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OVERLOOKING JUSTICE

Human Rights Violations Committed by Mexican Soldiers against Civilians are Met with Impunity

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GLOSSARY

ACRONYMS

AFADEM	Association of Families of the Detained and Disappeared and Victims of Human Rights Violations in Mexico (<i>Asociación de Familiares de Detenidos-Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México</i>)
CEJIL	Center for Justice and International Law
Centro Prodh	Miguel Agustín Pro Juárez Human Rights Center (<i>Centro de Derechos Humanos Miguel Agustín Pro Juárez</i>)
CINE	Specialized Infantry Platoon of the Army (<i>Compañía de Infantería No Encuadrada</i>)
CJM	Military Code of Justice (<i>Código de Justicia Militar</i>)
CMDPDH	Mexican Commission for the Defense and Promotion of Human Rights (<i>Comisión Mexicana de Defensa y Promoción de los Derechos Humanos</i>)
CMPP	Military Code of Criminal Procedures (<i>Código Militar de Procedimientos Penales</i>)
CNDH	National Human Rights Commission (<i>Comisión Nacional de los Derechos Humanos</i>)
CPF	Federal Criminal Code (<i>Código Penal Federal</i>)
DOF	Federal Official Gazette (<i>Diario Oficial de la Federación</i>)
FGJM	General Fiscalía of Military Justice (<i>Fiscalía General de Justicia Militar</i>)
FMF	Foreign Military Financing
GIEI	Interdisciplinary Group of Independent Experts (<i>Grupo Interdisciplinario de Expertos Independientes</i>)
IACFP	Inter-American Convention on the Forced Disappearance of Persons
IACHR	Inter-American Commission on Human Rights
IMET	International Military Education and Training
Inter-American Court	Inter-American Court of Human Rights
PGR	Attorney General's Office (<i>Procuraduría General de la República</i>)
PJF	Federal Judiciary (<i>Poder Judicial de la Federación</i>)
SCJN	Supreme Court of Justice (<i>Suprema Corte de Justicia de la Nación</i>)
SEDENA	Ministry of National Defense (<i>Secretaría de la Defensa Nacional</i>)
SEGOB	Ministry of the Interior (<i>Secretaría de Gobernación</i>)
SEMAR	Ministry of the Navy (<i>Secretaría de Marina</i>)
SFOPS	State, Foreign Operations, and Related Programs
Tlachinollan	Tlachinollan Human Rights Center (<i>Centro de Derechos Humanos de la Montaña Tlachinollan</i>)
UN	United Nations
UN Rapporteur on Torture	UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
WGEID	United Nations' Working Group on Enforced or Involuntary Disappearances

DEFINITIONS

CRIMES AND/OR HUMAN RIGHTS VIOLATIONS

Are defined in this report as the federal crimes set forth in the Federal Criminal Code and other civilian laws that can be considered human rights violations such as torture, enforced disappearances, and extrajudicial killings. While military officials still have authority to investigate and prosecute soldiers for military crimes (for instance, crimes against the external and internal security of the State, the existence and security of the Army, military duties and respect, military honor, or military justice) and for human rights violations committed by one soldier against another, this report does not address military investigations.

CIVILIAN INVESTIGATIONS

Are defined here as criminal investigations into crimes and human rights violations committed by soldiers that are carried out by civilian authorities (as opposed to military authorities). This report focuses on the PGR's investigations and federal trials of soldiers in the Federal Judiciary. (The PGR is in charge of investigating federal crimes in Mexico.)

SOLDIERS

Are defined here as members of the Mexican Armed Forces, whether they pertain to SEDENA or SEMAR. When necessary, the specific institution is identified.

KEY FINDINGS

- **THE 2014 REFORMS TO MEXICO'S MILITARY CODE OF JUSTICE (CÓDIGO DE JUSTICIA MILITAR, CJM) THAT ALLOW CIVILIAN AUTHORITIES TO INVESTIGATE SOLDIERS IMPLICATED IN CRIMES AND HUMAN RIGHTS VIOLATIONS HAVE NOT BEEN FULLY IMPLEMENTED.** While there are some civilian investigations into these cases, these are isolated instances in which authorities have not shown the political will to deliver justice. Additional reforms to the CJM must be passed to ensure serious and successful civilian investigations.
- **VIRTUALLY ALL OF THE ATTORNEY GENERAL'S OFFICE'S (PROCURADURÍA GENERAL DE LA REPÚBLICA, PGR) INVESTIGATIONS INTO HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS REMAIN UNRESOLVED.** According to official figures, between 2012 and 2016, the PGR launched 505 criminal investigations into crimes and human rights violations committed by soldiers against civilians. The majority of these investigations are for human rights violations, with torture (or crimes related to torture) and enforced disappearances being the most recurrent. In the same time frame (2012-2016), there is evidence of only 16 convictions of soldiers in the civilian justice system. Thus, within those four years, the PGR's success rate in prosecuting soldiers was 3.2 percent.
- **THERE ARE AT LEAST THREE PRACTICES RELATED TO MILITARY AUTHORITIES THAT OBSTRUCT OR DELAY CIVILIAN INVESTIGATIONS:** 1) when military and civilian authorities carry out separate investigations into the same case, 2) when military officials limit civilian authorities' access to testimony from accused soldiers or soldiers who are witnesses in investigations, and 3) when soldiers tamper with crime scenes or give false testimony.
- **THE PGR HAS NOT SHOWN THE POLITICAL WILL TO UNDERTAKE SERIOUS AND THOROUGH INVESTIGATIONS OF SOLDIERS WHO HAVE COMMITTED CRIMES OR HUMAN RIGHTS VIOLATIONS AGAINST CIVILIANS.** The PGR's investigations are slow and often lack sufficient evidence to bring strong cases to court. In some cases, it has taken the PGR more than three years to bring soldiers to trial. In others, six years have passed before obtaining a conviction in lower courts.

KEY FINDINGS

- **THE PGR FALLS SHORT IN INVESTIGATING THE CHAIN OF COMMAND IN CASES OF CRIMES AND HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS, AS WELL AS THE MILITARY ORDERS INVOLVED IN SUCH CASES.** This report only identifies two convictions of chain of command responsibility: the conviction of a lieutenant colonel for his liability as a superior in a 2009 enforced disappearance case in the state of Chihuahua, and the conviction of an infantry second lieutenant for the enforced disappearance of a civilian in the state of Nuevo León in 2012.
- **FEDERAL JUDGES HAVE ORDERED THE SEARCH FOR VICTIMS DISAPPEARED BY SOLDIERS IN MILITARY FACILITIES AND HAVE ORDERED SERIOUS AND THOROUGH INVESTIGATIONS OF SOLDIERS.** These decisions could help to improve the results of the PGR's investigations. Conversely, other judicial decisions have hindered civilian investigations of soldiers implicated in crimes and human rights violations.

INTRODUCTION

This report analyzes the crimes and human rights violations committed by Mexican soldiers that have been investigated and punished by the civilian justice system, as well as the cases that remain unpunished.

For over ten years, rather than prioritizing justice, Mexico's public security strategy and efforts to combat organized crime have focused largely on using force through the deployment of soldiers into Mexican streets. Efforts to strengthen civilian institutions such as the police and the Attorney General's Office have taken a back seat to this militarized approach. During the early years of its security cooperation with Mexico through the framework of the Merida Initiative, the United States supported this strategy by allocating a significant amount of funds to Mexico's armed forces.

The militarization of public security in Mexico has had at least three grave consequences: violence has increased in the country while human rights violations persist, the urgency and pressure to pass reforms to strengthen the civilian police force has decreased, and accountability has been virtually nonexistent. Soldiers who commit crimes and human rights violations, public officials who request the deployment of soldiers into states or municipalities, and politicians who have failed to undertake serious efforts to improve the civilian police force in Mexico are rarely held accountable.

This militarized public security model has negatively impacted Mexico's criminal justice system. The civilian justice system faces challenges—including military authorities' actions resulting in the obstruction or delay of investigations—which limit civilian authorities' ability to sanction soldiers implicated in crimes and human rights violations.

Civilian investigations are the only way to find truth and justice for victims of crimes and human rights violations committed by soldiers. Therefore, Mexican authorities' top priority should be to strengthen the civilian justice system. Currently the opposite is the case in Mexico, as there is an alarming threat of passing laws—including a Law on Internal Security (*Ley de Seguridad Interior*) that would expand and normalize the militarization of public security—that would weaken the civilian justice system and other reforms that would represent a setback for the adversarial judicial system.

This report establishes a pathway for strengthening the civilian justice system and improving investigations of soldiers. The first section explains reforms to military jurisdiction in Mexico. The report then analyzes official data and discusses obstacles to investigating soldiers in the civilian justice system, as well as the failure to investigate the chain of command in these cases. The final section provides recommendations and emphasizes that if authorities demonstrate political will they can carry out efficient civilian investigations of soldiers implicated in human rights violations and put an end to the impunity that persists in these cases.

METHODOLOGY

This report is the result of eleven months of research on crimes and human rights violations committed by soldiers in Mexico, focusing specifically on civilian investigations carried out between 2012 and 2016. This research includes unique information on investigations and trials of soldiers.

This document is based on three main sources: 1) interviews with human rights organizations and lawyers who represent or have represented victims of military abuses before national and regional courts, as well as with federal authorities in Mexico in charge of investigating soldiers implicated in human rights violations, 2) over 15 right-to-information requests that provided access to in-depth information, including the public version of nine convictions of soldiers for human rights violations investigated in the civilian justice system between 2012 and 2017,¹ and 3) collaboration with the journalists Daniela Rea, Mónica González, and Pablo Ferri, who created “Chain of Command” (available at <http://cadenademando.org>).

“Chain of Command” is an investigative journalism project based on interviews with soldiers and testimonies and data that address an aspect of violence in Mexico that regularly goes unnoticed: the stories of the soldiers that receive and follow orders to enforce a militarized security model, how soldiers experience confrontations, and what obedience, “the enemy”, orders, and the chain of command mean for them. This report includes excerpts from interviews with six soldiers involved in confrontations between 2006 and 2014, resulting in the prosecution of five of them for homicide, as well as information on an extrajudicial killing case from 2011 that resulted in the conviction of several soldiers.

The authors requested an interview with the Ministry of National Defense (*Secretaría de la Defensa Nacional*, SEDENA) for this report, but the request was declined.² The authors were then referred to the Ministry of the Interior (*Secretaría de Gobernación*, SEGOB), but the SEGOB did not respond to our information requests.

This report includes official data on civilian investigations, trials, and sentences of soldiers between 2012 and 2016. These figures were obtained through right-to-information requests to the Attorney General’s Office (*Procuraduría General de la República*, PGR), SEDENA, the Ministry of the Navy (*Secretaría de Marina*, SEMAR) and the Federal Judiciary (*Poder Judicial de la Federación*, PJF). The report focuses on the period between 2012 and 2016 because in 2012 civilian authorities began to investigate soldiers following several sentences issued by the Supreme Court of Justice (*Suprema Corte de Justicia de la Nación*, SCJN), in 2014 reforms to the Military Code of Justice (*Código de Justicia Militar*, CJM) were passed that ended military jurisdiction over abuses against civilians, and we ended our analysis of data in 2016 in order to examine the numbers for full calendar years.

Thus, this research is based on interviews, testimonies, official data on crimes, legal analysis of sentences and other legal documents (such as constitutional sentences—*sentencias de amparo*—and cases under investigation), as well as right-to-information requests and media reports in order to analyze how civilian authorities investigate soldiers and what aspects of these investigations require improvement.

FROM MILITARY JURISDICTION TO CIVILIAN JUSTICE

For decades, Mexican soldiers have participated in public security tasks, operations to combat organized crime, and efforts to repress social dissent. During Mexico's so-called "Dirty War" in the 1960s and 1970s³ and in the government's response to the Zapatista Army of National Liberation (EZLN) uprising in the state of Chiapas in 1994, law enforcement—including Mexican soldiers—participated in "systematic campaigns of violence against progressive social movements."⁴

Moreover, since the early years of the governments of the Institutional Revolutionary Party (*Partido Revolucionario Institucional*, PRI), soldiers have participated in operations to combat organized crime and drug trafficking, as well as in intelligence operations and the eradication of drug crop production.⁵ Since then-President Felipe Calderón's administration, starting in 2006, soldiers have played a central role in operations to combat organized crime, including operations to "take out" (kill)⁶ leaders of criminal groups.⁷

The presence of soldiers in Mexican streets has resulted in crimes and human rights violations against civilians, many of which have gone unpunished. At least since 1998, regional and international human rights bodies have recommended that Mexico withdraw soldiers from the streets, improve the civilian police, and ensure accountability for military abuses.

In the Inter-American Commission on Human Rights' (IACHR) 1998 report on the human rights situation in Mexico, the Commission issued recommendations urging Mexico to maintain soldiers in a role appropriate for their training and to revise how soldiers "confront the surge of dissident armed groups."⁸ In 1999, the United Nations (UN) Special Rapporteur on extrajudicial, summary, or arbitrary executions expressed her concern for the lack of independence of the military justice system in investigating soldiers.⁹ Several UN mechanisms, including the Special Rapporteur on Torture¹⁰ and the Working Group on Enforced or Involuntary Disappearances (WGEID), have highlighted the troubling relationship between military jurisdiction and impunity.¹¹ In 2015, the IACHR's Interdisciplinary Group of Independent Experts (*Grupo Interdisciplinario de Expertos Independientes*, GIEI), which provided technical assistance to the Mexican government in its investigation into the enforced disappearance of the 43 Ayotzinapa students, recommended the creation of a civilian oversight mechanism for law enforcement, including soldiers.¹²

This report identifies four key moments in Mexico that led to the end of military jurisdiction and that prompted the beginning of civilian investigations of soldiers.

FOUR KEY MOMENTS REGARDING MEXICO'S MILITARY JURISDICTION REFORMS

Judgments made by the Inter-American Court on Human Rights (Inter-American Court)—2009 and 2010

At least since the 1960s and 1970s (during the “Dirty War”), Mexican civil society groups have documented crimes and human rights violations committed by soldiers against civilians. There is no evidence that perpetrators of such abuses have responded for their actions.¹³

The enforced disappearance of activist Rosendo Radilla in the state of Guerrero on August 25, 1974 is a paradigmatic example of this lack of accountability. Rosendo Radilla disappeared after soldiers detained him and took him to military barracks. His family reported the disappearance, which was investigated within the military justice system, but the case never moved forward. To date, his whereabouts remain unknown and his perpetrators have not been held accountable.

The lack of results in the investigation 27 years after his disappearance prompted Rosendo's family to take the case before the Inter-American Human Rights System. In 2001, Rosendo's family and two human rights organizations—the Mexican Commission for the Defense and Promotion of Human Rights (*Comisión Mexicana de Defensa y Promoción de los Derechos Humanos*, CMDPDH) and the Association of Families of the Detained and Disappeared and Victims of Human Rights Violations in Mexico (*Asociación de Familiares de Detenidos-Desaparecidos y Víctimas de Violaciones a los Derechos Humanos en México*, AFADEM)—filed a petition to the IACHR. Because of Mexico's failure to properly respond to the IACHR's recommendations, the Commission brought the

case before the Inter-American Court in 2008. On November 23, 2009,¹⁴ the Court issued a sentence ruling the following:

INVESTIGATING UNDER MILITARY JURISDICTION

Military jurisdiction should not apply to human rights violations against civilians, as this subjects them to the military's system and violates the principles of exceptionality and restriction that should characterize military jurisdiction.

VICTIMS' RIGHTS

Victims of crimes and human rights violations committed by soldiers have the right to a civilian investigation into these abuses. Civilian investigations should allow victims to enforce their right to truth and justice and to obtain redress for the violation of their rights.

MEXICO'S LEGAL FRAMEWORK ON MILITARY JURISDICTION

Article 57, section II, a) of the Military Code of Justice that permits military authorities to investigate soldiers implicated in human rights violations against civilians should be amended to give civilian authorities jurisdiction over these cases.

Furthermore, Mexico's reservation to article IX of the Inter-American Convention on Forced

Disappearance of Persons (IACFDP) allowing that soldiers be tried in military jurisdiction for enforced disappearance cases is invalid (Mexico withdrew this reservation in 2014).

In 2010, the Inter-American Court issued three other sentences against Mexico¹⁵ for cases related to military jurisdiction:

THE CASE OF INÉS FERNÁNDEZ ORTEGA (SENTENCE ISSUED ON AUGUST 30, 2010)¹⁶

In 2002, soldiers broke into Inés' house, tortured and raped her, and forced her to provide information on a case they were investigating. The military investigations into these abuses went on for **eight years** but the soldiers involved were never punished. Therefore, Inés—with the support of the Tlachinollan Human Rights Center (*Centro de Derechos Humanos de la Montaña Tlachinollan*, Tlachinollan) and the Center for Justice and International Law (CEJIL)—filed a petition to the IACHR in 2003, which brought the case before the Inter-American Court. On August 30, 2010, the Court issued a sentence against Mexico for the lack of investigation into the case, the failure to hold perpetrators accountable, and the violation of Inés' human rights.

THE CASE OF VALENTINA ROSENDO CANTÚ (SENTENCE ISSUED ON AUGUST 31, 2010)¹⁷

In 2002, a group of soldiers threatened, raped, and tortured Valentina Rosendo in an attempt to force her to provide information on a detainee and other individuals they were investigating. Military authorities exonerated the soldiers implicated in the attacks and transferred the case to the civilian justice system, where the case stalled for **seven**

years. Because of this, Valentina—along with Tlachinollan and CEJIL—filed a petition to the IACHR in 2003, which brought the case before the Inter-American Court. On August 31, 2010, the Court issued a sentence against Mexico for the violation of Valentina Rosendo's human rights, the lack of due diligence in the investigations into the case (which were carried out primarily under military jurisdiction), and the fact that perpetrators were not held accountable.

THE CASE OF TEODORO CABRERA GARCÍA AND RODOLFO MONTIEL FLORES (SENTENCE ISSUED ON NOVEMBER 26, 2010)¹⁸

In 1999, approximately 40 soldiers belonging to the 40th Infantry Platoon of the Army stormed into a community during a counter-drug operation, killing a bystander and detaining environmental activists Teodoro Cabrera García and Rodolfo Montiel Flores. Soldiers took them to military barracks and subjected them to cruel and degrading treatment. Then, they brought Teodoro and Rodolfo before civilian authorities, who convicted them for charges of drug production and arms possession. Both Teodoro and Rodolfo denounced the torture they suffered while detained, but military courts exonerated the soldiers involved.

In November 2001, then-President Vicente Fox pardoned Teodoro and Rodolfo for “humanitarian reasons” and released them from prison. In 2004, with the support of the Miguel Agustín Pro Juárez Human Rights Center (*Centro de Derechos Humanos Miguel Agustín Pro Juárez*, Centro Prodh) and CEJIL, the IACHR took on their case and later brought it before the Inter-American Court in 2009. The Court ruled that Teodoro and Rodolfo had been arbitrarily detained and

subjected to cruel and degrading treatment and that Mexico had failed to investigate and sanction

those responsible for the crimes, or to investigate the torture allegations in the case.

The case of Bonfilio Rubio and judicial precedents of the Supreme Court of Justice (SCJN) on military jurisdiction—2011 and 2012

In 2011 and 2012, Mexico's Federal Judiciary issued relevant judicial decisions regarding military jurisdiction and the domestic application of the Inter-American Court's sentences, driving debates in Congress about the need to reform the Military Code of Justice:

THE CASE OF BONFILIO RUBIO VILLEGAS, CONSTITUTIONAL TRIAL (JUICIO DE AMPARO)—614/2011

In 2009, soldiers stopped a passenger bus at a checkpoint for a "routine revision". Once the bus pulled away, soldiers opened fire on it, resulting in the killing of Bonfilio Rubio, who was traveling on the bus. Military authorities launched an investigation into the case, but Bonfilio's family and Tlachinollan filed a constitutional complaint (*demanda de amparo*) requesting that the case be transferred from military to civilian jurisdiction. A federal judge issued a landmark decision in the case: it was the first time that a civilian authority (the judge) declared the extension of military jurisdiction in cases that involve civilians to be unconstitutional. The judge ordered the investigation into Bonfilio's killing to be transferred from the military justice system to the civilian

system.¹⁹ In other words, Bonfilio's case was the first national ruling in which article 57 of the CJM was declared unconstitutional during an ongoing investigation.

THE CASE "MISCELLANEOUS 912/2010" ON THE COMPLIANCE OF THE INTER-AMERICAN COURT'S SENTENCE IN THE CASE OF ROSENDO RADILLA—2011

The Supreme Court of Justice analyzed the obligations of federal judges vis-à-vis the Inter-American Court's sentence in the Rosendo Radilla case and incorporated the following aspects of the sentence into the domestic case law: 1) article 57 of the Military Code of Justice was unconstitutional as it extended military jurisdiction to cases of human rights violations involving civilians, and 2) the military justice system lacks the jurisdiction to investigate and try cases of enforced disappearance committed by soldiers on duty.²⁰ Subsequently, the Supreme Court analyzed 10 additional cases—including Bonfilio's case—and it reached the definitive decision that civilian authorities have jurisdiction to investigate soldiers implicated in crimes and human rights violations against civilians.²¹

Reforms to the Military Code of Justice²²—2014

Following the sentences by the Inter-American Court and decisions by the Supreme Court, debates around military jurisdiction reached the Mexican Congress, where the reforms to the Military Code

of Justice finally passed. These reforms entered into force after their publication in the Federal Official Gazette (*Diario Oficial de la Federación*, DOF) on June 13, 2014.

The reforms ensure that civilian authorities investigate human rights violations committed by soldiers against civilians²³ and that perpetrators are held accountable in the civilian justice system, restricting military jurisdiction.

Article 57 of the CJM was reformed to establish that human rights violations committed against civilians do not classify as military crimes and to grant civilian authorities (at both the federal and state levels) jurisdiction to investigate these cases.²⁴ The reforms to article 57 also incorporated the following rights:

THE RIGHT TO A CIVILIAN INVESTIGATION

Civilian authorities must carry out serious and thorough investigations that allow victims to exercise their right to truth and justice.²⁵

The right to a civilian investigation does not just mean that civilian judges issue sentences, but also that the investigation be within civilian jurisdiction. Therefore it is essential that a civilian public prosecutor carry out the first actions in such investigations.²⁶

THE RIGHT TO TRUTH AND JUSTICE

Victims have the right to participate in investigations into their cases, not only to obtain redress but also to execute their right to justice and truth.

These reforms also aimed to give legal certainty to victims and families. Prior to the reforms, although civilian authorities could assert jurisdiction over grave cases involving soldiers, they simply did not exercise this power.²⁷

BOX 1

THE NEGATIVE SIDE OF THE REFORMS TO THE MILITARY CODE OF JUSTICE

The 2014 reforms to the CJM were a positive step forward, but at the time, organizations and victims argued that some issues still needed to be addressed to guarantee successful civilian investigations.²⁸ Three years of implementation of the reforms have shown that article 57, as well as articles 37, 49bis, and 129 (also reformed in 2014) hinder civilian investigations in several ways. For instance, they restrict the civilian attorney general from conducting the first investigative actions and they permit military authorities to exert control in civilian investigations. Other examples include:

- Article 37 allows military authorities to be the first to investigate any crime committed by soldiers, even before informing civilian authorities of a case that falls under their jurisdiction. This results in multiple investigations into the same case being carried out by military and civilian authorities, which delays the PGR's investigations. In other cases, military investigators withhold information from civilian authorities.
- Article 49bis grants the Investigative Military Police (military investigators) responsibility over functions that are fundamental to civilian investigations. These include interviewing and protecting witnesses, ensuring the chain of custody, and preserving crime scenes.

- Article 57 still classifies human rights violations committed by one soldier against another as a military crime (a crime against the military discipline). This means that, for instance, torture cases committed by one soldier against another are still investigated in military jurisdiction.
- Article 129 allows for the imprisonment of soldiers accused of committing crimes and human rights violations against civilians in military prisons, making it difficult for civilian authorities to interview and obtain testimonies for civilian investigations.

The Military Code of Justice requires further reforms, including to the aforementioned articles, to improve civilian investigations.

Mexico's strategy to combat organized crime—2006 to 2017

In 2006, then-President Felipe Calderón dramatically increased the deployment of Mexico's armed forces to combat organized crime as a temporary yet urgent measure.²⁹ As with past efforts to militarize public security in Mexico, Calderón argued that the sheer level of violence perpetrated by criminal groups demanded the presence of soldiers in the streets until federal, state, and municipal police forces could fully assume their public security roles. While President Peña Nieto promised to shift away from this security strategy, he has continued the participation of soldiers in public security tasks and in operations to combat organized crime while doing little to strengthen the civilian police.

Due to the increased deployment of Mexican troops in 2006, civilian investigations of soldiers implicated in crimes and human rights violations became even more important as they became one of the few existing mechanisms to hold soldiers—and those asking for and allowing their presence in the streets—accountable.

The presence of soldiers in the streets cannot serve as a substitution for the development of

civilian police forces. Soldiers and police officers are not interchangeable. Civilian police are trained to combat crime with the trust and cooperation of the people.³⁰ Soldiers are trained to combat the enemy through the use of force and they do not specialize in preventing and investigating crimes or in interacting with the civilian population. Moreover, while four military guidelines or protocols regarding the use of force have been issued since 2009, they are constantly ignored in practice.³¹

Soldiers often commit human rights violations while carrying out public security tasks such as vigilance, counterinsurgency, and combatting organized crime. The cases of Rosendo Radilla, Valentina Rosendo, Inés Fernández, Teodoro Cabrera García, and Rodolfo Montiel Flores exemplify the human rights costs associated with having soldiers present in Mexican communities. In other cases, like the Tlatlaya massacre, soldiers have used lethal force. Even with this evidence, Mexico could approve a Law on Internal Security³² that would essentially validate the continuation of military deployment in the streets.

THE NUMBERS OF IMPUNITY

CIVILIAN INVESTIGATIONS OF SOLDIERS IMPLICATED IN HUMAN RIGHTS VIOLATIONS

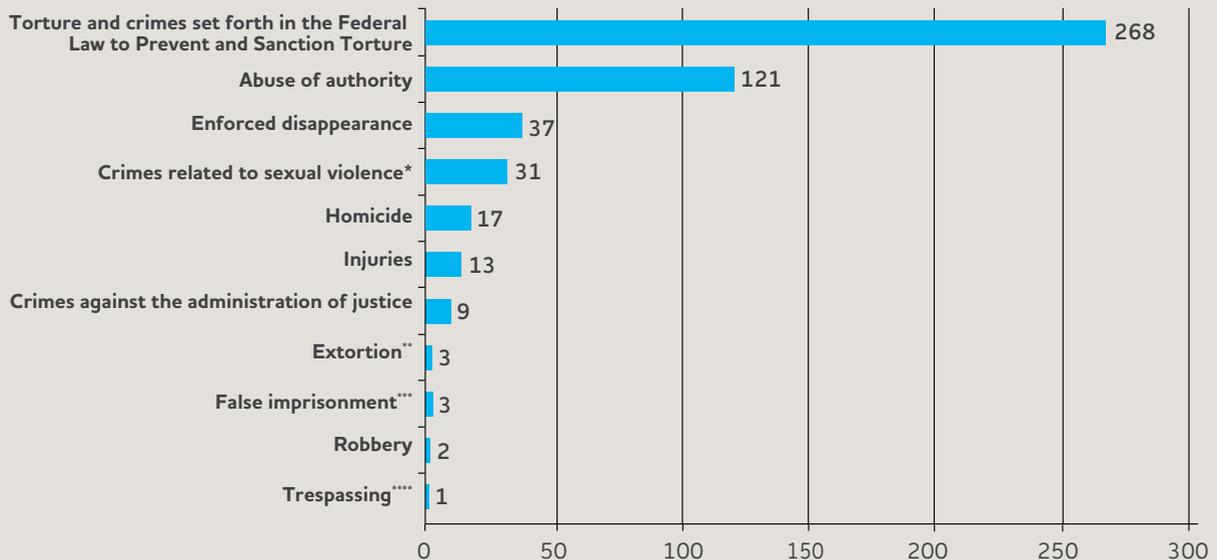
According to official figures, 505 civilian investigations into crimes and human rights violations committed by soldiers were initiated between 2012 and 2016. The PGR's figures do not detail the circumstances under which these crimes occurred, nor do they specify whether or not justice has been served in these cases. The PGR does not keep information on how many of its

own investigations of soldiers end in conviction or acquittal.

Other official figures are inconsistent: while SEDENA reports transferring 1,835 cases to the PGR for investigation between 2012 and June 2016, the PGR has a record of only 84 cases.³³ Similarly, the Federal Judiciary's data show that

FIGURE 1

INVESTIGATIONS INTO CRIMES AND HUMAN RIGHTS VIOLATIONS COMMITTED BY SOLDIERS, OFFICIAL FIGURES,³⁴ 2012-2016



* Includes cases of rape, sexual violence and abuse of authority, abuse of authority, torture, homicide and abuse of authority, injuries and rape, sexual abuse, and sexual harassment

** Committed by SEDENA soldiers

*** Committed by SEMAR soldiers

**** Committed by SEMAR soldiers

between 2012 and 2016, SEDENA transferred 829 cases in which it deemed it lacked jurisdiction, but civilian judges only asserted jurisdiction over 314 cases.³⁵

It remains unclear why military authorities transferred these cases directly to federal judges rather than to civilian prosecutors and whether or not the PGR investigated these cases beforehand.

The Federal Judiciary's figures on civilian trials of soldiers are ambiguous. Federal judges reported 357 trials against soldiers in civilian courts between 2012 and 2016, but it is unclear if all of these trials are of soldiers implicated in crimes and human rights violations against civilians or if they also include crimes committed by off-duty soldiers—that is, while the soldiers were acting in their civilian capacity and not as members of the armed forces.³⁶

Despite these limitations, this report is based on official information about civilian investigations of soldiers implicated in crimes and human rights violations. It excludes other information

that authorities provided on the investigations of soldiers for crimes such as organized crime, crimes against public health, transactions involving illegally sourced funds, and related crimes.

As seen in Figure 1, official figures show that torture (or crimes related to torture) and enforced disappearances are the most recurrent human rights violations that soldiers commit.

In regards to the 123 investigations into abuse of authority, it should be noted that there is evidence³⁷ that some cases of torture, enforced disappearance, and extrajudicial killings have incorrectly been classified as “abuse of authority” rather than as human rights violations.³⁸ The Tlatlaya case is an example of this. The legal definition of abuse of authority in the Federal Criminal Code³⁹ permits the misclassification of human rights violations. For instance, the failure to register the detention of an individual, the failure to present a detainee before authorities, or even denying that an individual has been detained falls under the definition of abuse of authority.

CONVICTIONS OF SOLDIERS IN THE CIVILIAN JUSTICE SYSTEM

There is little available information about convictions of soldiers in the civilian justice system for crimes and human rights violations. Such information is not public, and it is fragmented among the hundreds of thousands of cases that the Federal Judiciary tries each year. Obtaining information about convictions of soldiers is a complicated endeavor, demanding great monitoring efforts.

This report identifies 16 convictions of soldiers in the civilian justice system for crimes and human rights violations, and the authors obtained the public version of 12 of them. It is possible that other convictions exist, but authorities did not

report them in their responses to our right-to-information requests.

As seen in Table 1, between 2012 and 2016, the PGR launched 505 criminal investigations into crimes and human rights violations committed by soldiers against civilians. In the same time period, there is evidence of only 16 convictions of soldiers in the civilian justice system. This means that within those four years the PGR's success rate in investigating soldiers was 3.2 percent. It also shows that much still needs to be done to ensure victims' right to truth and justice.

TABLE 1
CONVICTIONS OF SOLDIERS IMPLICATED IN CRIMES AND HUMAN RIGHTS VIOLATIONS AGAINST CIVILIANS,⁴⁰ OFFICIAL FIGURES, 2012-2016

TYPE OF CRIME	NUMBER OF CONVICTIONS
Cover-up of human rights violations and destruction of a corpse*	7
Enforced disappearance	3
Homicide**	3
Injuries and trespassing***	2
Rape	1
TOTAL	16

* Includes convictions for cover-up of first-degree homicide and torture, as well as convictions for the violation of burial laws in the category of destruction of a corpse

** Includes a case of violence against civilians resulting in first-degree homicide, a case of violence against civilians resulting in non-aggravated homicide (*homicidio simple intencional*), and a case of first-degree homicide and crimes against justice committed by a public official in the category of tampering with evidence, prints, or traces of a crime scene

*** Includes a case of injuries and a case of violence against civilians resulting in injuries and trespassing

BOX 2

UNITED STATES COOPERATION AND MILITARY JURISDICTION IN MEXICO

For over two decades, the U.S. government has encouraged, and at times funded, the use of Mexican soldiers in counter-drug operations. As WOLA has noted previously, this assistance supports a concerning and open-ended role of the Mexican armed forces in combatting drug trafficking and organized crime in the country and provides backing to a military that has a record of committing widespread human rights violations with impunity.

In Fiscal Year (FY) 2008, the U.S. and Mexican governments launched a security cooperation agreement called the Merida Initiative. Through this aid package, the United States has provided over US\$2.8 billion in financial assistance to Mexico through the State, Foreign Operations, and Related Programs Appropriations Bill. The first few years of this support focused heavily on military aid. Between FY 2008 and FY 2011, the United States provided nearly US\$429 million in support through the Foreign Military Financing (FMF) account, which was used primarily to deliver aircraft and inspection equipment. Since FY 2012, FMF funding is no longer considered part of the Merida Initiative; however, between FY 2012 and FY 2017, Mexico received an additional US\$36.9 million in assistance for training and equipment under this account. The U.S. has provided more than US\$11 million in aid for military training to Mexico through the International Military Education and Training (IMET) account. Apart from funds administered through the State Department, the Department of Defense (DOD) has provided over US\$521 million in counter-drug assistance to the Mexican military since FY 2008.⁴¹

While the U.S. government has supported the use of the Mexican military in operations to combat drug trafficking and organized crime, in expanding U.S. assistance to Mexico through the Merida Initiative, the U.S. Congress recognized the need for the Mexican government to make progress on human rights in the framework of its security operations and it placed conditions on select U.S. funds. In order for these funds to be released to Mexico, the State Department must submit a report to Congress stating that the Mexican government has met a series of human rights requirements. Although the accounts and amount of the conditioned funds have varied over the years—as have the conditions themselves—these requirements have consistently required the Mexican government to investigate and prosecute military and police personnel who are credibly alleged to have committed human rights violations in the civilian justice system. In FY 2014, the conditions were also linked to changes in Mexican law, stipulating that: “The Government of Mexico is investigating and prosecuting military personnel who are credibly alleged to have committed human rights violations, and is taking the necessary steps to codify this practice into law by reforming Mexico’s Military Code of

Justice in accordance with rulings by Mexico's Supreme Court and the Inter-American Court of Human Rights.”⁴²

The State Department has submitted five reports to Congress affirming progress in Mexico. On one of these occasions, in 2010, the State Department informed Congress of its intention to not release the funds until Mexico made improvements in certain areas, including the “introduction of legislation to reform the Military Code of Justice to limit the crimes that would fall under the jurisdiction of military courts.”⁴³ For the first time in 2015, and again in 2017, the State Department withheld altogether the conditioned funds for FY 2014 and FY 2017 based on its assessment that the conditions had not been met, largely because grave human rights violations—including the Ayotzinapa and Tlatlaya cases—remained unpunished.⁴⁴



The mother of Adán Abraján de la Cruz, one of the 43 students from Ayotzinapa that were forcefully disappeared by Mexican security forces on September 26, 2014

OBSTACLES TO CIVILIAN INVESTIGATIONS AND TRIALS OF SOLDIERS

This report identifies two different types of obstacles to civilian investigations of soldiers: those within the civilian justice system and those related to military authorities.

THE FIRST OBSTACLE TO JUSTICE IS THE MERE PRESENCE OF SOLDIERS IN MEXICAN STREETS

Applying soldiers' military training to public security tasks has grave consequences. In an extrajudicial killing case analyzed for this report, the soldiers implicated were carrying out the functions of the police from the state of Nuevo León's Ministry of Public Security when they killed the victim. In the trial of this case—where soldiers were also accused of tampering with the crime scene—the soldiers argued that they lacked the training necessary to carry out public security functions.

In another case involving the extrajudicial killing of two civilians in Nuevo León, soldiers shooting at alleged criminals accidentally shot two victims driving in the same direction as the suspects. While the judge found the soldiers guilty of killing the victims, he also considered that when soldiers are deployed in the streets, they can “hunt down civilians but not kill them” and that, in this case, soldiers had not acted consciously nor did they have the time to determine whether or not the victims were members of a criminal organization before shooting them. Ultimately, the judge

decided that the killing of the two civilian victims had not been grave or intentional.

AUTHORITIES' FAILURE TO CONDUCT SERIOUS AND THOROUGH INVESTIGATIONS AND TRIALS IS ANOTHER OBSTACLE

In some cases, it has taken the PGR more than three years to bring soldiers to trial (that is, to indict them). In other cases it has taken the PGR six years to obtain a conviction in lower courts, showing that trials in federal courts move very slowly. In some cases analyzed for this report, the PGR has failed to collect the evidence necessary to bring strong cases before judges; in others, much of the evidence comes from military, rather than civilian, investigations.

YET ANOTHER OBSTACLE IS THAT SOLDIERS' TESTIMONIES ARE OFTEN GATHERED BY MILITARY AUTHORITIES AND THEN USED FOR CIVILIAN INVESTIGATIONS

In some cases, civilian judges have found that these testimonies do not meet the requirements of civilian laws, or that the soldiers' accounts are inconsistent. In one case analyzed for this report, a federal judge doubted the authenticity of the testimonies soldiers gave to military authorities because they were too similar to one another. In another case, a judge had reason to believe that

the testimonies had been modified to protect a fellow soldier or commander, or to avoid self-incrimination. Oftentimes, civilian authorities struggle to ensure that soldiers appear before the PGR or civilian judges to testify. The practice of keeping soldiers who are witnesses or who are accused in civilian investigations in military barracks contributes to these challenges.

Finally, we found cases where soldiers who have been detained and imprisoned in military facilities have reported being tortured by other soldiers in order to obtain forced confessions. When civilian judges receive these cases, they have failed to ensure that evidence obtained through torture is excluded from the investigations.

BOX 3

GOOD PRACTICES: MAKING PROGRESS IN INVESTIGATIONS OF SOLDIERS

Two situations stood out during this research as “good practices” driving progress in investigations and contributing to the conviction of soldiers:

- **THE TESTIMONIES OF VICTIMS, FAMILIES, WITNESSES, AND SOLDIERS GATHERED BY CIVILIAN AUTHORITIES:** It is paramount that civilian authorities obtain testimony directly from individuals involved in a case under investigation—whether they be victims or witnesses—and that these individuals are protected throughout the investigation.
- **ALLOWING VICTIMS, FAMILIES, AND THEIR LAWYERS TO PRESENT EVIDENCE IN CIVILIAN INVESTIGATIONS, AS WELL AS ALLOWING THEM TO OVERSEE THE PGR’S PERFORMANCE.** While much still needs to be done to ensure that authorities respect victims’ rights, actions such as filing complaints to Mexico’s National Human Rights Commission (*Comisión Nacional de los Derechos Humanos, CNDH*) for human rights violations committed by soldiers, as well as filing constitutional complaints to search for victims of disappearance in military facilities and to oblige the PGR to conduct serious and thorough investigations of soldiers have made a positive difference.

This report identifies two enforced disappearance cases in which federal judges ordered authorities to search for disappeared victims in military facilities: the enforced disappearance of a civilian on March 5, 2009 in Ojinaga, Chihuahua and the detention and disappearance of a civilian on November 25, 2015 in Guanajuato.⁴⁵ Moreover, in the Tlatlaya case⁴⁶ and in the Guanajuato case, federal judges ordered the PGR to conduct serious, thorough, and diligent investigations into human rights violations committed by soldiers. In another disappearance case, filing a complaint to the CNDH aided in obtaining a conviction against a soldier.

THREE CASES THAT ILLUSTRATE THE OBSTACLES OF CIVILIAN INVESTIGATIONS AGAINST SOLDIERS

The Tlatlaya case: Confrontation between soldiers and civilians on June 30, 2014 in Tlatlaya, State of Mexico. This confrontation resulted in the killing of 22 civilians, including at least 12 that were extrajudicially executed.⁴⁷

In this case, the military and civilian investigations into the killings were held concurrently. Military authorities had access to the crime scene and testimonies of the soldiers before civilian authorities.

In military jurisdiction, six of the seven soldiers under investigation were acquitted of crimes related to military discipline. One was sentenced to a year in prison for “disobedience” and has already served his sentence. During the military investigation, authorities failed to recognize Clara Gómez—witness and survivor of the massacre—as a victim and party to the case, forcing her to file a constitutional complaint to have access to the case file. After she obtained a judicial order allowing her access, she realized that it contained relevant information that had not been shared with civilian authorities.⁴⁸

The Tlatlaya case illustrates that holding military and civilian investigations concurrently delays and obstructs justice. Apart from seriously limiting civilian authorities’ access to information and evidence, military authorities have a lever of control that allows them to quickly carry out investigations, giving the false impression that the military system is more effective than the civilian system in investigating soldiers. This is not so. The Tlatlaya case shows that in military jurisdiction, cases of grave human rights violations also go unchecked or remain unpunished.

In the civilian investigation, three years since the crime occurred, the soldiers implicated have not been held accountable. In October 2015, the four soldiers charged with abuse of authority, improper performance of their duties, and alteration of a crime scene were released. While the PGR succeeded in indicting three soldiers for homicide and altering the crime scene, in May 2016 a federal court ruled that the PGR had not presented sufficient evidence to prove the possible involvement of the soldiers in the killings and sent the case back to the PGR to improve the investigation.⁴⁹ Since then, there has not been meaningful progress in the case.⁵⁰

Civilian authorities failed to keep victims informed on the progress of the case. In fact, Clara Gómez learned about the soldiers’ release through media outlets. This serves as a clear example of how the PGR fails to acknowledge her rights as a victim.

Recently, a federal judge ruled that the PGR was not investigating this case with due diligence, nor in a serious and thorough fashion.⁵¹ Therefore, he ordered the PGR to consolidate the investigation into a single case—as opposed to several dockets and investigations fragmented between different PGR offices—and to keep the victims informed of the actions undertaken in the investigation, specifying the goal of each action and when it will take place.

The Calera case: Enforced disappearance and homicide of seven laborers in Zacatecas on July 7, 2015

This case refers to the enforced disappearance of seven laborers on July 7, 2015 in Calera, Zacatecas. According to public information, their bodies were found days after their disappearance, and at least four of them had been shot point-blank. Their families reported their disappearance and stated that members of the 97th Infantry Platoon of the Army of the Eleventh Military Zone in Guadalupe, Zacatecas broke into the victims' homes during an operation to search for drugs and weapons and took the laborers with them.⁵²

SEDENA began an investigation into the disappearances, implying that military—rather than civilian—authorities were in charge of the first investigative actions. According to public reports, it was only later that civilian authorities were informed of the disappearances. The PGR then started an investigation in the adversarial judicial system of four soldiers for the crimes of enforced disappearance, intentional homicide, and crimes against the administration of justice.⁵³

Throughout the investigation, military authorities have kept the accused soldiers in military custody within military facilities, where the PGR questioned the soldiers with the support of personnel from SEDENA.⁵⁴ This practice impedes the PGR's ability to question soldiers in an independent environment without fear of reprisal, which can delay and obstruct civilian investigations and compromise the impartiality and reliability of soldiers' testimonies.

In October 2016, a civilian judge ordered that the accused soldiers be taken from military prison to civilian courts so that they could hear the crimes they would be indicted for in person.⁵⁵ However, the soldiers filed a constitutional complaint to suspend the judge's order to transfer them to civilian courts for their indictment. This is another example of how the imprisonment of soldiers in military prisons delays the progress of civilian investigations.

The Palmarito case: Confrontation between the military police and alleged gasoline smugglers (“huachicoleros”) on May 3, 2017, resulting in the killing of six civilians and four soldiers⁵⁶

According to Mexican authorities' official version of events, on May 3, 2017, members of the military police were patrolling the town of Palmarito, Puebla when alleged “huachicoleros” attacked them, resulting in the death of six civilians and four soldiers. Days later, on May 10, a video came to light showing a soldier executing a civilian involved in the confrontation, even though the victim had already surrendered and was lying on the ground.

The PGR and the military authorities started an investigation in the adversarial system of the sergeant and the other soldiers involved in these events. The PGR's investigation was for intentional homicide.

The PGR brought the case before a civilian federal judge, who decided there was not sufficient evidence to prove that a crime had occurred or

that the accused sergeant was involved in the incident. The judge decided that the soldier had acted in the context of “a war situation, literally speaking.” This decision shows how some judicial decisions hinder or delay investigations carried out by the PGR.

There have been other challenges hindering progress in the investigation into this case. For instance, the soldiers that testified against the sergeant later claimed that the PGR pressured them to do so. Ultimately, their testimonies were deemed valid.

The PGR appealed the judge’s decision, claiming that it was biased and based on the judge’s sympathy towards the soldier. A higher court revoked the judge’s decision and ordered that the civilian investigation into the case continue because there was enough evidence that the killing of the victim had been the result of lethal and excessive use of force. Furthermore, the victim had been executed despite the fact that he was unarmed, had already surrendered, and had been subdued and did not pose a threat or risk to the soldiers.⁵⁷

It is important to highlight that it is equally important to investigate the killing of the four soldiers that died in this confrontation, as well as the deaths of the 524 soldiers that—according to SEDENA—died between December 1, 2006 and September 1, 2017 during the “Enforcement of the Permanent Campaign against Drug Trafficking and the Compliance of the Federal Law on Weapons and Explosives”.⁵⁸ However, information about these cases is lacking.

BOX 4

MILITARIZING THE INVESTIGATIONS IN THE ADVERSARIAL CRIMINAL JUSTICE SYSTEM

The reforms to Mexico’s criminal justice system require all crimes and human rights violations committed by soldiers after June 18, 2016 to be investigated under the adversarial system. While this new system aims to improve the quality and independence of investigations—including investigations of soldiers—there have been recent attempts to increase the participation of soldiers in this new system, which could end up weakening it. This report highlights two examples:

- **THE ROLE OF SOLDIERS AS “FIRST RESPONDERS” IN THE ADVERSARIAL SYSTEM.** The first responder is the first authority with a public security role present in the place where a crime has occurred. First responders have the obligation to collect crime reports and testimonies, gather and receive evidence, oversee the chain of custody, and detain suspects until a prosecutor arrives to the crime scene.⁵⁹

The presence of soldiers in the streets, particularly in organized crime-related cases, opens the door to normalizing their role as first responders.⁶⁰ However, previous cases demonstrate that soldiers may not be suited to carry out this role, particularly when

they are involved in confrontations with criminal organizations or in human rights violations.

In 32 cases where the CNDH issued recommendations to SEDENA for the violation of the right to life between 2007 and 2014⁶¹—including the Tlatlaya massacre⁶² and the extrajudicial killing of two students in May 2010 in Monterrey, Nuevo León⁶³—soldiers either testified falsely or altered the crime scene, including by planting weapons and drugs at the scene or by moving victims' corpses.

Furthermore, according to official figures, between 2012 and 2016, there have been at least 58 trials of soldiers for obstructing civilian investigations, such as by testifying falsely, issuing false reports, providing false information as witnesses in investigations, reporting situations differently from how they actually occurred, simulating the existence of evidence, covering up the facts, delaying the presentation of a detainee before authorities, and committing crimes against the administration of justice.

- **EXCESSIVE INVESTIGATIVE POWERS IN THE MILITARY ADVERSARIAL SYSTEM.** In May 2016, the Mexican Congress reformed the Military Code of Justice and the Military Code on Criminal Proceedings (*Código Militar de Procedimientos Penales*, CMPP) to implement an adversarial military system.⁶⁴ However, the wording of these codes could be interpreted in a way that would extend military jurisdiction, for instance, by forcing civilians to testify before military authorities or by allowing soldiers to conduct searches in public offices when investigating military crimes.

In June 2016, the CNDH challenged the constitutionality of certain articles of these codes before the Supreme Court, as their wording could promote human rights violations and hinder the CNDH's access to information about military investigations. As of November 2017, the SCJN had not ruled on the merits of this case.⁶⁵

CHAIN OF COMMAND

Civilian authorities do not investigate the chain of command in cases implicating soldiers. In other words, they fail to investigate the military superiors of soldiers accused of committing crimes or human rights violations. This report only identifies two convictions regarding the chain of command: the conviction of a lieutenant colonel for his liability as a superior in an enforced disappearance in the state of Chihuahua in 2009, and the conviction of an infantry second lieutenant for the enforced disappearance of a civilian in the State of Nuevo León in 2012.

The investigation of the chain of command has been lacking in Mexico's civilian justice system for decades. In fact, one of the recommendations of the IACHR's Interdisciplinary Group of Independent Experts (GIEI) to improve criminal investigations in Mexico was to address "the lack of investigation of the potential liability of superior officials."⁶⁶ According to the GIEI, "The command responsibility is fundamental to any investigation of public officials, even more so in cases of grave human rights violations. The chain of command is fundamental in determining any liability of superiors and subordinates."

An example of the lack of investigation into the chain of command is the Tlatlaya case, where there is evidence that the soldiers implicated were enforcing a written order to **"patrol en masse during night hours ... in order to take out (abatir, in Spanish) criminals in the darkness"**⁶⁷ when the killings of civilians happened. To "take out" is a term that the government has used as a synonym for killing in the enforcement of the militarized security strategy. Clara Gómez, a survivor and witness of the massacre, and Centro Prodh submitted evidence so that the PGR could investigate this order. They also requested that the PGR investigate whether or not there are

other similar orders in the Mexican Army, and that three soldiers testify on the matter. It was only in 2016 that the PGR called a soldier to testify, but there were no further investigative actions. Recently, Clara and Centro Prodh obtained a constitutional sentence ordering the PGR to investigate the military order to "take out criminals in the darkness," as well as the chain of command.

There are other cases showing the importance of the chain of command for civilian investigations of soldiers. The team of journalists who created the investigative journalism project "Chain of Command" (<http://cadenademando.org>) interviewed six soldiers—five of which were prosecuted for homicide—that were involved in confrontations between 2006 and 2014. "Chain of Command" makes public the soldiers' valuable testimonies so that Mexican society can learn about how soldiers personally experience the militarized security strategy.



Mexican soldiers patrolling Ciudad Juárez

These testimonies show that the PGR is failing to investigate, besides the chain of command itself, a fundamental aspect of crimes and human rights violations committed by soldiers: the military orders—whether written or verbal—that soldiers receive from their commanders, as well as the context and dynamics in which those orders take place.

One testimony from “Chain of Command” illustrates the dynamic between commanders and subordinates in situations involving the killing of soldiers:

“[Considering] that you, as a soldier in the streets, are already resentful of crime when one of your teammates has been knocked down. Then the commander tells you, ‘No hassle, kill them, I don’t want anything alive, kill them, I will pay the price’—because now that I think about it, I did receive that order in the Army, that I shouldn’t leave them alive, because the dead don’t talk. That was rule number one, the dead don’t talk, they don’t testify. That is rule number one. Oh, but when things go wrong, fuck the lower ranks, fuck the troops. The commander washes his hands...”

Another soldier recalls the orders he has received in situations where a confrontation leads to civilian injuries: “...The commander ... said that it was better to kill them.... Sometimes detaining them is more complicated because you have to take them to the hospital and sometimes the commander told us it’s better to shoot them to avoid the formality...”

Another testimony recalls when soldiers had received authorization to “do whatever they want”: “...Green light means that you have the liberty to do whatever you want without asking for permission or authorization. For instance, by statute, the military convoys (soldiers’ trucks)

cannot take different routes, but with ‘green light’ they can; if you see suspects you can inspect them and shoot them before they shoot, because an armed man is a danger for the soldier...”

There have been cases in which soldiers have been called to court to testify on the detention of civilians who were later released and sought retaliation. The following testimony demonstrates the lack of civilian mechanisms to protect soldiers who are witnesses or victims of crimes: “That was how [military commanders] handled it, because if you bring them [before civilian authorities], they know you because [during the investigations, the authorities] make you confront them face-to-face (*carear*),⁶⁸ but afterwards they are released and seek revenge against you.” These situations led the commander to implement an internal measure: “...If there was a way of avoiding the face-to-face confrontation (*careo*) with a given criminal [during the investigations], well, better not to do it...” Nevertheless, this “measure” could hinder civilian authorities’ ability to obtain the information and evidence that they need for their cases.

Another soldier recounts receiving the order to fill a truck’s gas tank in order to get rid of the corpse of a civilian that died while being tortured by soldiers. Another time, he was ordered to act as a liaison with a criminal organization that gave his commander tips on rival criminal groups that led to searches, detentions, and confiscations. On yet another occasion, he received the order to give weapons to members of an organized crime group that they would later use to “[kill those] that the commander ordered,” and to give them marijuana as payment for the killings.

Finally, a soldier relates the dangerous situation they confront in the streets:

“...Many times, words or orders are unnecessary because the soldier realizes the situation he is up against. There, one uses common sense: you have family, [I prefer] the crying happen in another house rather than my own. In a risky situation where your life is in danger, it is then logical that if I have the means to defend myself, of course I will do it, even more so if they are people inflicting damage on the population...”

During the analysis of cases for this report there was no evidence that the PGR is investigating these sorts of orders and situations.

The lack of investigation into chain of command responsibility prevents victims and Mexican society from knowing the circumstances under which grave human rights violations most frequently occur. It also contributes to the lack of accountability of high-ranking military and civilian officials for their decisions to deploy soldiers in the streets. Finally, the lack of investigation into the chain of command results in an imbalanced situation where investigations and trials are focused on low-ranking soldiers while commander’s actions go unchecked.

BOX 5

MILITARY OBEDIENCE? THE SOLDIERS THAT RECEIVE ORDERS TO COMMIT HUMAN RIGHTS VIOLATIONS

In 2016 and 2017, several videos came to light showing soldiers participating in acts of torture, extrajudicial killings, and enforced disappearances.⁶⁹ In response, President Enrique Peña Nieto declared that soldiers are not required to follow orders to commit crimes and human rights violations, or orders that go against the military discipline.⁷⁰ Minister of National Defense General Salvador Cienfuegos apologized to Mexican society for cases in which soldiers have committed illegal acts.⁷¹

While these statements express good intentions, in practice, they do not serve as a defense for soldiers being investigated by civilian authorities, and they do not excuse soldiers’ actions. In the Army, the commander’s orders are indisputable and disobedience is unacceptable.⁷² Also, these apologies are generic and are not meaningful for the victims. High-ranking officials have never issued a specific apology to a victim—not even in the cases of Valentina Rosendo, Inés Fernandez, or Rosendo Radilla, where the Inter-American Court ordered the government to do so.

Recently, a federal court issued a judicial precedent [XVII.1o.P.A.49 P (10a.)] on this matter, paving the way for commanders who order their subordinates to commit crimes and human rights violations to be investigated and sanctioned.

The decision had to do with an enforced disappearance case from Chihuahua that occurred in 2009. A group of soldiers detained a civilian and took him to the barracks of the Specialized Infantry Platoon of the Army (*Compañía de Infantería No Encuadrada*, CINE) in Chihuahua, where he was held for a month before soldiers brought him before civilian authorities. During

his detention in military facilities, soldiers tortured him into confessing to crimes related to the possession of drugs and weapons and then incriminated him for these crimes before a civilian prosecutor. It was only then—and because his family had resorted to several legal procedures (including submitting a constitutional complaint and a report to the CNDH)—that his family learned of his whereabouts. Military authorities launched an investigation into the case and later transferred the case to civilian authorities, who convicted the implicated lieutenant colonel of the infantry—who was also the head of the CINE—to five years in prison for the crime of enforced disappearance.

The lieutenant colonel's main defense was that he did not order the detention and disappearance of the victim and that his subordinates carried out these actions without his consent or knowledge. But according to the federal court, it is doubtful that soldiers subjected to such "a rigid military discipline" would have concealed the victim without the order or knowledge of their commander, and that the head of the CINE had the obligation to ensure the legality of his subordinates' actions. Therefore, the federal court upheld the conviction of the lieutenant colonel to five years in prison, as well as his command responsibility in this enforced disappearance case.

While this judicial precedent is a positive development, it is still unclear whether civilian authorities will apply it to other investigations and trials of high-ranking military officials.

CONCLUSIONS AND RECOMMENDATIONS

The 2014 reforms to Mexico's Military Code of Justice (*Código de Justicia Militar*, CJM) were an important step towards strengthening investigations into crimes and human rights violations committed by soldiers against civilians. However, much still needs to be done to ensure that these reforms translate into successful civilian investigations and bring truth and justice for victims.

The poor results of criminal investigations of soldiers show that authorities lack the political will to bring about justice in these cases. It also demonstrates the pressing need to strengthen the civilian justice system and to reject legal reforms that would counteract the adversarial judicial system. Further, it exposes the negative impact

of having neglected police reform in Mexico for decades. Mexican authorities cannot indefinitely avoid these debates; the more they do so, the more they expose society to danger and abuses, as well as expose soldiers to public discredit.

Mexico must urgently develop a strategy to gradually withdraw soldiers from public security tasks. This strategy must go hand-in-hand with strengthening the civilian police force with a citizen security-focused approach, increasing accountability, and improving civilian investigations of soldiers implicated in crimes and human rights violations.

Among the actions authorities should implement to improve civilian investigations of soldiers are:

FOR MEXICO:

1. Strengthen the civilian justice system to improve investigations into crimes and human rights violations committed by soldiers against civilians by:
 - Improving the capacity to investigate these cases, including by improving training for investigative police, forensic experts, prosecutors from the Attorney General's Office, and civilian police forces, as well as by sharing good investigative practices between attorney general's offices and the Federal Judiciary (*Poder Judicial de la Federación*, PJJF).
 - Improving coordination between federal and local attorney general's offices and military authorities so that civilian authorities—instead of soldiers—carry out the first investigative actions in cases where soldiers are implicated in crimes and human rights violations against civilians.
 - Ensuring that Mexico's new National Prosecutor's Office (*Fiscalía General de la República*, FGR) is autonomous and that the federal prosecutor is appointed through a transparent process, with the participation of civil society. Mexico's first *fiscal general* must be

independent and have an appropriate background to resist any political pressure that may arise when investigating soldiers. Additionally, forensic services should be autonomous, professional, and independent—by law or in practice—from the authority of the FGR.

2. The Attorney General's Office must establish a policy to investigate and prosecute crimes and human rights violations committed by soldiers against civilians. The plan should be made public and specify investigative priorities, which cases they are investigating, and the results of the cases (which should also be made public). The plan should also explicitly promote the investigation of the chain of command and military orders that instruct soldiers to commit human rights violations.
3. Abstain from increasing soldiers' participation in investigating crimes in the adversarial system, whether as first responders or by any other means. Mexico's Congress must refrain from approving a Law on Internal Security or any other legal reform that goes against the adversarial criminal justice system or civilian oversight of public security.
4. The PJF must standardize the judicial precedents regarding the distinction between the role of the police and that of the military, and it should detail what constitutes proportional and rational use of force by law enforcement officials in accordance with international norms. It should also require the PGR to comply with high probative standards in cases involving soldiers. It could also systematize and improve the outreach of judicial information on cases involving soldiers, as well as improve the exchange of experiences and best practices among judges that have tried such cases.
5. Create a mechanism to monitor the implementation of the 2014 reforms to the CJM and the progress of civilian investigations of soldiers. The mechanism must be public, transparent, and regularly updated. To do so, both the PGR and the PJF must improve their statistics on crimes and human rights violations committed by soldiers against civilians.
6. Amend the CJM to correct the shortcomings of the 2014 reforms. Articles 37, 49bis, 57, and 129 must be amended to solidify the role of civilian authorities in the investigation of soldiers and to improve the quality and results of civilian investigations. Likewise, the Federal Criminal Code (*Código Penal Federal*, CPF) must be amended to classify as an aggravating circumstance instances where on-duty soldiers or policemen commit a homicide as a result of the use of excessive or unnecessary force.
7. Mexico's National Human Rights Commission (*Comisión Nacional de los Derechos Humanos*, CNDH) must improve the investigation and follow up to its recommendations on human rights violations committed by soldiers, including by classifying cases as grave human rights violations when appropriate, recommending the investigation of the chain of command and obedience to military orders, and abstaining from classifying recommendations

to the Ministry of National Defense (*Secretaría de la Defensa Nacional*, SEDENA), the Ministry of the Navy (*Secretaría de Marina*, SEMAR), and the PGR as “fulfilled” if there is no meaningful progress in civilian investigations.

FOR THE UNITED STATES:

1. In U.S. assistance to Mexico, prioritize strengthening Mexican federal judicial officials’ capacity to carry out thorough and evidence-based investigations, including in cases involving soldiers.
2. Continue supporting justice system reforms and the rule of law in Mexico and prioritize cooperation to solidify civilian police forces and to improve Mexico’s internal and external oversight mechanisms. Additionally, the United States must refrain from encouraging and supporting the use of soldiers in public security tasks and to combat organized crime. By doing so, they are supporting a dangerous role for the armed forces that has led to increased abuses in the country.
3. Use the human rights requirements of the Foreign Military Financing (FMF) account to make an honest assessment of the human rights situation in Mexico and withhold conditioned funds in the absence of measurable and meaningful progress in investigations and sanctions against soldiers and law enforcement officials implicated in human rights violations.
4. Ensure the enforcement of the Leahy Laws that prohibit the State Department and the Department of Defense from providing assistance to any unit of a foreign country’s security forces if they have credible evidence that the unit has committed a gross human rights violation.

ENDNOTES

1. The nine cases where soldiers have been implicated are: the enforced disappearance of a civilian on March 5, 2009 in Ojinaga, Chihuahua; the cover up of an aggravated homicide and torture of a civilian on August 20, 2009 in Ojinaga, Chihuahua; the extrajudicial killing (violence against a civilian resulting in intentional homicide and fabrication of false evidence) of two civilians on March 3, 2010 in Anáhuac, Nuevo León; the enforced disappearance of six civilians on October 1st 2010 in Guadalajara, Jalisco; the extrajudicial killing (aggravated homicide and crimes against justice in the category of tampering with evidence of the crime scene) of a civilian on April 18, 2011 in Monterrey, Nuevo León; the enforced disappearance of a civilian on May 20, 2012 in Monterrey, Nuevo León; the confrontation between soldiers and civilians in a warehouse on June 30, 2014 in Tlatlaya, State of Mexico (Tlatlaya case); the enforced disappearance and homicide of seven laborers in Zacatecas on July 7, 2015; and the confrontation between the military police and alleged members of a criminal group involved in the smuggling of gasoline (“huachicoleros”) on May 3rd 2017, resulting in the killing of six civilians and four soldiers.
2. Meeting request to SEDENA sent on September 21, 2016 by email and follow-up to meeting request with the Ministry of the Interior on January 12, 2017 by email.
3. While there is not consensus on the exact dates of Mexico’s Dirty War, the law enacted by the State of Guerrero to investigate human rights violations committed during that period defines the “Dirty War” as the period between 1969 and 1979. See Ley número 932 por la que se crea la comisión de la verdad para la investigación de las violaciones a los derechos humanos durante la guerra sucia de los años sesenta y setentas del estado de Guerrero, March 20, 2012.
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The Washington Office on Latin America (WOLA) is a leading research and advocacy organization advancing human rights in the Americas.

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