenio, *16 governors prisoners, on trial or fugitives*, 19 April 2017. Available at: <https://www.milenio.com/opinion/joaquin-lopez-doriga/en-privado/16-gobernadores-presos-procesados-o-refugiados>. Roberto Sandoval, the former governor of Nayarit, was added to this list.

76. Vanguardia, 2017, *the year with the most former governors in prison, the majority are from the PRI party*. December 23, 2017. Available at: <https://vanguardia.com.mx/articulo/2017-el-ano-con-mas-ex-gobernadores-en-prision-la-mayoria-son-priistas>

77. IDHEAS, *Press release The Mexican State is responsible for the enforced disappearance of Víctor Manuel Guajardo Rivas: UN*, January 31, 2020. Available at: <https://www.idheas.org.mx/comunicaciones-idheas/sala-de-prensa-idheas/comunicados/el-estado-mexicano-es-responsable-de-la-desaparicion-forzada-de-victor-manuel-guajardo-rivas-comite-de-derechos-humanos-de-la-onu/>

78. FIDH, *Mexico: Murders, disappearances and torture in Coahuila de Zaragoza constitute crimes against humanity*, No. 295e, June 2017. Available at: <https://www.fidh.org/IMG/pdf/rapport-mexique-num-5-3.pdf>

79. Proceso, *"We knew what was happening with Garcia Luna ... but we had to work with him"* Roberta Jacobson. May 2, 2020. Available at: <https://www.proceso.com.mx/628400/conocimos-las-andanzas-de-garcia-luna-pero-debiamos-trabajar-con-el-roberta-jacobson>

his service. And despite the fact that a thorough investigation into this situation had to have been launched for more than ten years, the Mexican justice system did not show the will to prosecute a case of such relevance. This is not the first time that potential perpetrators of serious crimes have been arrested and tried in the United States, not for human rights violations, but for crimes related to corruption or drug trafficking, leaving out all possible access to justice for victims.



RECOMMENDATIONS

That is why, from FIDH and IDHEAS, we have denounced the commission of crimes against humanity and we deeply believe that the opening of a preliminary examination by the International Criminal Court would be a great support to combat impunity in Mexico. Therefore, we urge:

1. To the Mexican State, including the Judiciary, to recognize the existence of crimes against humanity and to act accordingly:
 - a. To analyze the context to recognize patterns and identify chains of command in cases related to the most serious crimes. We recall that the Legislative Power has already ordered the creation of context analysis units in prosecutors specialized in enforced disappearance and disappearance committed by individuals, as well as search commissions. We urge that such units be effectively implemented.
 - b. To refer the situation to the Prosecutor of the International Criminal Court.
 - c. To decisively and effectively combat impunity by strengthening the justice system and intensifying efforts to guarantee the independence and impartiality of the judiciary, as has already been recommended to the Mexican State as a result of the Universal Periodic Review.⁸⁰
2. To the Office of the Prosecutor of the International Criminal Court to open a preliminary examination on Mexico.

The opening of a preliminary examination would facilitate Mexico to take an indispensable turn in the investigation methodology of cases immersed in contexts of structural violence, of widespread and systematic attacks against the civilian population, as well as a space of justice for victims of crimes against humanity committed in Mexico.

80. UN Human Rights Council, Report of the Working Group on the Universal Periodic Review on Mexico, A/HRC/40/8, 40th session from February 25 to March 22, 2019. See the recommendations of the 12 countries that made reference to the problem of impunity that operates in Mexico (Austria, Canada, Costa Rica, Denmark, Finland, Italy, Kazakhstan, Lithuania, the Netherlands, Norway, Slovenia, Switzerland). Available in: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/447/02/PDF/G1844702.pdf?OpenElement>



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We are a civil society organization that, through strategic litigation on human rights and legal support for victims of serious human rights violations (torture, enforced disappearances and extrajudicial executions), seeks to produce normative, procedural and behavioral changes within the State institutions to combat impunity and protect victims and/or their families.

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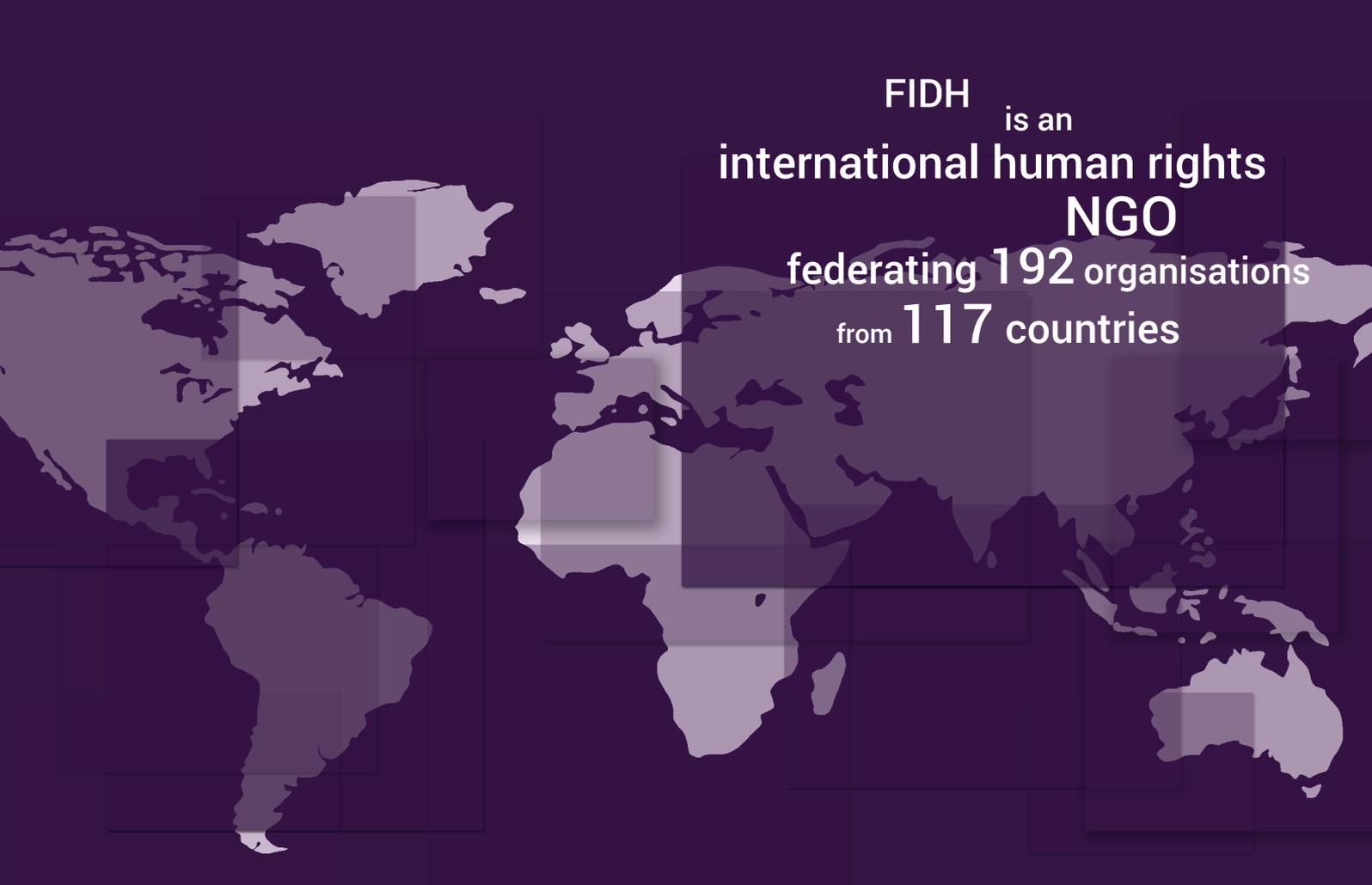
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