

# Submission for Third Universal Periodic Review of Mexico

MARCH 2018

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The Open Society Justice Initiative (“Justice Initiative”) respectfully submits these written comments for consideration by the Human Rights Council on the occasion of its third Universal Periodic Review (UPR) of Mexico. This submission focuses on one specific area of concern that Mexico’s UPR should address: the likely perpetration of crimes against humanity by both state and non-state actors in Mexico since at least 2006 and, in some instance, the apparent collusion between these actors.

## Introduction and Recommendations

The Open Society Justice Initiative (“Justice Initiative”) respectfully submits these written comments for consideration by the Human Rights Council on the occasion of its third Universal Periodic Review (UPR) of Mexico. The Justice Initiative is part of the Open Society Foundations, established by philanthropist and financier George Soros to support the development of strong and tolerant democracies whose governments are accountable to their people. It has been working in Mexico since 2004, having helped establish Mexico’s first pretrial services agency.

In June 2016, the Justice Initiative published *Undeniable Atrocities: Confronting Crimes against Humanity in Mexico*.<sup>1</sup> Produced with five Mexican human rights NGOs, the 216-page report conducted a detailed analysis of the intensity and patterns of violence in Mexico. It concluded that a now decade-long militarization strategy employed in Mexico’s so-called “War on Drugs” has resulted in an indiscriminate and extrajudicial use of force—conducted in the absence of accountability or a sufficient regulatory framework on the use of force. This, in turn, has resulted in Mexican federal forces committing numerous acts of murder, enforced disappearance, and torture on a widespread and systematic scale.

Almost three years later, the situation in Mexico has deteriorated even further. In 2017, the country experienced its deadliest year in two decades, with homicides exceeding 25,000. Attacks on journalists and human rights defenders have increased sharply across the country in that same time period, while more than half of Mexico’s disappeared were reported missing in the past six years alone. Meanwhile, torture remains a routine and “generalized” practice by Mexican public officials at both the state and federal level, a finding reaffirmed by the UN Special Rapporteur on Torture in early 2017, following his previous visit in 2015. For all of the crimes that have been committed in Mexico, criminal accountability remains virtually absent.

This submission focuses on one specific area of concern that Mexico’s UPR should address: the likely perpetration of crimes against humanity by both state and non-state actors in Mexico since at least 2006 and, in some instance, the

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<sup>1</sup> See *Undeniable Atrocities: Confronting Crimes Against Humanity in Mexico* (Open Society Foundations, 2016), available at: <https://www.opensocietyfoundations.org/sites/default/files/undeniable-atrocities-en-20160602.pdf>.

apparent collusion between these actors. To that end, it urges the UPR Working Group to make the following three recommendations to Mexico:

- (1) **Establish an international mechanism**, composed of Mexican and international staff and based inside Mexico, with a mandate to independently investigate and, when necessary, prosecute atrocity crimes and related cases of corruption.<sup>2</sup>
- (2) **Enact legislation to domesticate international crimes**, including crimes against humanity, so that they are defined in Mexico’s national penal code and prosecutable as such.
- (3) **Repeal the recently passed Internal Security Law**, which gives broad and superseding authority to the Mexican military to engage in domestic law enforcement, including criminal investigative powers. Far from addressing widespread impunity for graves crimes, this law furthers enshrine the role of Mexico’s armed forces in law enforcement.

### **Crimes against Humanity**

Article 7 of the Rome Statute of the International Criminal Court (to which Mexico has been party since January 2006) defines crimes against humanity as a number of different acts committed “as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Eleven underlying acts are listed, including murder, torture, and enforced disappearance. The Statute further defines an “attack” as “a course of conduct involving the multiple commission of acts...against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.” This means that crimes against humanity can be perpetrated by government forces, as well as by organized armed groups. Based on the intensity and patterns of violence committed since December 2006, the Justice Initiative and its Mexican partners have concluded that there is a “reasonable basis to believe” that the murders, enforced disappearances, and torture committed by both federal government actors and members of the Zetas cartel constitute crimes against humanity.<sup>3</sup>

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<sup>2</sup> This recommendation builds on a more modest 2015 recommendation advanced by the UN High Commissioner for Human Rights’ that Mexico establish an advisory council to address impunity (thus far ignored by the Mexican government). See “Response of the Mexican State to the Recommendations Made by the High Commissioner for Human Rights, Mr. Zeid Ra’as Al Hussein, Following his Visit to the Country on 5 to 7 October 2015,” available at: [https://www.hchr.org.mx/images/doc\\_pub/RespuestaGobMex\\_EN.pdf](https://www.hchr.org.mx/images/doc_pub/RespuestaGobMex_EN.pdf).

<sup>3</sup> The “reasonable basis” standard is used by the prosecutor of the International Criminal Court to determine whether to move to open an investigation. See Rome Statute, Article 15.

### *State Policy: Mexican Federal Government*

Mexico's federal government has pursued a policy that involves the indiscriminate and extrajudicial use of public force against any civilian perceived as connected with "organized crime," while ensuring near complete impunity for those federal officials who carried out such violence. This occurs in the knowledge that such force would entail significant violence and in the absence of a regulatory framework to prevent abuses. These failures to appropriately limit the use of force and establish accountability are not an accident; indeed, they have been an integral part of the state's policy. While the motive behind this policy—the pursuit of public order and national security in the face of rampant crime—may be entirely appropriate, the question of motive is immaterial. Instead, the relevant inquiry is whether there was deliberate pursuit of a policy to combat organized crime "by any means," one that involved the multiple commission of acts against a civilian population that include murder, torture, and enforced disappearance.

The victims of these acts include criminal cartel members, but they also include many "false positives:" civilians accused without basis of involvement in organized crime, often tortured into incriminating themselves and others, and frequently disappeared or murdered. Other civilians have been caught in the crossfire of a reckless strategy, killed as "collateral damage" in the battle between the government and the cartels.

The extent, patterns, and intensity of the crimes strongly suggest that they have been "systematic." Indeed, the same factors that demonstrate an implicit policy to use indiscriminate and extrajudicial force against civilians perceived as connected with organized crime also contribute to a finding that the attack was systematic. These include: the vast scale of the acts of violence perpetrated; statements by government and military leaders describing the policy and acknowledging that it would involve significant violence; the mobilization of the Mexican armed forces and substantial resources to combat organized crime, as broadly defined; the absence of a general regulatory framework governing the exceptional use of force (until a partial framework was implemented in 2012), as well as the continuing absence of a law on the use of force; and the near complete impunity with which federal agents have committed illegal acts of violence against alleged members of organized crime, including victims who are falsely accused and innocent "collateral" victims of indiscriminate force.<sup>4</sup> The magnitude of murder, disappearance, and torture over a number of years also meets the legal threshold of being "widespread."

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<sup>4</sup> For a more detailed pattern analysis, see pp. 63-85 of *Undeniable Atrocities*.

## *Non-State Policy: Los Zetas*

Under international criminal law, non-state actors can also commit crimes against humanity. The actions of the Zetas cartel most clearly fit the legal definition of an “organization” under the Rome Statute; however, further investigations could well conclude that other cartels operating in Mexico also have sufficient organizational characteristics to commit crimes against humanity. The Zetas cartel, in particular, qualifies as an “organization” because of its hierarchical structure, its control over territory, and its capability to carry out widespread or systematic attacks against civilians; it has expressed an intention to launch such attacks, and has done so in fact. The Zetas appear to have pursued a policy of controlling territory through violence in order to force other criminal actors to pay them a portion of their profits. In the course of this policy, the Zetas have committed a brutal string of atrocities, including murder, torture, and disappearances that follow identifiable patterns. The cartel has targeted civilian populations to maintain territorial control through terror. The cartel’s commission of numerous acts of murder, disappearance, and torture over a period of years, in a highly organized fashion, strongly suggests that the Zetas committed these crimes in a manner that is widespread and systematic.<sup>5</sup>

### **Corruption and Collusion**

Growing evidence also suggests that actors at multiple level of the Mexican state—federal, as well as state, municipal, and local officers—have colluded with cartels in the perpetration of atrocity crimes. As Mexico’s National Human Rights Commission (CNDH) has concluded, “police, particularly at the state and local level,” have been “involved in kidnapping, extortion, and in providing protection for, or acting directly on behalf of, organized crime and drug traffickers.”<sup>6</sup>

For example, two of the most brutal episodes perpetrated by the Zetas in the state of Coahuila—the killing of approximately 300 men, women, and children in the northern municipality of Allende over a three-day period in 2011, and the disappearance and murder of an estimated 150 persons within the walls of the Piedras Negras prison during the period 2009-2012—illustrate the scale and organization of crimes by the Zetas, as well as the complicity of certain public officials in these attacks. It is now clear, for instance, that many of those charged with protecting the public from such violence, such as members of the local police force, may have facilitated the killings.<sup>7</sup> Although some local police officers and

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<sup>5</sup> For a detailed analysis of the Zetas cartel, see pp. 87-94 of *Undeniable Atrocities*.

<sup>6</sup> See 2011 U.S. State Department Country Report on Mexico, 19 (describing CNDH report).

<sup>7</sup> See e.g., Ginger Thompson, “How the U.S. Triggered a Massacre in Mexico,” *ProPublica* (June 12, 2017), available at: <https://www.propublica.org/article/allende-zetas-cartel-massacre-and-the-us-dea>; Diego Enrique Osorno, “How a Mexican Cartel

prison employees have been arrested and prosecuted for these crimes, official complicity appears to extend well beyond these lower-level officials. Further investigation is now required to answer the numerous questions raised about the apparent complicity of Coahuila public officials in these crimes, and to expose the networks of corruption that exist among them, their associates, and organized crime.

There are increasing signs that such corruption and the violent crime it enables are also widespread across a number of states in Mexico—from Veracruz to Tamaulipas, from Guerrero to Chihuahua. Indeed, there are compelling reasons to believe that the complicity of corrupt public officials in cartel-led atrocity crimes may be a widespread, recurrent pattern.

In Guerrero, for instance, the findings of the Interdisciplinary Group of Independent Experts (GIEI) suggest a pattern of law enforcement working in collusion with criminal organizations. Specifically, the experts concluded that a possible motive for the attack against the 43 disappeared students by municipal police from Iguala was their apparent intervention in an operation of another cartel, the *Guerreros Unidos* drug trafficking organization, which had been using passenger buses to smuggle drugs to the United States.<sup>8</sup> Noting the level of coordination of the local police forces in the attacks, the GIEI concluded that one logical motive for the attack may have been that the students unintentionally commandeered a particular bus containing heroin or bulk cash. The experts also concluded that the attacks against the students had to have been centrally coordinated, given their sustained nature and the involvement of several patrols and two different police forces (from Iguala and neighboring Cocula). Moreover, the GIEI ascertained that collusion in the attack may have included **state and federal police, and the Mexican Army, as well. Their final report—whose recommendations have been largely ignored by the Mexican government—established that all of these authorities** were in the area at the time and were aware of both the students’ movements and the police attacks, but failed to intervene.<sup>9</sup>

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Demolished a Town, Incinerated Hundreds of Victims, and Got Away With It,” *Vice News* (December 31, 2014), available at: <https://news.vice.com/article/how-a-mexican-cartel-demolished-a-town-incinerated-hundreds-of-victims-and-got-away-with-it>.

<sup>8</sup> See GIEI, *Informe Ayotzinapa II: Avances y conclusiones sobre la investigación, búsqueda, y atención a las víctimas* (April 26, 2016), available at: <https://drive.google.com/file/d/0B3wuz7S3S9urNFFIZUNMSldQUik/view>.

<sup>9</sup> See Francisco Goldman, “The Missing Forty-Three: The Government’s Case Collapses,” *The New Yorker* (June 8, 2015), available at: <https://www.newyorker.com/news/news-desk/the-missing-forty-three-the-governments-case-collapses>.

These findings help bring attention to a growing fear: that public authorities in Mexico have been infiltrated by organized crime. While the reasons for such collusion may vary, as may the modes of perpetration, these incidents appear to replicate a corruptive pattern that is consistent with the cartel-led crimes against humanity policy documented in *Undeniable Atrocities*. Such collusion, if proven, points to criminal liability for both state and non-state actors alike, and to the need for an international, independent body that can investigate the links between them.

## **Conclusion**

The extraordinary violence Mexico is experiencing, and the questions it raises about collusion between state actors and organized crime, demands a commensurate response. Mexico needs an international mechanism—based inside the country, but composed of national and international staff—that would have a mandate to independently investigate and, when necessary, prosecute atrocity crimes and the corruptive acts that enable them.

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Amsterdam, Bishkek, Brussels, Budapest, Freetown, The Hague, London, Mexico City, New York, Paris, Phnom Penh, Santo Domingo, and Washington, D.C.