

Children and Armed Conflict in Mexico

Alternative report on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the **involvement of children in armed conflict**



CHILDREN AND ARMED CONFLICT IN MEXICO

ALTERNATIVE REPORT

ON THE IMPLEMENTATION OF THE OPTIONAL PROTOCOL
TO THE CONVENTION
ON THE RIGHTS OF THE CHILD
ON THE INVOLVEMENT
OF CHILDREN IN ARMED CONFLICT

M E X I C O

Title:

INFANCIA Y CONFLICTO ARMADO EN MÉXICO

Informe alternativo sobre el Protocolo Facultativo de la Convención sobre los derechos del niño relativo a la participación de niños en conflictos armados

Red por los Derechos Infancia en México

[Derechos Infancia México AC]

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Our Mission

To promote a social and cultural movement to secure that children know, exercise and enjoy all their rights.



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Contents

Acknowledgments	7
<hr/>	
Introduction	9-10
<hr/>	
An alternative report: what is it for...?	11
<hr/>	
I. General measures of implementation and prohibition	13-16
A. Legal status of the Protocol in Mexico	13
B. Criminalization of the acts enumerated in the Protocol	14
C. Latent conflicts	14
Recommendations	15
<hr/>	
II. Prevention	17-22
A. Compulsory recruitment	17
B. Voluntary recruitment	18
C. Direct participation in hostilities	18
D. Military schools	18
Recommendations	22
<hr/>	
III. Mexico's fight against organized crime and its consequences for children	23-43
A. Context	23
B. Armed conflict or internal violence?	24
C. Impact of Mexico's fight against organized crime on children's life	26
Exemplary cases	32
D. Children involvement in organized crime	35
Exemplary case	40
E. Prevention of children involvement with organized crime.	41
Recommendations	43
<hr/>	
Recommendation table.	44-46
<hr/>	
List of issues concerning additional and updated information related to the consideration of the initial report of Mexico	47
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*Valeria Geremia
Mexico City, January 2011*

Introduction

Armed violence, the State and the best interest of the child

Innocent children victims of aggression. In Mexico, there is a widespread climate of violence, where stray bullets, cross fires in public spaces close to schools, direct attacks and children's massacres affect the peace that is necessary for children to develop, and generate serious security problems.

Since December 2006, the Mexican government launched a military action against the narco-trafficking, with the intention to contain its advancement within the country. Beyond the good intention and the legitimacy of such decision, the ravages of armed violence in the country are highly alarming. More than 34'000 killings, among them a thousand of children lost their life, and impunity is prevalent.

In Mexico, the existence of a war is not acknowledged, although frequently the authorities employ the word "war" in their speeches; however, it is essential to think about it. How can be defined the violence that prevails within the country? How can we find an exit door that strengthens the rule of law? How can we prevent children from being affected by violence? How we deal with the victims and provide compensations to the victims?

One of the biggest consequences of the conflict is the loss of human lives, especially children. It is pertinent to bring back the memory of the baby Elizabeth Martínez who was shot dead in crossfire between the Army and the organized crime in December 2009; remember the massacre of children in Ciudad Juárez in January 2010, where 12 children and 3 youngsters lost their lives. In October 2010, another massacre in the same city killed 14 young people. Another massive killing happened in March 2010 in Durango where 10 teenagers were murdered; at the beginning of April 2010, in Nuevo Laredo, Tamaulipas, Martín and Bryan, aged 9 and 5, were shot dead by military fires. On April 15, 2010, a little girl aged 8 and her 12 year old brother died together with their mother in crossfire between narco-traffickers and the Army in Acapulco, Guerrero. The list goes on and amounts to a thousand of children killed; criminal impunity is the common answer.

One of the State's main tasks is to guarantee the security and the integrity of its citizens and in particular to take seriously the children's right to be protected from violence. In 2006, the UN Committee on the Rights of the Child urged Mexico to "duly investigate cases of violence and abuse against children in order to avoid the impunity of perpetrators". Unfortunately, it can be observed an increase in violence against children (who represent the 33% of Mexican population) leaving a trail of exemplary cases that trivialize corporal punishments, degrading treatments,

gender-based violence, the increase in the homicide rate and the lack of due investigations to arrest the perpetrators.

The action of the Mexican State, in its different levels (federal, state, local), was overwhelmed by the impact that this conflict is having on people's life. In some cases, the action of the State resulted in violating children's rights. Unfortunately, there is no joint, preventive action; on the contrary, it can be noticed the lack of a "security protocol for children" within the framework of armed interventions. Likewise, we have detected an increasing stigmatization of children that die in military operations against the narco-trafficking; they are immediately associated with criminal groups, without evidence or investigation. This is perhaps the reason why the majority of killings are not being investigated.

One of the most sensitive topics is the role of the Army in the fight against organized crime, human rights violations and the lack of investigation into crimes perpetrated by the military personnel. The Mexican government deemed that the only mean to fight against the organized crime and its corruption of federal and local policemen was to involve the Army and the Navy, without a legal framework that backs this new task and facing the "historical" risk of being held responsible for crimes that are not investigated by civil courts. The latter contradicts the recommendation issued by the UN Human Rights Council in the Universal Periodic Review, in June 2009. The National Human Rights Commission pointed out a raise in complaints for human rights abuses against the Army, without questioning the immunity that is provided to the military by the military courts. The Mexican government drafted a bill aiming at reviewing the Code of Military Justice with a view to extending the jurisdiction of civil courts for crimes like tortures, rape and forced disappearances, leaving other serious crimes such as homicide to the military courts jurisdiction.

Currently, there is no official, public information about the number of children detained, injured or killed in the fight against the organized crime. The media and the civil society are carrying out some counts based on newspapers articles that only show trends of violence against children.

Given this situation, the Red por los derechos de la Infancia en México (REDIM) expressed, at different times, its deep concern about the difficulties that the Mexican State, at the federal and local levels, is facing in order to protect children's rights. Mexico is among the countries where the organized crime is fighting against the State over territorial control, as the criminal groups rely on economic power to corrupt public officers and policemen at the different levels. We believe that it is important to recognize the existence of an "armed conflict of its own", where the

organized crime does not necessarily seek the political power, but to create conditions of illegality and fragmentation of public institutions in order to obtain a leeway that allows them to exercise power and economic control.

Recognizing children as human rights holders and changing the paradigm about childhood is one of the milestones of the Convention on the Rights of the Child (CRC). All over the world, children's rights are placed in the political agenda, but this does not necessarily mean the respect of the "best interest of the child". This is to say that most political, economic and social decisions are still taken without considering the impact they will have on children's life. This is the reason why we do not achieve a significant change in children's life yet. Twenty years after the ratification of the CRC, we can highlight some improvements, and in some countries the establishment of public policies based on a child-right approach. However, in Mexico, a national child protection system is yet to be created; this system would allow coordinating public policies and efforts at the legislative, executive and judicial levels.

Two decades have passed since the Convention was debated and adopted, yet only few people are foreseeing that in few years the childhood will be threatened by a new form of exploitation by the organized crime that with unprecedented money and corruption could disrupt the rule of law. It is striking to notice that the UN Convention on Transnational Organized Crime (Palermo, 2000) is focused on public security and illegality, but it does not acknowledge its impact on children and young people.

Children have been transformed into goods/objects that are bought/sold/exploited/murdered. After the Convention on the Rights of the Child, two Optional Protocols have been adopted, one about "the sale of children, child prostitution and child pornography" and another about "involvement of children in armed conflict". These protocols represent an opportunity to recommend to the State parties to take actions to protect children from organized crime activities in each country.

This has led the organizations member of the Red por los Derechos de la Infancia en México to provide information to the UN Committee on the Rights of the Child, after agreeing that the widespread violence and the increasing presence of organized crime represents a challenge to guarantee the full exercise of children's rights.

To guarantee the best interest of the child, the authorities need to implement preventive actions to curb the killings and injuries of children carried out by criminal groups and the Army. It is compulsory to investigate such killings, bring to justice public officers responsible for human rights violations and omission, punish the perpetrators and compensate

the victims and their families. It is an obligation of the State to provide detailed information about the number of children that were victims, orphaned, detained and murdered in the framework of the fight against the organized crime led by the current administration.

It is imperative to move forward the creation of a new institutionalism to implement children's rights, through the establishment of a national child protection system, that includes the set-up of a Children Rights Commissioner (Ombudsman) at the federal level, to investigate with impartiality and independence cases of violation of children's rights, taking into account the UN Committee on the Rights of the Child recommendation N.11 to Mexico (2006) and its general comment No. 2 (2002) on "The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child."

Juan Martín Pérez García

Executive Director

Red por los derechos de la infancia en México

Mexico City, 17 January 2011

An alternative report: what is it for...?

The growing recognition of the importance of children's rights protection reached a milestone with the adoption of the Convention on the Rights of the Child (CRC), by the United Nations General Assembly, on 20 November 1989. The CRC is the most widely and rapidly ratified human rights instrument of the history; currently, only the United States of America and Somalia have not ratified this treaty. The Convention confers rights to children and imposes obligations on State parties that ratified it.

To strengthen several obligations set up in some articles of the Convention, the United Nations General Assembly adopted two Optional Protocols in 2000. These Protocols are separated international instruments and are only binding on State parties that ratified them. The Optional Protocol on the sale of children, child prostitution and child pornography entered into force on 18 January 2002. The Optional Protocol on the involvement of children in armed conflict entered into force on 12 February 2002. The latter reinforces the provisions of article 38 of the Convention, raising the minimum age for direct participation in hostilities from 15 to 18 (article 1) and prohibiting that children below 18 are compulsorily recruited by armed forces (article 2). Article 4 criminalizes voluntary recruitment by armed groups and participation in hostilities for children below 18. The Protocol also requires State parties to raise the minimum age for voluntary recruitment from 15 to 16 and, in order to make sure that such recruitment is genuinely voluntary, the parents' consent is mandatory, and relevant information is provided to future recruits.

Mexico ratified the Convention and both the Protocols. As a consequence – and by virtue of article 133 of Mexican Constitution – such treaties were incorporated into domestic law. The Committee on the Rights of the Child (CRC Committee) is the body of independent experts that monitors implementation of the Convention on the Rights of the Child and its two Optional Protocols. The Committee meets in Geneva, Switzerland and normally holds three sessions per year consisting of a three-week plenary and a one-week pre-session working group. When a State ratifies the Convention and/or the Protocols, it undertakes the obligation to submit regular reports to the Committee on how the rights are being implemented, the progress made and the obstacles that are affecting its implementation. States must report initially two years after acceding to the Convention and then every five years.

Once drafted the report, the State sends it out to the Committee, which seeks additional information through NGOs and international organizations. Such information, submitted in the form of "alternative reports", is carefully reviewed by the Committee in a pre-session working group meeting, held in Geneva with relevant stakeholders. On the basis of this information, the Committee drafts a "list of issues" and sends it to the government along with an invitation to attend the plenary session where the Committee will review its report. The discussion between the Committee and the government is frank and honest and focuses on a list of detailed questions and answers, where the Committee voices its concerns. Although all Committee members participate in the debate, a country rapporteur is named to take the lead in the session. On the basis of this dialogue, the Committee addresses its concerns and recommendations to the State party in the form of "concluding observations". Such observations are binding on the State party as they arise from a treaty that the State ratified and is obliged to respect and implement.¹

The alternative report prepared by the Red por los Derechos de la Infancia en México (REDIM) aims at complementing the information provided by the Mexican State's first report on the Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict. REDIM is grateful for the opportunity to offer its observations to the United Nations Committee on the Rights of the Child.

The report is composed of three main chapters and a table of recommendations. First chapter analyzes general measures of implementation and prohibition, describes the legal status of the Protocol and the hierarchy of laws in Mexico, and highlights the lack of criminalization of the offences enumerated in the Protocol. Likewise, it gives account of the most recent armed conflict in Mexico in 1994, and provides background information on armed groups operating within the country.

The second chapter focuses on prevention and explains the compulsory and voluntary recruitment process in armed forces, underscoring the necessity to rise minimum age for voluntary recruitment and the urgency to clearly establish by law that children under the age of 18 shall not participate in hostilities. The chapter enlightens the military schools

system, its institutions, main rules and opacity that do not allow easy access to information.

The third chapter describes a particular form of "armed conflict", that is fight against organized crime and narco-trafficking, launched by President Felipe Calderón, in December 2006. This fight - internationally known as "drug war" - which consists of the deployment of more than 50,000 army troops in security operations, provoked the death of thousands of civilians in confrontation between the army and organized crime groups, as well as among criminal organizations. Too many victims were children. Exorbitant is the number of children that - due to the lack of other options - get involved into narco-trafficking.

REDIM acknowledges that such situations of internal violence do not strictly fall within the field of the application of the optional Protocol on the involvement of children in armed conflict, as, according to international humanitarian law principles, Mexico's situation does not amount to an armed conflict, either international or not. However, given the gravity of the circumstances in which Mexico finds itself, REDIM deemed important to provide information about this ongoing conflict, and to submit to the consideration of the UN Committee on the Rights of the Child some data and analysis that can make visible children's problems in Mexico at present.

To draft this report, REDIM requested the Ministry of National Defense, the Ministry of the Navy, the Ministry of Public Security, the Ministry of Interior and the General Attorney Office to provide disaggregated data on topics of interest of the report. However, due to the lack of transparency and secrecy that depict public institutions in Mexico, the information obtained was partial and incomplete.

On 17 June 2010, REDIM attended to the pre-session working group meeting with the Committee on the Rights of the Child, in Geneva, and presented this alternative report. During the meeting, REDIM answered to the questions raised by the Committee, and provided information in all areas, especially in those not adequately covered by the government report. REDIM identified strengths, weaknesses and challenges in the implementation of legislative, administrative and other measures related to the Protocol within the country.

¹ United Nations High Commissioner for Human Rights in Guatemala: *Comité de los Derechos del Niño*, Prospecto GACDH 7, Guatemala, p. 5.

I. General measures of implementation and prohibition

A. Legal status of the Protocol in Mexico

Mexican government's ratification of the Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict converts such instrument into part of Mexican legal system.

Article 133 of the Constitution provides:

"this Constitution, and the laws enacted by the Congress, which shall be made in pursuance thereof; and all treaties made, or which shall be made, by the President of the Republic with the Senate's consent shall be the supreme Law of the Union. The judges in every State shall be bound thereby, by anything in the Constitution or laws of any State to the contrary notwithstanding".

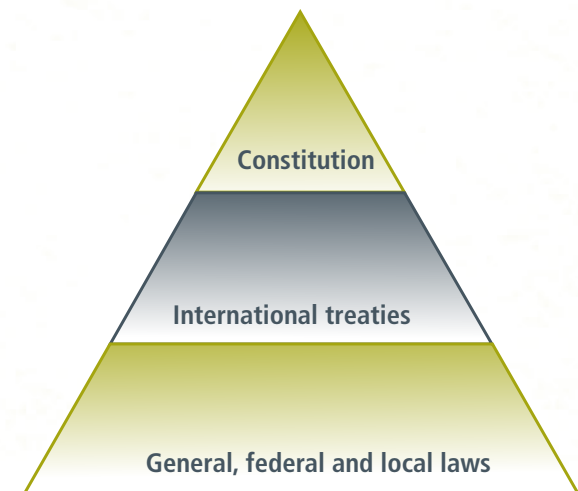
This article only enumerates limit the listing of the different categories of norms that form the Mexican legal system without establishing a clear hierarchy of laws. The imprecise phrasing of article 133 leaves room for interpretations that sustain that there is no hierarchy and Constitution, laws and treaties have the same rank. The Supreme Court (Suprema Corte de Justicia de la Nación or SCJN) tried to clarify the meaning of article 133, but its stances have not been consistent or systematic. The SCJN position can be divided into two phases, the first covering until the late 90ies, and the second spanning from the year 2000 to date. In the first stage, the Supreme Court believed that federal laws and treaties hold the same rank, below the Constitution. In 1999, the SCJN abandoned this principle to favor international treaties over federal laws, by affirming that:

International treaties are found in the second level, right below the Constitution, and above federal and local laws. This interpretation of article 133 of the Constitution, draws the consideration that these international commitments are set and undertaken by the Mexican state with all its authorities in front of the international community; for that it explains that the Constituent Assembly gave the President of the Republic the power to sign international treaties as head of state and, at the same time, the Senate intervene to represent the federal entities will and, through its ratification, obliges its authorities".²

In 2007, the Supreme Court confirmed 1999 thesis, offering additional arguments to sustain the hierarchy of treaties.

"International treaties lie hierarchically below the Constitution and above general federal and local laws, as the Mexican state upon signature, accordingly to the provisions of the Vienna Convention on the law of between states and international organizations or between international organizations themselves, and, moreover, respecting the fundamental principle of international customary law "pacta sunt servanda", freely undertakes obligations in front of the international community, that cannot be ignored by invoking domestic laws and which non-fulfillment entails responsibility of international nature".³

The following pyramid illustrates the hierarchy of laws in the Mexican legal system, according to the most recent Supreme Court stances, and places international treaties below the Constitution and above general, federal and local laws.



The criteria of hierarchic supremacy of international treaties with regard to domestic laws scores a point toward the recognition of international obligations of Mexico in its domestic system. However, given the confusion created by the ambiguous phrasing of article 133, several draft laws have been proposed with the aim of clarifying the hierarchy of laws and awarding to human rights and humanitarian law treaties the rank of supreme law, along with the Constitution.

² Supreme Court/Suprema Corte de Justicia de la Nación, P. LXXVII/99, Year 1999. Época: 9, Título: *Tratados Internacionales se ubican jerárquicamente por encima de las leyes federales y en un segundo plano respecto de la Constitución Federal Tienen la Misma Jerarquía Normativa*. Localización: Instancia: Pleno, Tesis Aislada.

³ Supreme Court/Suprema Corte de Justicia de la Nación, P. IX/2007, Year 2007. Época: 9, Título: *Tratados Internacionales son parte integrante de la ley suprema de la Unión y se ubican jerárquicamente por encima de las leyes generales, federales y locales. Interpretación del artículo 133 constitucional*. Localización: Instancia: Pleno, Tesis Aislada.

B. Criminalization of the acts enumerated in the Protocol

Trough article 133 of the Constitution, the content of treaties to which Mexico is part of becomes mandatory in the country. Through article 6 of the Federal Penal Code, crimes listed in treaties to which Mexico is part can be applied and invoked in courts. In this respect, the Optional Protocol as well as the Rome Statute of the International Criminal Court establish that the recruitment of children below 18 and 15, respectively, is forbidden. These provisions should be able to be invoked in Mexican tribunals and applied by national authorities. However, in practice, for the application, it is required that domestic legislation prohibits and criminalizes acts provided in the Protocol. It should be noted that harmonizing domestic legislation is an obligation for the Mexican state, undertaken upon ratification, and it is not possible to argue the lack of domestic law to fail to honor international commitments.

Mexico has a backlog in this respect. Provisions of the Military Justice Code (very outdated and prior to the Geneva Conventions) are very poor and do not include children recruitment by armed forces or armed groups in the catalog of war crimes. Moreover, the Federal Penal Code does not prohibit such acts and does not criminalize recruitment of children as an offence.

C. Latent conflicts

According to the Consejo Nacional de Evaluación de la Política de Desarrollo Social (CONEVAL), income poverty reaches the 40% of Mexicans and one out of ten Mexicans suffers from food poverty⁴. It is correct to state that rural areas are more affected than urban areas by poverty.

Along Mexican history, these conditions contributed to push people to look for alternatives to modify their situation. The lack

of options and the unmet social demands led to unrests and armed protests. In accordance with the Centre of documentation of the armed movements (Centro de Documentación de los Movimientos Armados)⁵, 45 armed groups exist within the country - whose size and impact greatly differ. However, the Government reaction has been alike in all cases: no importance or attention was given to social pretensions and difficult circumstances. Government response was only "order restoration", and looking for annihilation of such armed groups.

Government actions have spanned from open fire to more covert and complex military strategies. One of the most famous is the so-called "dirty war" (guerra sucia), where the authorities employed counter-insurgency strategy to fight armed groups in conflict with the law.⁶

This way, social protests became one of the main complain mechanisms. Apparently, criminalization and repression of such forms of protest reached their goal. However, armed groups are still present, though dormant.

Out of the aforementioned armed groups, the most important is the Ejército Zapatista de Liberación Nacional (EZLN) in Chiapas State. This group claims to be victim of an "undeclared genocide against our population since long time"⁷, identifying reasons to their fight in "work, land, housing, food, health, education, independence, freedom, democracy, justice and peace".⁸

On January 1st, 1994 the EZLN got towns of San Cristóbal de las Casas, Altamirano, Las Margaritas y Ocosingo, and on the following day, fights erupted between the EZLN and the Mexican Army, and continued until the cease-fire decree was signed by the former President Carlos Salinas de Gortari.

Peace process started in February 1994, with the creation of a Committee for Peace (Comisionado para la Paz). Later on, the

Dialogue, Conciliation and Dignified Peace Act was enacted. Its main object was to "deal with the causes that gave rise to the conflict and to promote agreed-on solutions to political, social, cultural and economic claims, within the state of law and through institutional means".⁹ In this act, for the first time, the Mexican government acknowledges the existence of an armed conflict.

In February 1995 an air strike by the Army and the police besieged the area. One year later, in February 1996, a peace agreement was signed, known as *Acuerdos de San Andrés* between the EZLN and Government representatives. In this treaty, Federal Government recognizes the right of indigenous people to free determination and autonomy. To date, it is thought that such agreement has not been implemented; however, the EZLN suspended all military confrontations and the Government still coordinates and implements programs through the Coordination for the Dialogue and Negotiation in Chiapas, a body belonging to the Ministry of Interior. Such development programs did not attain any goal nor generated social changes. Simultaneously, since 1995, it has been noted the presence of paramilitary groups that contribute to a climate of tension and unrest, as they violently intervene in political and social conflicts in the region and are sponsored by the Government.¹⁰ Even though the existence of these groups has been denied by the Government, it has been documented by several reports from local organizations. Such armed groups benefit from impunity and authorities silent support.¹¹ Many people were killed, injured, disappeared and were displaced as a consequence of their actions.

Recommendation 58/95 of the National Commission on Human Rights (Comisión Nacional de Derechos Humanos, CNDH) researched and confirmed "the presence of armed civilians identified by a ribbon on members' shirtsleeves", that operate jointly to public security forces of Chiapas State.¹² In January 1998, *Proceso* magazine published a document from the Ministry

⁴ CONEVAL, *Evolución de la pobreza en México*, México, 2009.

⁵ CEDAMA, information available in the webpage www.cedema.org, accessed on 28 April, 2010.

⁶ Cfr. *Informe Histórico a la Sociedad Mexicana*, Fiscalía Especial para Movimientos Sociales y Políticos del Pasado, Procuraduría General de la República, 2006 expediente de anexos a la demanda, anexo 4, p. 279.

⁷ *Declaración de la Selva Lacandona*, disponible en Internet y con acceso el 26 de abril de 2010 en: <http://palabra.ezln.org.mx/comunicados/1994/1993.htm>.

⁸ Idem.

⁹ Idem, Artículo 2, § II.

¹⁰ J. Arana, *Zedillo propuso el dialogo en 1995, pero lanzó al Ejército contra el EZLN*, La Jornada, Ciudad de México, 2 February, 2005. <http://www.jomada.unam.mx/2005/02/09/005n1pol.php>, accessed on 27 April, 2010.

¹¹ One of the organizations that documented the situation in Chiapas is the Centro de Derechos Humanos Fray Bartolomé de las Casas. In particular, see reports on armed attack, militarization and paramilitary forces: [www.frayba.org.mx]. Also see the OHCHR report: *Diagnóstico sobre la Situación de los Derechos Humanos en México*. Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos en México, 2003, pp. 156 y 157, available online in: <http://www.sre.gob.mx/derechoshumanos/imagenes/docs/Diagnostico.pdf>, accessed on 27 April, 2010.

¹² National Human Rights Commission/Comisión Nacional de Derechos Humanos, Recomendación 58/95 del 8 de mayo de 1995, addressed to the governor of Chiapas State <http://www.cndh.org.mx/recomen/1995/058.htm>, accessed on 27 April, 2010.

of National Defense called "Campaign Plan Chiapas 94" (Plan de Campaña Chiapas 94) that admits the creation of paramilitary forces and aims at displacing population and destroying EZLN headquarters.¹³

One of the most deplorable events was the so-called "Acteal Massacre", of December 22, 1997, when an armed group killed 45 people, of which 18 children, while praying in a chapel. The CNDH recognized and denounced the State responsibility for perpetration and omission of various public officials of Chiapas government.¹⁴

As a result of the Chiapas conflict, the number of internally displaced people is considerable. Estimations range from 12 to 50 thousand people, which would mean among 5 and 21 thousand children living outside of their communities of origin. Armed groups operating in Chiapas have not been dismantled nor disarmed. Despite the open conflict ceased since long time, Chiapas region remains heavily militarized. According to military budget, the second region with greatest military budgetary allocations is Chiapas and Tabasco (Military Region Number VII), the first being the region of Estado de México, Morelos and Distrito Federal (Military Region Number I) where military schools, military camps and presidential guards are concentrated. In 2009 budget, 151.6 million dollars were allocated to Chiapas and Tabasco region.¹⁵ In these areas, the CAPISE (Centro de Análisis Político e Investigaciones Sociales y Económicas, A.C.) identified 91 military installations, in a study conducted in February 2004. In 2005, the Ministry of National Defense (Secretaría de la Defensa Nacional - SEDENA) stated that there are 118 military installations in the area. According to SEDENA data, the land acquired and expropriated for military use amounts to 4,443 hectares. According to CAPISE, at least 57 installations are situated on cooperative lands (public land of indigenous areas).

Recommendations

- o Explicitly prohibit by law and criminalize forced recruitment of children below 18 by armed forces and forced and voluntary recruitment of children below 18 by armed groups.
- o Reform article 133 of the Constitution in the sense of conferring to human rights and humanitarian law treaties constitutional rank.
- o Establish extra-territorial jurisdiction for the authors of offences identified in the Protocol, when the author or the victim is a national of the country or have any other links with the State party.
- o Provide conditions for the return and/or relocation of internally displaced people. Provide specialised care for internally displaced children.
- o Dismantle, disarm, and hold responsible paramilitary groups or armed civilians in indigenous regions (those not included in any special legislation, such as the Amnesty law).

¹³ C. Marín, *Plan del Ejército en Chiapas, desde 1994: crear bandas paramilitares, desplazar a la población, destruir las bases de apoyo del EZLN...* in magazine Proceso N° 1105, 4/01/1998. Y el Plan de Campaña Chiapas 94, http://www.frayba.org.mx/archivo/articulos/941001_plan%20de_campa%C3%B1a_chiapas94_sedena.pdf , acceded on 27 April, 2010.

¹⁴ National Human Rights Commission/Comisión Nacional de Derechos Humanos, Recomendación 1/98, addressed to the General Attorney and the governor of Chiapas State. <http://www.cndh.org.mx/recomen/1998/001.htm> , acceded on 27 April, 2010.

¹⁵ R. Benítez Manaut et al.(eds.), *Atlas de Seguridad y la Defensa de México 2009*, México, Colectivo de Análisis de la Seguridad con Democracia, 2009.



Foto: Ricardo Ruiz / Procesofoto / Chihuahua

II. Prevention

II. Prevention

A. Compulsory recruitment

In conformity with articles 5 and 11 of Military Service Law, all male reaching 18 years of age have the obligation to register with Municipal Committees or Mexican Consulates abroad to fulfill their obligation of military service.

Article 25 provides the exception for which children aged 16 or 17 can apply for early recruitment, when - in accordance to their personal interests and needs - request to serve national military service in advance. Only children who want to leave the country at the time they are supposed to enroll or children, or children who for study reasons prefer to serve in advance, can obtain early recruitment. In this case, the law requests parents or tutors' written consent.

Compulsory recruitment is composed by various phases. The first phase is the enlistment, where registration is done and military service ID card is obtained. The second phase consists of a lottery system: whoever draws a black ball must serve as a "reservist", that is, he must not follow any activities whatsoever and gets his discharge card at the end of the year. The ones who get a white ball serve Saturdays in the Army or Navy Unit, composed entirely of one-year conscripts. The following phase is the training and entails class participation on Saturdays from February to December of the year in question. Classes focus on the following subjects: military legislation, human rights and humanitarian law, military ethics and civics, weapons knowledge and security measures military movements, personal defense, physical education, military health, march, and ecology. Recruits with a community service interest may participate in literacy campaigns as teachers or as physical education instructors.

In 2009, 314 recruits of the National Military Service were offered to serve for only three months (instead of one year)

provided they accepted to undertake training in marijuana and poppy crop eradication. These activities took place from May 25, 2009 until August 1st, 2009, in Michoacán.¹⁶ This is the first time that young recruits are involved in tasks related to the fight against the narco-trafficking.

Upon request of REDIM, the Ministry of National Defense provided the following data about children below 18 that serve military service in advance.

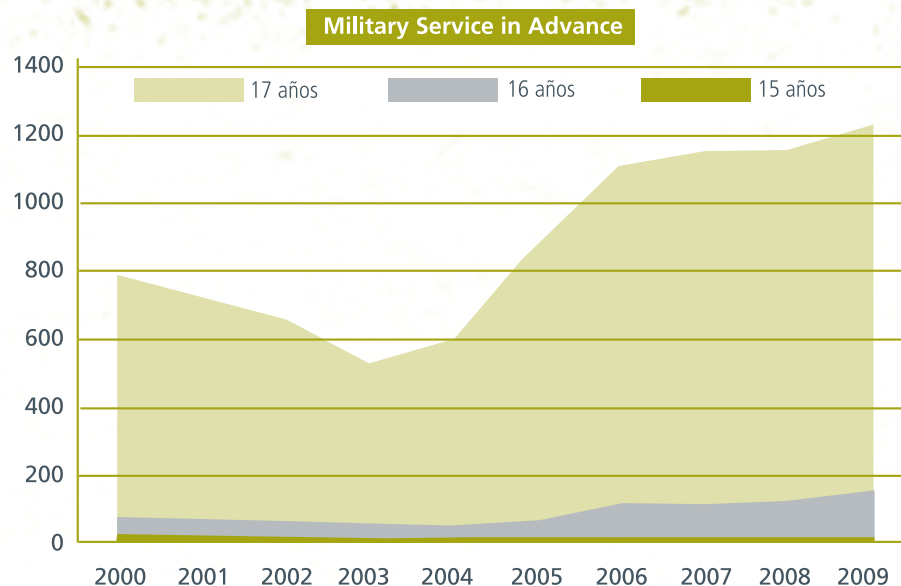
MILITARY SERVICE IN ADVANCE 2000-2009

SIT. (CATEGORY)	2000		2001		2002		2003		2004	
	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO
EARLY	84	2	85	8	86	2	87	0	88	0
	83	65	84	60	85	57	86	43	87	35
	82	774	83	715	84	648	85	521	86	593

MILITARY SERVICE IN ADVANCE 2005-2009

SIT. (CATEGORY)	2005		2006		2007		2008		2009	
	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO	CLASE	EFFECTIVO
EARLY	89	1	90	0	91	0	92	0	93	0
	88	56	89	99	90	101	91	109	92	138
	87	863	88	1106	89	1143	90	1152	91	1219

¹⁶ Ministry of National Defense/Secretaría de la Defensa Nacional, *Tercer Informe de Labores*, 2009, p. 106.



B. Voluntary recruitment

Minimum age for voluntary recruitment is 18 years old. However, the Army accepts volunteers aged 16, but only in transmission unities and with a job contract that cannot exceed 5 years. In this case, it is mandatory an application from the child and the written consent of his parents or tutors.

Visiting Ministry of National Defense website, the first striking fact is the emphasis put on the benefits of voluntary recruitment. Since the entry date of the service military personnel receives the following benefits:

I. Integral health service for the soldier and its beneficiaries;

II. Economic benefits entering the Army Institute:

- Monthly wages and overtime.
- Vacation bonuses.
- Year end compensation.
- Saving fund.
- Service compensation.
- Life insurance.
- Retirement insurance.
- Aid in burial expenses in case of military man's beneficiaries death.
- Death payment in case of military man's death.
- Funerary service.
- Centers for children welfare.
- Pharmacy discounts.
- Shops discounts.
- Rented house.
- Vacations and granting of ordinary licenses.
- Pension for beneficiaries in case of soldier's death.
- Discount on touristic services.
- Scholarships for children of military personnel (soldiers and sergeant 1/o. level only).
- Agreements with universities and other educational institutions for military personnel that want to enroll in higher studies (Master, PhD etc.).
- Scholarships and credits for scientific and technical trainings.

In a country like Mexico, where most people do not have access to social welfare, health insurance or pension, benefits offered by the Army are an immense incentive for disadvantaged children and family. In fact, it is no secret that almost all new recruits who voluntarily join up belong to families with limited options for education, and job and at least the two-thirds of them come from rural areas. It is unknown the number of children below 18 that every year voluntary join the Army, as the Ministry of National Defense does not disaggregate its data by age and did not respond yet to REDIM requests to accede to such data.

C. Direct participation in hostilities

Mexicans who serve in the Army must be 18 years old, with the exception of those enrolling in military schools. It is accurate to affirm that there is no legal obligation for children under the age of 18 to enroll in the Army, let alone to participate in hostilities. Nevertheless, there is no legal provision that clearly rules out the possibility to use in hostilities children aged 16 or 17 who voluntarily joined up or children of the same age who are serving their military service in advance. The silence of the law in that regard leaves room for the involvement of children below 18 in hostilities, in case of armed conflict.

D. Military schools

In Mexico, the military education system is imparted by the Ministry of National Defense (Secretaría de la Defensa Nacional - SEDENA) and the Ministry of the Navy (Secretaría de la Marina Armada - SEMAR).

According to SEDENA official reports, the military education system is composed of 35 education facilities and five headquarters. In these institutions, around 5,000 students per year attend to the following types of study: 67 high schools, 21 officers' trainingschools, 36 class schools, and 173 specialization, training, and refresher classes. With regard to children below 18, they can enroll in military schools, but having successfully completed middle school or high school is a prerequisite to be admitted. Children with a middle school degree, from 15 onwards, can attend the following schools: Military School of War Materials, Military School of Transmissions, Military School of Air Force Specialists, Military School of Maintenance and



Photo Credit: Germán Canseco / Procesofoto / DF

Supply, and Military School of Special Air Force Troops. Children holding a high school diploma, from 16 years onwards, can join of the following schools: Heroic Military College, Military School of Aviation, Military School of Dentistry, Military School of Nursing, Military School of Transmissions, and Military School of Health Officers.

In response to a REDIM request, the Ministry of National Defense offered the following data about children attending military schools at the time of writing (April 2010):

	AGE			SEX		AREA	
	15 YEARS OLD	16 YEARS OLD	17 YEARS OLD	M	F	URBAN	RURAL
NUMBER OF CHILDREN	14	23	29	64	2	54	12

The following table refers to students graduated from military schools in 2007, 2008, 2009:¹⁷

MINISTRY OF NATIONAL DEFENSE		Graduated		
		2007	2008	2009
Military Schools		2007	2008	2009
1	Military School of Medicine.	100	93	75
2	Military School of Dentistry.	10	8	7
3	Military School of Engineering.	60	36	12
4	Heroic Military College.	360	481	436
5	Military School of Nursing.	47	51	46
6	Military School of Aviation.	34	29	23
7	Military School of Maintenance and Supply.	23	22	34
8	Military School of Air Force Specialists.	49	18	13
9	Military School of Health Officers.	35	20	17
10	Military School of War Materials.	56	159	177
11	Military School of Transmissions.	14	42	15
12	Military School of Air Force Troops.	273	220	317
13	Military School of Transmissions Class.	41	293	238
Total		1002	1379	1335

Comparing the two tables, it can be noticed a remarkable difference between the number of children attending military schools and the number of students graduated from the same schools. This discrepancy might be explained by the fact that most students join such schools once adults, i.e. they start their military studies when over 18. However, SEDENA's reports do not explain the underlying reason of these differences. Moreover, in the first table, information provided about "geographical areas" do not clarify whether it refers to children's origin or to schools location, and contradicts REDIM investigations that show that most students in military schools come from rural areas.

With regard to gender equality, it needs to be highlighted that out of the aforementioned 13 schools, only five (Military

School of Medicine, Military School of Dentistry, Military School of Aviation, Military School of Air Force Troops and, logically, Military School of Nursing) accept girls enrollment.

These schools train every kind of military personnel. School curricula greatly vary, but most subjects are military-related and in all schools military training goes hand in hand with academic education. In all schools, regardless the kind of studies imparted, pupils are taught the use of weapons and actually use weapons in their training. SEDENA's report states that "education and training are priority activities for the Army and the Air Force, and seek the development and strengthening of students' knowledge in sciences, military arts and related matters".

¹⁷ Ministry of National Defense/Secretaría de la Defensa Nacional: *Primer Informe de Labores*, 2007, pp. 23-24; *Segundo Informe de Labores*, 2008, p. 29; *Tercero Informe de Labores*, 2009, pp. 29-30.

Moreover, SEDENA reports that in 2009, in Mazatlán, Sinaloa State, students of 12 military schools and 6 school units participated in crop eradication, through the search, finding and destruction of illegal drugs. These activities involved 5,609 people, including teachers, students and other military personnel.¹⁸ This is the first time that young students of military schools are drawn in the “drug war”, showing as such tasks that should be carried out only temporarily by the Army, acquired so much importance to become part of students training.

All military schools students, irrespective of their age, have military status and in case of violations of law, are tried in military courts, and treated like adults. The only difference lies in penalties, since children can be sentenced up to the half of the penalties established for adults (articles 153-156, Military Justice Code). Likewise, students of military schools are subjected to the same disciplinary laws as military personnel, as well as to school regulations and codes of practice. As a consequence, the Discipline Law of the Mexican Army and Air Forces applies to children as well as to adults.

With respect to children’s origin, unofficial sources underscore that at least 70% of pupils come from rural areas, and the remaining 30% is mainly composed of military personnel’s relatives. Almost all students come from middle-low class families. All military schools are boarding schools where pupils receive clothes, food and housing.

Several sources consulted for the draft of this report emphasized the difficulties that children encounter when they wish to leave military schools, as school regulations do not include the will of the student as a valid ground for an early discharge. Pupils can request the discharge, but such request must be mandatorily approved by the school board of directors, leaving to the latter’s discretion and arbitrariness the final decision. In addition, all students admitted to military schools, must sign a paper in which they commit themselves to serve the Army for, at least, a time double their studies, making the discharge extremely complicated.

The Army regularly organizes advertising campaigns and installs recruitment centers in subway stations, bus stations and airport terminals. Visiting SEDENA’s website, it is striking to see how nicely and passionately military schools are depicted, showing short videos and tempting portrayals of military life. An example is the leaflet “*A day of activities in the Heroic Military College*” (Un día de actividades en el Heroico Colegio Militar), that illustrates the “enthusiasm” that reigns in this school and the “happiness” of its students. The website provides accurate information on requisites to join military schools (diplomas, medical examinations etc.) as well as on academic, military and sport activities of each school. On the other hand, no information is provided on school discipline or legal status of pupils (civil or military) during their studies.

Currently, military education systems laws and regulations are under revision, with the aim of giving legal certainty to procedures followed within military schools, and guaranteeing that military education takes place in a legal framework.

With regard to military schools handled by the Ministry of the Navy (SEMAR), Only one school admits children from 15 onwards (Heroic Navy School); three schools accept children from 17 onward (Navy School of Engineers, Navy School of Medicine and Navy School of Nursing). In all four schools, children of both sexes are admitted. Following a REDIM official request, SEMAR provided the following information, disaggregated by age and sex.

¹⁸ Ministry of National Defense/Secretaría de la Defensa Nacional, *Tercer Informe de Labores*, 2009, p. 28.

MINISTRY OF THE NAVY (SEMAR)

NUMBER OF CHILDREN BELOW 18 WHO ATTEND MILITARY SCHOOLS

STATE	AGES						TOTAL
	15		16		17		
	FEM.	MASC.	FEM.	MASC.	FEM.	MASC.	
MÉXICO, D.F.	2	3	1	5	4	7	22
TUXPAN VERACRUZ	0	6	2	2	1	5	16
ENSENADA, B.C.	0	1	0	1	3	1	6
CD. DEL CARMEN, CAMP.	5	0	1	3	2	2	13
GUAYMAS, SON.	3	2	3	0	4	3	15
I. MUJERES, Q. ROO.	0	0	0	5	3	4	12
MANZANILLO, COL.	1	0	0	2	2	1	6
ACAPULCO, GRO.	4	4	2	0	1	5	16
CD. MADERO, TAMPS.	2	1	0	2	2	3	10
LA PAZ, B. C. S.	0	0	1	5	3	2	11
VERACRUZ, VER.	1	5	0	3	5	1	15
MAZATLÁN, SIN.	0	4	0	5	4	2	15
FRONTERA, TAB.	0	0	2	2	3	5	12
SAN BLAS, NAY	3	4	1	0	1	5	14
LERMA, CAMP.	1	0	0	5	4	2	12
PTO. VALLARTA, JAL.	0	2	2	3	2	5	14
YULKAPETÉN, YUC.	2	3	0	0	5	3	13
LÁZARO C., MICH.	0	0	0	5	3	1	9
CHETUMAL, Q. ROO.	0	0	1	2	4	5	12
SALINA CRUZ, OAX.	1	1	2	0	4	1	9
PTO. MADERO, CHIS.	2	2	0	0	5	5	14
IXTAPA ZIHUAT., GRO.	0	3	0	2	5	5	15
HUATULCO, OAX.	1	1	1	0	2	5	10
I. COZUMEL, Q. ROO.	0	0	0	3	1	2	6
COATZACOALCOS, VER.	1	2	0	0	2	2	7
MATAMOROS, TAMPS.	0	1	0	0	1	2	4
CHAMPOTÓN, CAMP.	1	0	1	0	2	2	6
TOTAL	30	45	20	55	78	86	314

Recommendations

- o Raise the minimum age for voluntary recruitment up to 18 years old, without exceptions.
- o Explicitly prohibit direct participation in hostilities of children under the age of 18.
- o Explicitly criminalize by reform of the Federal Penal Code violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities.
- o Stipulate explicitly that military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol, regardless of any military order to that effect.
- o Ensure that all children in military schools receive education according to articles 28, 29 and 31 of the Convention on the Rights of the Child, taking into account Committee's general comment No. 1 (2001) on the aims of education. In particular, human rights education should be included on the provisions of the Protocol.
- o Establish that children under the age of 18 attending military schools are granted civilian status and not military status.
- o Ensure that children in conflict with the law, irrespective of its military or civil nature, are always dealt with within the juvenile justice system and are treated in accordance with the standards enshrined in the Convention (arts. 37 and 40) and illustrated in the Committee's general comment No. 10 (2007) on "children's rights in juvenile justice".
- o Formally prohibit corporal punishment, taking into account Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.
- o Provide children attending military schools with adequate access to independent complaints and investigation mechanisms.
- o Improve the system of data collection and analysis on voluntary recruitment, compulsory recruitment and military schools. Ensure the access to such data by all the interested parties.

III. Mexico's fight against organized crime and its consequences for children

A. Context

Nor violence nor narco-trafficking are new in Mexico. However, in recent years the Mexican state is facing powerful drug cartels¹⁹ that fight a merciless war to extend their control on country's most profitable markets. The concurrence and the struggles between such organized crime groups, as well as the clashes between the latter and Mexico security forces, provoked the death of thousands of members of criminal groups, policemen, army officers and civilians. In this context of intense turf wars between rival groups of organized crime, kidnappings, executions, beheadings and other forms of violence are frightening art of the sad spectacle to which Mexicans attend every day.

The necessity to improve public security is evident and, laying on this premise, on March 7, 2007, the Mexican government launched a public security program in the framework of the so-called "Integral strategy to prevent crime and to fight organized crime" (Estrategia integral de prevención del delito y combate a la delincuencia). Within this framework, as a temporary mean, the President of the Republic requested the participation of special forces of the Mexican Army and Air Forces to support civil authorities to fight organized crime, and in particular narco-trafficking.

As a consequence, the Army is currently fighting along with the police and carrying out tasks that can be grouped into three main categories:

- The first involves duties traditionally carried out by the armed forces in Mexico, such as technical intelligence collection and maritime and aerial monitoring and interdiction. These tasks are well-suited to the armed forces, which have the

equipment, training and experience to perform them;

- The second category includes traditional civilian law enforcement and judicial duties. Specifically, this includes actions such as making arrests, prosecuting and convicting defendants and imposing punishment. With the exception of the military routinely detaining suspects and then turning them over to law enforcement authorities, the tasks in this second category have remained mainly in the hands of civilian authorities;
- The final category is more of a gray area. It involves tasks that overlap between Mexico's armed forces and law enforcement agencies, and it is the area over the last few years in which the Mexican military has become increasingly involved. It is also the area that has caused the most controversy, primarily due to the fact that it has brought the troops into closer contact with the civilian population. Some of the most noteworthy tasks in this final "gray" category include:
 - Drug-crop eradication and meth-lab seizures.
 - Immigration and customs inspections at entry and exit points.
 - Raids and arrests of high-value cartel targets. Beyond simply stopping the flow of drugs and weapons into and out of Mexico, the federal government has also sought to disrupt the criminal organizations by arresting drug cartel members. Highly sensitive and risky operations such as the arrest of high-ranking cartel leaders have been carried out more often than not by the military's elite Special Forces Airmobile Group (GAFE).
 - General public safety and law enforcement. A central part of the federal government's effort to curb the violence has been the deployment of military forces to many areas, where the troops conduct such actions as security patrols,

traffic stops and raids as well as man highway checkpoints. In some cities, like Ciudad Juárez and Tijuana, the military has been called upon to assume all public-safety and law-enforcement responsibilities.²⁰

In order to conduct its "drug war", the Mexican state has progressively strengthened Army's capability, and involved the Army in tasks that should pertain to security forces only. It is worth noting that Army expenses increased in all recent budgets. Ministry of National Defense budgetary allocations increased 24% in 2007, 8% in 2008, 20, 09% in 2009 and 0, 02 in 2010.

MINISTRY OF NATIONAL DEFENSE

Years	Budgetary allocations
2010	43,632,410,311
2009	43,623,321,860
2008	34,861,005,900
2007	32,200,896,500
2006	26,031,900,900
2005	24,002,172,080

To use the Army for public security tasks is a faculty recognized in Mexican legal system. The intervention of the Mexican Army and Air Forces lies on legal legitimacy and it is based on:

- Article 89, paragraph VI of the Constitution.
- Articles 1, 2, 5, paragraphs I y V, y 16 of the National Security Act.
- Articles 1, 2, 3, 11 and 17 of the Organic Law of the Mexican Army and Air Forces.
- National Development Plan, axis No. 1.

¹⁹ Seven major drug cartels operate in Mexico: Sinaloa, Del Golfo, Arellano Félix, Carrillo Fuentes, Amezcuca Contreras, Díaz Parada y Familia Michoacana. Recently, the DEA (Drug Enforcement Administration) also granted the "cartel" rank to Los Zetas, a criminal group that used to work with Del Golfo cartel in the past.

²⁰ S. Meiners/F. Burton, The Role of the Mexican Military in the Cartel War, *Stratford*, 29 July, 2009.

- National Defense Sectorial Program, objective No. 4.
- Guideline for the Integral fight to narco-trafficking 2007-2012.
- Supreme Court jurisprudence thesis No. 35/2000, 36/2000, 37/2000 y 38/2000. Those rulings admit as constitutionally possible that the Army and Air Force support civil authorities in public security tasks. According to the Supreme Court, the Constitution provides the Army with the faculty to act when there is a serious danger or a conflict, taking instructions from the President.

However, the legality of the Army's intervention on paper is not reflected by the actions on the ground. Since 2006, the "drug war" has grabbed headlines every day for its vigor, territorial extensions and violations of human rights of thousands of Mexican of all ages. President Calderón employed the words "drug war" or "frontal combat" to point out the Army and police actions, while the Minister of National Defense spoke of "collateral damages" to name civilians victim of this conflict.

Even though the government is focusing all its efforts on fighting the narco-trafficking, it is important to underline that drug is one of the many businesses of drug cartels and it is an oversimplification to qualify organized crime exclusively as drug cartels. General Attorney investigations show that narco-trafficking amounts to 45 to 48% of cartels year revenues, the rest coming from the commission of other crimes. Depending on the cartels, the percentage of revenues coming from drug-related activities can hardly amount to 30%, as in the case of Familia Michoacana and Zetas cartels. Currently, cartels are involved in 22 types of crimes (smuggling, piracy, extortion, kidnapping, trafficking in human beings, commercial and sexual exploitation, corruption, money laundering, just to mention few).

Moreover, all criminal groups take advantage of State officials corruption and impunity prevailing in the country. It is essential to fight corruption within the State to reduce the dominance of the groups within the territories and to end the impunity of its members. It is also important to investigate and hold responsible corrupted police officers that provide organized crime groups with illegal weapons and seized drugs. Corruption is strictly related to impunity. According to the National Survey

on Insecurity (Encuesta Nacional sobre la Inseguridad - ENSI), in 2008, only 22% of crime victims pressed charges against perpetrators and only 15% of reported crimes were effectively investigated by the Attorney General Office.

Finally, it should be noted that given the lack of transparency of public authorities and the lack of reliable and accessible data on this subject, authorities refrain from publishing official statistics on "drug war" victims "playing around the numbers". Major newspapers are the only dependable source for information with account of those killed in the fight against organized crime, while authorities are relatively absent and only sporadically publish available data.

B. Armed conflict or internal violence?

Although official declarations coming from government officers define the strategy against organized crime as a "battle", a "fight, or a "war against the narco", it is necessary to clarify whether we are actually living in time of war or if it would be more appropriate to speak of "internal disturbances". Categorize such violent acts is more than just a theoretical exercise: categorization has immediate consequences, as it determines applicable rules and protection, in accordance with the agreed-upon legal qualification.²¹

According to the International Criminal Tribunal for the Former Yugoslavia, "an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State".²² International humanitarian law exclusively applies and regulates humanitarian issues in time of armed conflict, whether international or non-international.

An international armed conflict is a declared war or any other armed confrontation between two or more States, even if the state of war is not recognized by one of them. No minimum level of intensity, military organization or control over territory is required for an international armed conflict to be recognized as such. An international armed conflict may consist merely of low-level combat (or there may even be no combat at all),

²¹ ICRC, *Violence and the use of force*, Geneva, 2008, p. 5.

²² Prosecutor v. Dusko Tadic, Case No. IT-94-1-AR72, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 (ICTY Appeals Chamber), para. 70.

small-scale incursions into enemy territory, or an invasion that meets no resistance. The four Geneva Conventions of 1949 (GC I – IV) relating to the protection of the persons not (or no longer) taking part in hostilities (wounded, sick, shipwrecked, prisoners of war, the dead, civilians and those caring for victims of armed conflict) are applicable. Additional Protocol I of 1977 (AP I), which supplements the Geneva Conventions of 1949, applies in international armed conflict, in situations of occupation and in situations of colonial domination.²³

On the contrary, to have a non-international armed conflict, the following requirements must be fulfilled: non-governmental armed groups fight either among themselves or against governmental forces, with a level of intensity exceeding that of isolated and sporadic acts of violence; and with a level of collective organization enabling them to carry out sustained and concerted operations. In addition, the armed groups may also exercise a certain minimum control over the territory. Article 3 common to the Geneva Conventions of 1949 is the main provision applicable to non-international armed conflicts. Whenever an armed group has achieved a certain minimum control over a territory, Protocol II additional to the Geneva Conventions, which develops and supplements Common Article 3, is applicable. In particular, Additional Protocol II contains an extended list of fundamental rights and protections; precise provisions regarding persons whose liberty has been restricted; provisions relating to prosecution and punishment of criminal offences related to internal armed conflicts; more detailed provisions on wounded, sick and shipwrecked persons; more precise provisions on the protection of the civilian population, including the prohibition of forced movement of civilians etc.²⁴

However, Additional Protocol II does not apply to “situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts”. Consequently, such situations fall below the threshold of internal armed conflicts.

There is no accepted worldwide definition of such situations: they have been named “internal violence”, “organized armed

violence”,²⁵ “urban violence”,²⁶ or simply “organized crime”, according to the different contexts. In some countries it would be appropriate to speak of “urban violence” while in others it would be preferable to use the words “internal tensions”. In Mexico, we will use the expression “organized crime”, which can be considered one of the most serious challenges to human security, as it hampers social, economical, political and cultural development. It is a multi-faceted phenomenon that consists of different illegal activities, among which we can emphasize drug trafficking, trafficking in human beings, arms trade, migrant trafficking, money laundering etc.

At the international level, the United Nations Convention against Transnational Organized Crime (Palermo Convention, adopted in 2000) is the main instrument in the fight against organized crime.

The Convention is further supplemented by two Protocols, which target specific areas and manifestations of organized crime: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air. In the Convention, organized crime shall mean a “structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit”. At the domestic level, the matter is regulated by the Federal law against organized crime, which contains a partially different definition. Article 2 states that organized crime is the “link between three or more persons, existing for a period of time, to commit any crime considered as such in the present law”.

The main difference between the two definitions lies in the scope, as financial gain is required to have a criminal group in the Convention, while in the Federal law the scope is irrelevant. This lack of mention can lead to a misuse of the concept, since it can enable members of social movements to be accused of belonging to organized crime groups. The United Nations Human

²³ ICRC: *Violence and the use of force*, Geneva, 2008, p.29.

²⁴ Idem.

²⁵ “Organized armed violence” is the definition used in the acclaimed study “Neither war nor peace: international comparison of children and youth in organized armed violence”, see below, para. D.

²⁶ The International Committee of the Red Cross employs the term “urban violence” and considers it among the four major challenges in contemporary world. See the 30th International Conference of the Red Cross and Red Crescent, Declaration: *Together for Humanity*, 30IC/07/R1.

Rights Council, in the framework of the Universal Periodic Review, recommended to Mexico to harmonize domestic legislation to its international commitments and particularly “to enact a definition of organized crime consistent with the United Nations Convention against Transnational Organized Crime”.²⁷

Having said so, it is still to be determined how to categorize Mexican situation at the moment. It is accurate to say that currently in Mexico die more people because of firearms than they die in many low-intensity armed conflicts around the world; that drug cartels enjoy a territorial paramilitary presence in several areas of the country; that small-bore arms and light arms used during confrontations between rival groups or between such groups and the Army are the same used in any internal conflict. However, and despite those similarities, Mexican situation cannot be regarded as a non-international armed conflict. Firstly, organized crime is not politically oriented, does not have any political purpose or any explicit political aim to replace the State (unlike armed groups in civil wars which attempt to establish a different political order). Secondly – and although we acknowledge that drug cartels exercise a certain power and influence over some portions of the territory - the requirement of “effective control” is not fulfilled. Thirdly, categorize Mexican situation under “armed conflict” will have as a consequence that criminals will be treated and judged like “combatants”, granted them protection as according to the Geneva Conventions, including the possibility to legally exercise violence and to legitimize the “collateral damages” related to the conflict. Fourthly, international humanitarian law contains many provisions about protection of civilians in case of armed conflict. In a civil war, it is possible to distinguish between a soldier, a guerrilla man and a civilian, but how to distinguish between a delinquent and a civilian? In addition, to categorize the Mexican conflict as an “armed conflict” would contribute to legitimize the already-existing extremely high level of State violence against narco-trafficking.

If we agree that Mexican situation cannot be regarded as a non-international armed conflict, then international

humanitarian law rules are not pertinent. In times of urban violence, disturbances or tensions, international law of human rights is applied.

Without undermining the right and the responsibility of the State to maintain the order, it must be emphasized the necessity to respect the following essential human rights that are particularly important for law enforcement:

- the right of every human being to life, liberty and security of person;
- the prohibition of torture and cruel, inhuman or degrading treatment or punishment;
- the prohibition of arbitrary arrest or detention;
- the right to a fair trial;
- the right of persons deprived of their liberty to be treated with humanity;
- the prohibition of arbitrary or unlawful interference with a person’s privacy, family, home or correspondence;
- the right to freedom of opinion, expression, peaceful assembly and association.²⁸

The exceptionally high level of violence related to drug trafficking, the permanent threats to human security, the vigorous State repression, definitely place Mexico in a category on its own, mid-way between war and peace, but it does not justify by any means the application of international humanitarian law, nor it does validate the violations to humans rights of citizens, or the derogation of freedoms and rights guaranteed by the rule of law.

C. Impact of Mexico’s fight against organized crime on children’s life

If this strategy to fight against organized crime and insecurity was successful and the deployment of thousands troops was sufficient to that end, violence and killings levels should have systematically fallen and people should feel safer. On the contrary, violence did not decrease, struggles for crime markets continued, killings and extrajudicial executions, and military confrontations between the Army and organized crime groups escalated.

Official data shows the failure of this strategy.

At the beginning of August 2010, the Ministry of Interior reported that from December 2006, the number of victims has significantly increased and amounted to 28,228 deaths, 90% from executions and 10% from military confrontations.²⁹

Deaths in the frameworks of the fight against organized crime	December 2006 July 2010
Total	28,228
Executions	25,455
Military confrontations	2,773

With regard to children, from December 2006 to October 2010, 994 children lost their life because of the State fight against organized crime. In order to understand the gravity of the situation, it is sufficient to compare the 2000-2006 children death toll (503 deaths) with the 2006-2009 figure (994).

Deaths in the frameworks of the fight against organized crime	December 2006 October 2010
Children ³⁰	994

In respect to the homicide rate per year per 100,000 inhabitants, from 1997 to 2007, such rate had progressively decreased, going from 17 in 1997 to 10 in 2007. In 2008, a year later the launch of the fight against narco-trafficking, the figure jumped to nearly 12 (11,8). This brings Mexico over the 10 homicides/100,000 inhabitants’ rate, which the World Health Organization considers “pandemic”.

²⁷ UN, Human Rights Council, *Universal Periodic Review*, Mexico A/HRC/11/27, para. 94.1.

²⁸ ICRC, *Violence and the use of force*, Geneva, 2008, p.18.

²⁹ Ministry of Interior/Secretaría de Gobernación: Dirección General de Comunicación Social, *Boletín No.305-04/08/2010*.

³⁰ Redim elaboration, based on official records and data published in newspapers *Reforma* y *la Jornada*.



Los datos graficados son las tasas redondeadas a entero. Se muestran los homicidios dolosos en México, a pesar de no ser un dato derivado de la ENSI por ser uno de los insumos en el INIS. Fuente: datos de averiguaciones previas iniciadas, registrados por el SNSP. Formato CIEISP 2008 y población según CONAPO 2008, actualizada tras el Censo 2005.

In addition, some Mexican States suffer from extremely high homicide rates, like Sinaloa (43.7), Chihuahua (42.1), Guerrero (30.2), and Durango (27.8). Ten States reach levels higher than national average, up to four times higher. In Ciudad Juárez, this rate climbed to 191/100'000 inhabitants, confirming the city's sad Guinness as the most violent city in the world.

In regards to children under 18 of age, death toll is naturally lower than national average (that takes into account the whole population). However, in the most violent States, where the total homicide rate increased, children homicide rate increased too, especially in Baja California, Chihuahua, Durango y Sinaloa.

ENCUESTA NACIONAL SOBRE INSEGURIDAD - 2009

DATOS OFICIALES HOMICIDIOS DOLOSOS

TASA POR 100 MIL HABITANTES

Entidad	2007	2008
Sinaloa	28.0	43.7
Chihuahua	18.5	42.1
Guerrero	25.4	30.2
Durango	16.3	27.8
Baja California	17.1	27.7
Oaxaca	26.7	20.6
Sonora	12.5	15.8
Nayarit	11.2	15.2
Quintana Roo	14.4	15.2
Michoacán	13.2	14.2
Tamaulipas	8.5	9.8
San Luis Potosí	6.2	8.8
México	7.8	8.6
Chiapas	8.1	8.2
Morelos	6.9	8.1
Distrito Federal	8.1	8.1
Puebla	7.2	7.7
Tabasco	9.5	7.3
Coahuila	7.4	6.9
Jalisco	5.6	6.6
Veracruz	6.6	6.6
Nuevo León	6.5	6.0
Hidalgo	6.1	5.8
Campeche	4.6	5.7
Aguascalientes	4.4	5.6
Colima	5.1	5.6
Zacatecas	4.8	5.4
Guanajuato	4.6	5.1
Baja California Sur	5.2	5.1
Tlaxcala	3.8	3.8
Querétaro	3.4	3.4
Yucatán	1.6	2.5
Nacional	9.7	11.8

- Fuente: datos de averiguaciones previas iniciadas, registrados por el SNSP. Formato CIEISP 2008 y población según CONAPO 2008, actualizada tras el censo 2005.
- Se muestra la tasa de los homicidios dolosos en México a pesar de no ser un dato derivado de la ENSI por ser uno de los insumos en el INIS.
- La tasa de homicidios dolosos por 100 mil habitantes correspondientes a esta tabla son utilizados para la construcción del termómetro del Delito 2009 o Índice Nacional de Seguridad.

Death cause: homicide. Age group: children aged 0 to 17 ³¹										Rate		
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2006	2007	2008
Aguascalientes	1		2	3	1	3	3	5	7	0.69	1.15	1.62
Baja California	17	17	19	14	27	12	15	21	56	1.49	2.05	5.4
Baja California Sur	1	1	1	1	1	1	2	4	1	1.11	2.21	0.55
Campeche	7		1	5	1	1		2	6	-	0.71	2.14
Coahuila	15	20	21	7	10	11	8	12	13	0.86	1.3	1.42
Colima	7	6	3	2	4	6	3	2	6	1.5	1.01	3.04
Chiapas	39	14	44	43	24	29	61	8	20	3.24	0.43	1.08
Chihuahua	53	70	60	41	56	55	53	33	120	4.49	2.81	10.29
Distrito Federal	76	89	92	87	77	67	59	59	85	2.34	2.39	3.51
Durango	7	9	9	14	13	8	5	9	22	0.84	1.53	3.8
Guanajuato	32	34	23	21	15	18	18	25	23	0.91	1.28	1.2
Guerrero	33	35	30	29	26	33	58	54	41	4.34	4.13	3.21
Hidalgo	6	9	3	6	7	2	6	3	4	0.66	0.33	0.45
Jalisco	31	42	40	31	29	22	34	38	41	1.35	1.53	1.67
México	256	273	250	228	211	255	207	136	136	4.08	2.69	2.7
Michoacán	45	56	33	39	34	49	67	42	25	4.31	2.77	1.69
Morelos	19	19	10	8	9	6	7	7	14	1.21	1.22	2.48
Nayarit	7	5	9	3	8	6	8	1	6	2.26	0.29	1.76
Nuevo León	8	7	10	11	12	13	9	19	16	0.62	1.32	1.11
Oaxaca	50	49	51	45	47	42	35	36	37	2.44	2.57	2.71
Puebla	35	46	29	30	35	29	31	23	23	1.43	1.07	1.08
Querétaro	9	13	4	8	4	11	9	7	6	1.45	1.13	0.97
Quintana Roo	6	14	7	17	7	10	4	4	11	0.9	0.88	2.39
San Luis Potosí	42	28	23	20	16	10	15	18	24	1.55	1.89	2.56
Sinaloa	30	22	16	13	20	18	12	17	30	1.26	1.82	3.28
Sonora	11	15	17	11	11	16	10	10	16	1.15	1.15	1.86
Tabasco	8	6	4	8	5	3	9	9	10	1.17	1.19	1.34
Tamaulipas	19	13	7	10	17	15	32	10	12	2.99	0.94	1.13
Tlaxcala	6	4	3	6	8	6	10	4	4	2.38	0.96	0.96
Veracruz	39	28	26	25	16	27	17	14	27	0.64	0.54	1.05
Yucatán	3	2	1	6	2	2	1	2	4	0.15	0.31	0.62
Zacatecas	2	9	11	9	7	6	6	5	6	1.11	0.95	1.16
Nacional	924	958	863	802	760	792	814	639	852	2.11	1.68	2.26

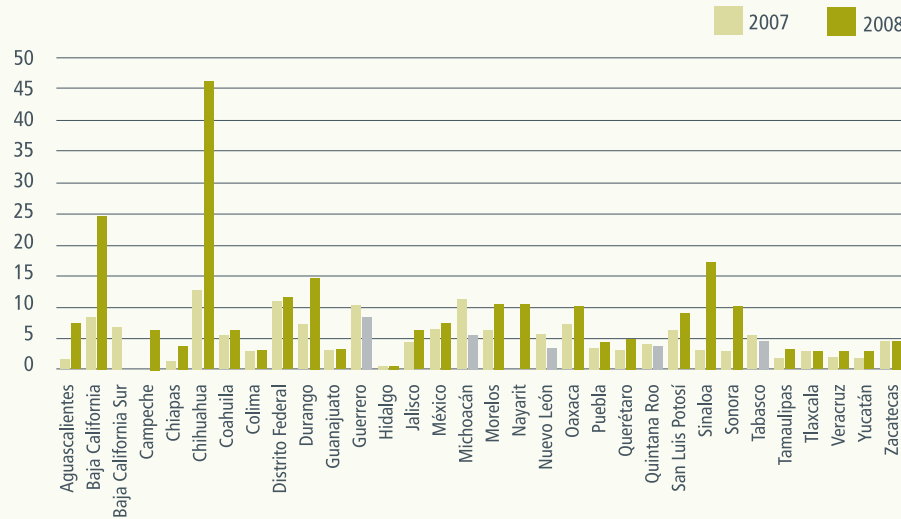
In disaggregating such data for age, it must be stressed that the age group most affected by the increase in homicide rate is the 15-17 years old group. From 2007 to 2008, the homicide rate of children aged 15 to 17 in Baja California jumped from 8.33 to 24.3 (in percentage terms, it means an increase of 291.7%). In Chihuahua, the rate rose from 12.6 to 45.95, with an increase of 364%. Still more worrisome it is the increase in Sinaloa, where the rate climbed from 3.13 to 17.01, producing a percentage increase of 543%.

³¹ Ministry of Health/Secretaría de Salud, Sistema Nacional de Información en Salud, Dirección General de Información en Salud: *Base de datos de defunciones 1979-2008*.

Death cause: homicide. Age group: children aged 15 to 17 ³²										Rate		
	2000	2001	2002	2003	2004	2005	2006	2007	2008	2006	2007	2008
Aguascalientes			2		1		2	1	5	2.94	1.45	7.14
Baja California	8	13	13	12	18	8	10	14	42	6.14	8.33	24.3
Baja California Sur				1	1		1	2		3.42	6.72	0
Campeche	3			2	1				3	0	0	6.1
Chiapas	17	1	18	20	14	17	29	4	11	9.52	1.3	3.54
Chihuahua	38	41	32	31	39	29	28	24	88	14.81	12.6	45.95
Coahuila	8	15	16	4	9	3	5	8	9	3.4	5.39	6.01
Colima	5	1	1	1	1	1	1	1	1	2.89	2.9	2.9
Distrito Federal	51	52	63	49	52	42	36	44	46	8.64	10.81	11.48
Durango	2	6	6	7	11	5	4	7	14	4.11	7.18	14.39
Guanajuato	14	22	11	7	8	7	9	10	10	2.81	3.13	3.13
Guerrero	11	16	17	15	7	21	34	22	18	15.79	10.2	8.36
Hidalgo	3	5	2	3	3		2	3	3	0.2	0.3	0.3
Jalisco	13	17	23	12	12	10	15	18	25	3.62	4.35	6.05
México	105	93	90	90	87	91	78	54	60	9.33	6.43	7.12
Michoacán	19	27	19	17	17	22	39	29	14	14.83	11.17	5.48
Morelos	11	14	4	5	5	3	4	6	10	4.08	6.11	10.2
Nayarit	5	2	4	3	5	2	1		6	1.67	0	10.24
Nuevo León	6	4	4	3	4	8	7	13	8	3.03	5.6	3.43
Oaxaca	24	22	24	29	21	14	21	17	24	8.75	7.07	10.02
Puebla	11	24	16	12	15	12	11	12	15	3.13	3.39	4.22
Querétaro	1	5	1	5	2	5	4	3	5	3.87	2.86	4.73
Quintana Roo		4	5	6	4	3	3	3	3	4.08	3.95	3.85
San Luis Potosí	15	11	10	10	14	5	11	10	14	6.98	6.33	8.87
Sinaloa	19	13	8	9	11	13	6	5	27	3.74	3.13	17.01
Sonora	7	10	11	9	4	9	6	4	14	4.3	2.85	9.92
Tabasco	4	4	2	8	2	2	6	7	6	4.6	5.41	4.68
Tamaulipas	12	8	3	6	10	8	22	3	5	12.77	1.73	2.87
Tlaxcala	3	3		1	3	2	4	2	2	5.85	2.91	2.9
Veracruz	22	16	15	13	7	12	7	9	12	1.57	2.02	2.71
Yucatán	2	2		2	1	2	1	2	3	0.88	1.75	2.63
Zacatecas	2	5	7	6	4	2	3	4	4	3.36	4.53	4.58
Nacional	445	458	431	399	393	358	410	341	507	6.44	5.35	7.95

³² Ministry of Health/Secretaría de Salud, Sistema Nacional de Información en Salud, Dirección General de Información en Salud: *Base de datos de defunciones 1979-2008*.

VARIATION IN THE HOMICIDE RATE - CHILDREN AGED 15 TO 17



In addition to direct violence (i.e. the violence that leads to children's death or injury), children are also affected by the death of one or both their parents, in the State fight against drug cartels. NGOs estimate that around 30 thousands children are now orphans,³³ though exact figure is unknown, as well as the fate of such children, since no government body is paying attention.

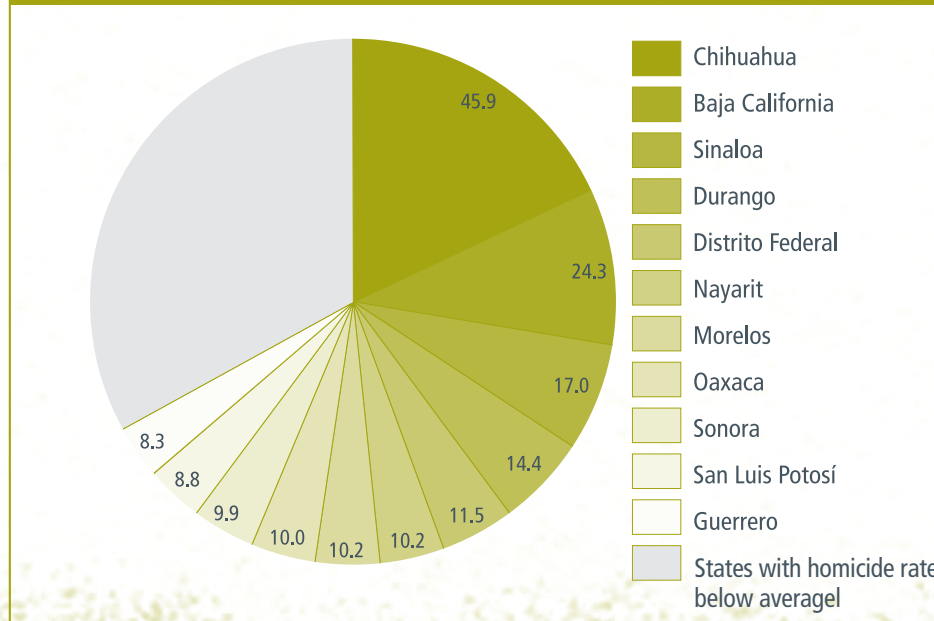
Concerning insecurity, the presence of the Army on the streets should have decreased people's feelings of insecurity, especially in States were organized crime is more active and violence levels higher.

Once again, figures prove government strategy wrong.

The National Survey on Insecurity (Encuesta Nacional sobre Inseguridad, ENSI) reports that in 2008-2009, the percentage of people who affirmed to feel unsafe in the country rose from 59% to 65%. In Chihuahua, this percentage jumped from 42% to 82% in one year. The same survey points out that in 2009, the 56% of surveyed people did not allow their children under the age of 18 to go out at night for fear of being victims of some crimes. Those percentages go up to 64,9% in cities like Culiacán (Sinaloa), and up to 79% in Ciudad Juárez (Chihuahua).

In addition, deploying thousands of troops on the streets provoked a dramatic raise in complaints for human rights abuses against the Army. From 2006 to the end of 2009, the National Human Rights Commission (Comisión Nacional de los Derechos Humanos, CNDH by its Spanish acronym) received 3,570 complaints for alleged human rights violations committed by military personnel (182 complaints in 2006, 367 in 2007, 1230 in 2008 and 1791 in 2009).

STATES WITH HOMICIDE RATE ABOVE NATIONAL AVERAGE, AGE GROUP: CHILDREN AGED 15 - 17



³³ La Jomada, Guerra del narco habría dejado 30 mil huérfanos desde 2006, según ONG, 25 de Julio, 2010.

*"If the government main argument for implementing such strategy was to fight against insecurity and violence, (...) three years later, the results are simply indefensible. There is no evidence showing that the frequency or the importance of kidnappings, assaults, and fights between drug cartels have decreased"*³⁴

*The employment of the Army and the Navy and the doubling of police forces "might or might not have affected the power and the strength of drug cartels. But they did not reduce by any mean violence level or people's insecurity".*³⁵



³⁴ R. Aguilar/J. Castañeda, *El narco: la guerra fallida*, Punto de Lectura, México 2009, p. 41, own translation.

³⁵ *Idem*, p. 44, own translation.

EXEMPLARY CASE

Soldiers fire on a family: two children die

Brothers Almanza Salazar aged 5 and 9 killed while travelling with their parents

Two little children, aged 5 and 9, died by soldiers who shot at a family that was travelling in Matamoros, passing a checkpoint in Ribereña highway. Martín and Bryan Almanza Salazar were shot dead on April 3, 2010, when, together with their parents Martín Almanza Rodríguez (also injured in the shooting) and Cynthia Salazar Castillo, and their sisters Lucero Michel aged 10, Jennifer aged 8 and Yesenia aged 3, were going to the beach in Matamoros, on a field day. Travelling with them also were Carlos Alfredo Rangel and his wife Vanessa Viridiana Velázquez Carmona and their three-month old baby Jesús Alfredo Rangel Velázquez.

All started when the families approached a checkpoint, travelling in a Tahoe SUV. Seeing the Army, the driver Carlos Alfredo (injured in the shooting) slowed down and, shortly after passing the checkpoint, the soldiers opened fire, without apparent reason.

On 30 April 2010, in a press conference, the Military Attorney General, José Luis Chávez García, reported that both children had died as a consequence of a clash between the Army and some criminals. More specifically,

the Military Attorney General revealed that the families were attacked by a grenade 40 mm caliber whose splinters provoked the death of the children. This kind of weapon – concluded the Attorney General – is not owned by the Army. The parents of the children strongly rejected this version, underscoring that their children were hit by bullets and not by grenade splinters, and denying that any clash had ever occurred between the Army and a criminal group.

The National Human Rights Commission (CNDH) was tasked to conduct an independent investigation and elucidate the circumstances of the death of the brothers Almanza Salazar. On 16 June 2010, the CNDH announced its conclusions: the investigation carried out by the Ministry of National Defense is not supported by evidence. There was no confrontation between the Army and criminal groups and, in addition, there was an unlawful removal of evidence. The CNDH pointed out several human rights violations, in particular the right to life, integrity and personal security, arbitrary use of public force, cruel treatment, alteration of the crime scene. All of these violations were perpetrated by military personnel.

The National Human Rights Commission issued recommendation N.36/2010 in which urged the authorities to:

Ministry of National Defense:

First. Provide compensatory damages to the family of Bryan and Martín Almanza Salazar;

Second. Compensate physical and emotional damages, through medical and psychological assistance to the victims;

Third. Give instruction to Ministry of National Defense officers not to manipulate the crime scene and/or distort the facts; provide training courses on evidence preservation.

Fourth. Implement a mechanism to periodically subject Army officers to toxicology and psychology tests. Likewise, conduct such tests on the officers that participated in the shooting and include the results in the criminal investigation file.

Office of the Attorney General:

First. Take into account this recommendation and include its conclusion into the criminal investigation N. APIPGR/DGCAP/DFI/050/2010. Take all the necessary measures to shed light on the facts, ensure full access to justice to the family of the children and punish the perpetrators.

Second. Recognize the survivors as “victims”, so to have full access to all the rights guaranteed in the Constitution, international treaties and domestic law.

Third. Ensure cooperation with the National Human Rights Commission in all administrative proceedings, and provide this Commission with access to all files they might request.

On 3 July 2010, the Ministry of National Defense accepted all the recommendations, although pointing out that its compliance will be conditional to the result of criminal investigations.

EXEMPLARY CASE

Ten teenagers executed in Pueblo Nuevo, Durango

Alleged narco-traffickers attacked and killed ten teenagers on 28 March 2010

Seven children and three youngsters – native of Ejido El Aval - were travelling in a pick-up car heading to Los Naranjos, when they were ambushed by a group of 20 people allegedly pertaining to the Zetas drug cartel. Some neighbors argued that some of the victims were involved with the Sinaloa drug cartel, since they were carrying out three arms and fought back for nearly an hour.

Yolanda, Erika, Iván and Margarito Ortega Rueda respectively aged 19, 11, 17 and 13, Juana Francisca and Yesenia Sarabia Mancinas aged 17 and 15, Pedro and Lázaro Leyva Cabrera aged 21 and 19, Sergio González Luna aged 16 and Carlos Ramírez Leyva aged 15 died in the attack. Two babies Armando Antonio Sarabia Aragón, 8 month-old, son of Yolanda, and Martín Vega Ortega, 10 month-old, were the only survivors.

Forty-eight hours after the accident, the Office of the Attorney General of the State of Durango (PGJE, by its Spanish acronym), still lacked a clear version of the facts, as well as solid evidence to launch the investigation. The only certain fact was that the victims were hit by 40 bullets and that an armed group was spotted in the place of the massacre few minutes earlier.

In a first unofficial version, it was reported that the day of the attack ten women from El Aval and sixty-five women from Los Naranjos, beneficiaries of the State-sponsored "Opportunities Program", went to the latter village to receive some checks that would be delivered by helicopter. Four of the ten women from El Aval had agreed to meet with their sons after getting the payment. Florentina Cabrera Medrana, mother of Pedro and Lázaro, declared: "My sons told me they were coming; I was waiting for them. That's why, when I heard the shooting, I ran out to the mountain. When I got there, they were still shooting. I tried to reach the car because I wanted to see my sons. Some men yelled at me; I tried again, they fired on me and I stopped myself. After, they ordered me to open the door of the car. When I opened, I first saw my grandson bleeding. I took him

into my arms...at that moment, I saw another baby but I could not reach him. He was in Erika's arms, although she was dead". Afterwards, she learnt that it was Armando Antonio Sarabia Aragón, Yolanda's son.

In an official report released by the PGJE, it was said that the mainstream investigation was turning around a multiple murder carried out by the organized crime, and the place of the murder was known as "The Golden Triangle" (El Triángulo Dorado).

The State of Durango General Attorney, Daniel García Leal, claimed that according to evidence, the armed group tried to halt the pick-up car but since they did not stop, the armed group fired on the car. Therefore, he concluded that the killing was provoked by a clash between the two groups and was not an execution.

It must be emphasized that the Army came first to the crime scene, and next came the State Investigation Unit (AEI, by its Spanish acronym) and the Prosecutor. According to Luz Esther Luna Sarabia, Sergio's mother, "when AEI officers arrived, the bodies were already inside the church; we took them to the church. We notified the authorities, but since they did not show up until the next day, we took the bodies and moved them to the church, for fear of decomposition". The families could not take the bodies to Durango for the autopsy, because they lacked money. Moreover, the Army, the AEI and the Office of the Prosecutor promised the families to comeback but they did not.

On its side, the State Human Rights Commission provided the families with psychological help and legal assistance. State Deputy-Prosecutor, Ramiro Ortiz, claimed that investigation has been slowed down by the victims' families refuse to speak to the authorities. However, eight months after the killings, there is no progress in the investigation, no elucidation of the facts and no perpetrator has been brought to justice.

EXEMPLARY CASE

Two students executed outside the university

At midnight on 19 March 2010, Javier Francisco Arredondo Verdugo and Jorge Antonio Mercado Alonso were studying at the Instituto Tecnológico de Monterrey library. Shortly after they left, a clash erupted between the Army and a criminal group. The students were stuck in the middle and died in the crossfire.

At first, State authorities asserted that the students were members of the armed group that attacked the military, even though the investigation had shown that Jorge and Javier were University students and had nothing to do with the armed group. Likewise, a Ministry of National Defense report claimed that the students came out of a truck and died in the crossfire.

The National Human Rights Commission (CNDH) clarified in its recommendation N.45/2010 that: "the version handled by the Army is not supported by any evidence". Moreover, the Commission stated that the crime scene has been altered: "the bodies have been moved, weapons were put next to the bodies and the surveillance camera was broken". Military officers had also declared that "the students were carrying an automatic rifle and a carbine".

The Commission showed that the Army modified the crime scene, labeled the students as "criminals" in order

to justify their actions. The crime scene reconstruction was made possible by another surveillance camera that partially recorded the scene. A number of contradictions emerged from the officers' testimonies, as well as from the State Prosecutor,³⁶ who claimed that Javier and Jorge were certainly not students.

The Commission also highlighted the lack of cooperation from the Office of the State Prosecutor, the Office of Federal Prosecutor and the Ministry of National Defense that hindered the independent investigation carried out by the Commission. "This Commission does not have enough evidence to charge anyone; however, evidence shows an arbitrary use of force from the Army and an omission to protect the physical integrity of the victims".

On 28 August 2010, the Ministry of National Defense accepted recommendation N.45/2010 by affirming: "The Ministry maintains its commitment to the respect and promotion of human rights in all its operations (...) and for this reason, the Ministry decided to accept all the recommendations made by the Commission". Likewise, the Ministry promised to specify responsibilities in the crime scene alteration, and to provide training courses on human rights to its officers.

³⁶ Press Conference: Comandancia de la 7/a. Zona Militar, Comunicado de Prensa General Escobedo, Nuevo León, 'PERSONAL MILITAR REPELE AGRESIÓN EN EL MUNICIPIO DE MONTERREY, N.L.'.

D. Children involvement in organized crime

Narco-trafficking is the most evident, profitable and violent form of organized crime in Mexico. However, criminal groups have greatly diversified their activities and are currently involved in the commission of many different types of crimes. The territorial control exercised by those groups and the dramatic consequences of their actions have prompted academics to speak about “a new war” or “a new urban insurgency”.³⁷ The major study in the field (Neither war nor peace: international comparison of children and youth in organized armed violence”, L. Downey, 2005) employs the term “organized armed violence” and defines the children involved as “children and youth employed or otherwise participating in organized armed violence where there are elements of a command structure and power over territory, local population or resources”.³⁸ However, we will continue to use the term “organized crime”.

There is no official statistics on the number and the type of crimes committed by children under the age of 18 involved in organized crime. Nor there exist official figures about how many children are currently working with and for criminal groups. Scholars estimate that around 30,000 children cooperate with organized crime groups in diverse ways and are involved in the execution of 22 types of crimes (from drug trafficking, to kidnapping, from trafficking in human beings to extortion, smuggling, piracy, corruption etc.).

Homicides and injuries related to violence are inflicted on and by children every day in all areas of the country. However, there are way more frequent in poor areas, where possibilities of employment, education are scarce and life conditions are hard. Scholars argue that within the country, there are 17 States (out of 32) that are living a process of “Somalization”, where large

territorial portions are ungovernable and legitimate authorities are relatively absent. It is estimated that exist around 780 focus of “ungovernability” in the country.³⁹

When the lack of life alternatives is combined with easy access to drugs and weapons and a violent neighborhood, joining an armed group is a tempting option. Significantly, children often describe it as the only feasible option, at a given moment. Crime provides these children with compensation, recognition and money that cannot be obtained through lawful means. In fact, among the main reasons cited by children involved in narco-trafficking, there are: poverty and social exclusion, ill-treatment, desire for consumer goods, easy money and a high social status, need for friendship and surrogate families; search for identity and protection from physical harm or death; desire for revenge.⁴⁰ In addition, narco-trafficking is having a cultural impact on children, since the cultural identity is changing, and many children claim they want to be narco-traffickers or criminal group leaders. “Role models who should represent the ethic dimension of the society are deteriorating and there is no longer a connection between moral values and social recognition. In children’s eyes, there is no qualitative difference between a policeman and drug boss”.⁴¹

This lack of job and education options is reflected and confirmed by two nation-wide surveys, one conducted by the Mexican Youth Institute (Instituto Mexicano de la Juventud, IMJ)⁴² and the other led by the Ministry of Labor and Social Security,⁴³ on children below 18 that do not study nor work.

Such surveys show that around one and half million of children (1’561’641) aged 5 to 17 do not work nor study and this figure goes up to almost eight millions (7,796,630) for those aged 12 to 29. No surprise that such population becomes an easy prey for recruitment from organized crime groups.

Interviews with civil society organizations that work on the field with children who joined criminal groups, as well as scholars of Mexican universities, give account of an alarming situation. When we speak about organized crime in Mexico, it is essential to distinguish between local gangs and transnational groups that are much more organized and work together with main drug cartels. More often, local gangs are not involved in transnational organized crime and only seek to control their territory. In this case, the main activities for children are drug sale and surveillance, and their participation does not amount to a real membership. On the other hand, membership is deemed when children are incorporated to transnational organized groups and work with and for drug cartels. It is well known that Mara Salvatrucha is working with Los Zetas at present and around 35,000 children and young people are involved, while the M18 is working with Sinaloa cartel and is employing around 8,000 children and young people.⁴⁴ Unfortunately, there is no official data on gangs participation.

Indisputably, narco-trafficking is taking advantage of such children and is exploiting them. It must be highlighted that children involved with criminal groups do not have to be seen as perpetrators only, but also as victims of economic exploitation from organized crime. This exploitation starts in their early childhood. As a matter of example, with regard to human beings trafficking, children as old as 9, are involved in the commission of such crime. Usually, children of 9 years of age are used as guards or spies, or are used to monitor trains and verify how many migrants are getting to Mexico every day. From 12 years onwards, children are used to keep under surveillance houses where migrants are detained and make sure nobody is escaping from it. Older children (16 years) carry weapons and are involved in kidnappings and killings.

³⁷ M.G. Manwaring, *Street Gangs: The New Urban Insurgency*, Strategic Studies Institute, US Army War College, 2005.

³⁸ L. Downey, *Ni guerra ni paz, Comparaciones internacionales de niños y jóvenes en violencia armada organizada*, 2005, p. 9.

³⁹ Prof. E. Buscaglia, interview, Mexico City, 25 March, 2010.

⁴⁰ M. Poretti, *Preventing Children from Joining Armed Groups*, *Refugee Survey Quarterly*, Vol. 27, Issue 4, pp. 123-141, 2008.

⁴¹ Prof. J.M. Valenzuela, interview, Tijuana, 5 April, 2010.

⁴² IMJ-CIEJ, *Encuesta Nacional de Juventud 2005*.

⁴³ INEGI/STPS, *Resultados del módulo de trabajo infantil 2007, Encuesta Nacional de Ocupación y Empleo 2007*.

⁴⁴ Prof. E. Buscaglia, interview, Mexico City, 25 March, 2010.

With respect to narco-trafficking, children are involved in all the industry line. Little children work as guards, older are involved in drug transfer and some are hired killers. Girls mainly work in drug packing.

As it is shown by the aforementioned examples, there exists a real process of criminal development. Children start with low-responsibilities tasks and end their criminal career carrying out more violent tasks. However, lately, it has been observed that this process does not always develop as such, in a linear way, where the age is directly proportional to the seriousness of the crime. Currently, tasks are attributed depending on children's ability and criminal capacity, irrespective of his age or criminal development. As a consequence, it is highly likely to be found a 12 year old child who shows violent attitudes and becomes a hired killer at 12.⁴⁵

State response to this situation has been, so far, only focused on criminalization and militarization, with a generalized lack of any preventive strategy. In the operations of the Army, the Navy and the police against organized crime, arrests and detentions of children allegedly pertaining to the criminal groups are increasingly frequent. As for adults, 398 thousand people have been arrested from January 2007 to July 2010. With regards to children, the following table gives account of the geographical distribution of such arrests and their increase. The Ministry of National Defense and the Ministry of the Navy claim not to hold registers of children detained before 2007, which indirectly confirms that such tasks were previously conferred to the police and the judiciary only.



⁴⁵ C. Cruz Santiago, interview, Mexico City, 21 March, 2010.

MINISTRY OF NATIONAL DEFENSE: CHILDREN DETAINED IN MILITARY OPERATION AGAINST THE ORGANIZED CRIME				
YEAR	NUMBER OF DETAINEES	AGE	TOTAL	STATE
2007	6	9,15 Y 16	3	BAJA CALIFORNIA.
		17	1	VERACRUZ.
		14 Y 17	2	ZACATECAS.
2008	44	1 DE 13; 5 DE 15; 5 DE 16 Y 6 DE 17	17	BAJA CALIFORNIA
		12, 14, 15, 16 Y 17	5	CHIHUAHUA
		2 DE 14; 3 DE 16 Y 9 DE 17	14	GUERRERO
		17	1	VERACRUZ
		3 DE 15 Y 4 DE 17	7	ZACATECAS
2009	140	1 DE 7; 1 DE 9; 1 DE 14; 2 DE 16; 5 DE 15, 7 DE 16 Y 9 DE 17	26	BAJA CALIFORNIA
		1 DE 12; 2 DE 14; 1 DE 15; 1 DE 16, Y 4 DE 17	9	CHIHUAHUA
		14 Y 17	2	COAHUILA
		1 DE 14; 4 DE 15; 13 DE 16 Y 29 DE 17	47	GUERRERO
		2 DE 17	2	QUINTANA ROO
		17	1	TABASCO
		1 DE 13; 4 DE 14; 5 DE 15; 9 DE 16 Y 19 DE 17	38	VERACRUZ
		1 DE 13; 2 DE 15; 6 DE 16 Y 6 DE 17	15	ZACATECAS
2010 (january-may)	42	15	1	BAJA CALIFORNIA SUR
		14, 15, 16 Y 17	4	CHIHUAHUA
		16	1	COAHUILA
		2 DE 15; 6 DE 16; Y 4 DE 17	12	GUERRERO
		1 DE 13; 1 DE 14; 1 DE 15 Y 2 DE 17	5	MORELOS
		17	1	NAYARIT
		17	1	SONORA
		13	1	TABASCO
		1 DE 16 Y 6 DE 17	7	VERACRUZ
		2 DE 14; 2 DE 15; 4 DE 16 Y 1 DE 17	9	ZACATECAS

MINISTRY OF THE NAVY : CHILDREN DETAINED IN MILITARY OPERATIONS AGAINST THE ORGANIZED CRIME			
YEAR	NUMBER OF CHILDREN	AGE	STATE
2007	1	16	QUINTANA ROO
	1	16	TAMAULIPAS
	1	16	GUERRERO
2008	3	15, 16 Y 17	MICHOACÁN
	1	16	SINALOA
2009	2	16	CHIAPAS
	1	17	BAJA CALIFORNIA SUR
	2	15	TAMAULIPAS
	2	17	BAJA CALIFORNIA
	1	17	GUERRERO
2010 (enero-mayo)	2	3 Y 11	VERACRUZ
	1	16	VERACRUZ
	4	16	TAMAULIPAS
	1	16	GUERRERO
	1	14	TAMAULIPAS
	1	17	SONORA
	1	14	QUINTANA ROO

FEDERAL POLICE: CHILDREN DETAINED IN OPERATIONS AGAINST THE ORGANIZED CRIME (January 2008 - May 2010)	
STATE	TOTAL
AGS	3
BC	28
BCS	2
CAMP	2
CHIH	148
CHIS	1
COAH	7
COL	1
DF	29
DGO	9
GRO	6
GTO	7
HGO	6
JAL	1
MEX	11
MICH	11
MOR	1
NAY	6
NL	12
OAX	4
PUE	2
QRO	4
QROO	1
SIN	8
SON	13
TAB	7
TLX	5
TMPS	14
VER	8
ZAC	6
TOTAL	363

FEDERAL POLICE:	2008 (january - may)	2009	2010	TOTAL
CAUGHT IN THE ACT	17	226	120	363

Reforma newspaper, quoting sources of the Office of the Attorney General, published very different figures and claimed that the number of children detained in federal operations against the organized crime is 3,664, from December 2006 until April 2010.

Office of the Attorney General: Children detained in operations against the organized crime	
Year	Number
2006 (diciembre)	64
2007	868
2008	1,020
2009	1,272
2010 (enero-abril)	440
Total	3,664

It must be emphasized that these arrests, whatever the exact figure is, are being carried out in a worrisome legal void, since the Parliament has not yet issued the Federal Law on Juvenile Justice, frozen in the Chamber of Deputies since 2005.

In December 2005, the reform of the Article 18 of the Constitution introduced in Mexico the new system of juvenile justice. The most relevant elements of the new system are: the minimum age of criminal responsibility is set in 12 years; treatment's main goal will be social reintegration; a fair treatment and trial will be guaranteed; the trial will be oral and will be carried out by specialized courts; deprivation of liberty will only be used as a last resort measure and for the shortest appropriate period of time; deprivation of liberty will only be

applied to children aged 14 onwards and only for very serious crimes; alternatives to a court conviction will be put in place.

The Constitutional reform created an obligation for the Federation and each State to put in place a coherent system of juvenile justice. All the States created such a system within the assigned deadline (12 September 2006), to try and judge crimes of local jurisdiction. On the contrary, the Federation, responsible for the crimes of federal jurisdiction, did not establish any deadline for passing the law, reason why, at the time of writing, the enactment of the law is still pending.

To fill a legal void, the Supreme Court established that local judges were competent to try federal crimes too and extended the application of the 1991 Act for the treatment of children offenders. However, the 1991 Act only recognizes the ordinary appeal and not the other means recognized in modern juvenile justice laws, like denied appeal, complaint and motion of reconsideration; and it does not establish any form of child participation to the trial, nor guarantees the child a fair trial. In addition to these legal weaknesses, there are also practical problems: local Attorney generals are reluctant to intervene in federal crimes, paralyzing the trial. Likewise, the children judged for federal crimes and sentenced to jail are currently being detained in detention centers that should be reserved to children sentenced for local crimes.

Among the reasons that can explain the delay in the enactment of the federal law, it should be mentioned the lack of financial resources to launch the new system. Indeed, the latter requires a complete re-engineering, with the creation of a juvenile justice system composed by attorney generals, judges, policemen, social workers specialized in children's rights, as well as the creation of detention centers everywhere in the country. Having said so, such financial limitations do not discount the obligation of the Federation to issue the law with the utmost urgency.



Photo Credit: Benjamín Flores / Procesofoto / Reynosa

EXEMPLARY CASE

Criminalization of children in the absence of a proper juvenile justice system

On 24 October 2010, a group of teenagers allegedly pertaining to a criminal group were arrested in Morelos. The Ministry of the Interior of Morelos stated that such group was headed by a 12-year old boy, nicknamed "el Ponchis" and his two sisters, also known as "Las chabelas". At that time, the three were still at large.

After the arrest of those children, the authorities did not provide any information on their legal status; quite the opposite, they provided confusing information to national and international media that published contradictory reports. While in some articles "el Ponchis" is deemed to be 12 years old, in others it is said that he is 14 years old; what is more, a great confusion exists about his real identity.

After the detention of his friends, called by the authorities and the media "baby killers", a video was uploaded to "youtube" where it is shown an interrogation of one of the detainees, Cristian García Ramírez, also known as "el Cris".

The police, the Army and the office of the Attorney general launched an extensive search with the aim of capturing "El Ponchis". On December 2, he was detained at the Morelos airport while he was about to board for San Diego, California. It was found out that his real name is Edgar Jiménez Lugo and he is 14 years old.

Before turning him to the Attorney General's office, the Army allowed the media to interview the guy, violating his right to privacy and the right to be treated with dignity (articles 16, 40 CRC). All of the above shows the existence of a media campaign, probably started by the Army and public security authorities, to criminalize a 14-year old boy, violating his right to the presumption of innocence and his right to be protected from unlawful and arbitrary interferences in his private life, enshrined in the Convention on the Rights of the Child as well as in the Mexican Constitution.

E. Prevention of children involvement with organized crime

Crime prevention is a task that every country that wants to effectively fight against such plague must undertake. The Palermo Convention enumerates some measures that State parties should take in order to reduce the opportunities for criminal groups to participate into illicit activities. Among such measures, it can be emphasized:

- The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;
- The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities;
- The prevention of the misuse by organized criminal groups of tender procedures conducted by public authorities and of subsidies and licenses granted by public authorities for commercial activity;
- The prevention of the misuse of legal persons by organized criminal groups; such measures could include: (i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons; (ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction; (iii) The establishment of national records of persons disqualified from acting as directors of legal persons;
- The alleviation of the circumstances that render socially marginalized groups vulnerable to the action of transnational organized crime.

This last point deserves some additional reflections, with a particular focus on children at risk of joining organized crime groups. To effectively fight against the recruitment of children from criminal groups, it is obligation of the State to establish a prevention strategy, primarily addressing this part of the population and its families. The Committee on the Rights of

the Child recommended to the Mexican state to take into consideration international standards in juvenile delinquency prevention, in particular the Riyadh Guidelines.⁴⁶ Likewise, the CRC Committee in its general comment N.10 about "Children's Rights in Juvenile Justice" underscored the importance of prevention, because "a juvenile justice policy without a set of measures aimed at preventing juvenile delinquency suffers from serious shortcomings".⁴⁷

Unfortunately, the current tendency in public policy is focused on repression. The Mexican government only considers organized crime as a public security problem and a criminal challenge and not as a social problem first. As a consequence, adopted measures rely on police and use of force and do not involve any preventive actions. To date, there is no state-sponsored program that deals with the flux of children that every day join criminal groups in the country. Militarization policies do not solve the problem because they do not confront the root causes of violence, but only its effects. In addition, such policies shift people and media attention from country's urgent problems (corruption, poverty, unemployment) to violence and repressive measures. The lack of preventive measures only aggravated the causes that deny children a full access to the exercise of their rights and created perfect conditions for the proliferation of armed groups and an increased violence and organization. Likewise, the criminalization of some conducts, the arrest and detention of children, the lowering of the minimum age of criminal responsibility are counterproductive, since they only increase recidivism, radicalize criminal conducts and strengthen criminal networks.⁴⁸

All of the above does not imply, by any means, that law enforcement is not important. It definitely is, but it is not possible to prevent and deter children from joining organized crime groups without addressing the roots causes that push such children to do so. Repressive measures must be placed within a multi-dimensional, multi-phased policy, ensuring the full respect of human rights of children. Prevention strategies that focus on risk factors have a real chance of success. There is a range of viable strategies; some of them have been proven

particularly effective. However, it is likely that no single strategy will be sufficient to reduce violence levels. On the contrary, many concurrent strategies will be required, and must be tailored to the particular area of implementation.

Any successful intervention should be based on the following principles:

- to develop general and specific public policies, based on local assessments yet integrated into the national and structural level;
- address structural risk factors;
- foster a preventive network based on obligation holders (family, community, State);
- prioritize inclusion instead of repression;
- promote child participation in the elaboration of public policies to fight organized crime.

The CRC Committee stresses how prevention policies must include different levels of interventions: schools, family, community, society at large.

*"Emphasis should be placed on prevention policies that facilitate the successful socialization and integration of all children, in particular through the family, the community, peer groups, schools, vocational training and the world of work, as well as through voluntary organizations. This means, inter alia that prevention programmes should focus on support for particularly vulnerable families, the involvement of schools in teaching basic values (including information about the rights and responsibilities of children and parents under the law), and extending special care and attention to young persons at risk. In this regard, particular attention should also be given to children who drop out of school or otherwise do not complete their education. The use of peer group support and a strong involvement of parents are recommended. The States parties should also develop community-based services and programmes that respond to the special needs, problems, concerns and interests of children, in particular of children repeatedly in conflict with the law, and that provide appropriate counselling and guidance to their families".*⁴⁹

46 ONU, Committee on the Rights of the Child, *Concluding Observations*, 2006, CRC/C/MEX/CO/3, para. 71.

47 ONU, Committee on the Rights of the Child, *General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, CRC/C/GC/10, para. 17.

48 M.G. Manwaring, *A Contemporary Challenge to State Sovereignty: Gangs and Other Illicit Transnational Criminal Organizations in Central America, El Salvador, Mexico, Jamaica and Brazil*, Strategic Studies Institute, U.S. Army War College, December 2007, p. 22.

49 ONU, Committee on the Rights of the Child, *CRC General Comment No. 10 (2007): Children's Rights in Juvenile Justice*, CRC/C/GC/10, para. 18.

Preventive measures should identify key communities, children in need of special protection and implement local projects that involve families, schools and communities. Good practices are set out below according to the targeted level of intervention (i.e. relationship, community and society).

On the family level, preventive strategies that showed best results are:

- Home visitations: These programmes include training, support, counselling, monitoring, and referral to outside agencies for low-income parents, mothers who are expecting or have recently had a child, or at risk of abusing their children;⁵⁰
- Training in parenting demonstrated to be effective. Such programmes help parents to overcome the problems associated with poor family management practices by teaching parents how to provide consistent and supportive forms of discipline, to reduce physical punishment and how to develop clear standards for child behaviour;⁵¹
- In general, programs offer greater benefits if they are delivered early in a child's life or to pre-teens. Most effective programs started before the age of 5, lasted at least 2 years, involved home visits, provided educational pre-school experience, focused on the child and the family at the same time and also provided occupational and medical assistance to parents.⁵²

On the school and community level, the most promising interventions are:

- Programmes, which are designed to build life-skills, social-skills, emotional and cognitive competences, appear to be effective;⁵³
- Environmental change programs in school settings (e.g. classroom management practices, cooperative learning

techniques, student monitoring and supervision, changes in the physical environment) have given good results;⁵⁴

- Interventions focusing on role models and mentoring;
- Extracurricular activities: sports, arts, music, theater, journalism, can provide children with the opportunity to participate in group activities and get recognized for this;
- Residential mobility interventions (e.g. housing vouchers to offer families a choice in residential location) have demonstrated some positive effects on reducing juvenile involvement in crimes;⁵⁵
- Community police: this police works with the community to manage its security and to respect the rights of the inhabitants and to solve community problems;
- Citizen participation: communities have to become managers of their own development, because organized crime emerges where communities are disorganized, abandoned.

It is evident that such interventions will not be effective if they are not accompanied by structural changes and programs that modify the spatial concentration of poverty, reduce inequalities, encourage job creation and make sure that all children have access to education. Likewise, measures to reduce access to means, like restricting access to guns, have shown some preventive effect. The strengthening of police and judiciary systems, in particular the juvenile justice system, the fight against impunity and corruption and the decrease in violence exposure are additional measures to guarantee the success of the strategy.

It is required that any local intervention is integrated into a national framework. Public policies should be based on feasibility studies and baseline assessments that: identify environmental risk factors that cause or contribute to criminal groups proliferation in a determined area; identify populations

at risk; design and implement at municipal and state level a comprehensive strategy to tackle structural and local risk factors.

Multi-level, multi-faceted interventions have given the best results, so far. In this sense, an exemplary program is Fight for Peace, implemented in Rio de Janeiro, Brazil. It involves a wide range of activities: educational support, food assistance to families, labour market referral, paid internships, citizenship classes, participation in sporting competitions, legal assistance, family visits, building of active youth leaders, psychological support, and cultural visits

Effectively preventing children participation in criminal groups remains a key and very complex challenge for which no easy clear-cut answer seems to exist. Coordination among key stakeholders (government, police and security forces, armed groups, civil society and other national or international organizations) is necessary to any successful preventive intervention. With strong commitment and investments, creative preventive measures, based on evidence and addressing risk factors, can produce a real change.

⁵⁰ WHO, World Report on Violence and Health, 2002, p. 41; OJJDP (Office of Juvenile Justice and Delinquency Prevention), Blueprints for Violence Prevention, 2004, p. 16; T. Moeller: Children aggression and violence – a psychological approach, Lawrence Erlbaum Associates, Inc., Mahwah, NJ, 2001, p. 319.

⁵¹ WHO, op. cit., p. 42; OJJDP, op. cit., 2004, p. 22.

⁵² L. Downey, op. cit., p. 159.

⁵³ WHO, op. cit., p. 40; OJJDP, op. cit., 2004, p. 43.

⁵⁴ L. Sherman et al., *Preventing Crime: What Works, What Doesn't, What's Promising*, National Institute of Justice, 1998, p.7.

⁵⁵ L. Dahlberg/A. Butchart, "State of the science: violence prevention efforts in developing and developed countries", *International Journal of Injury Control and Safety Promotion*, Vol. 12, No. 2, 2005, p. 100; J. Ludwig, G. Duncan, P. Hirschfeld: "Urban Poverty and Juvenile Crime: Evidence from a Randomized Housing-mobility Experiment", *Quarterly Journal of Economics*, No. 16, May 2001.

Recommendations

- o Comply with recommendations issued by the UN Human Rights Council in the Universal Periodic Review on topics like public security, the Army, the fight against organized crime and military courts. In particular, ensure full compliance to the following recommendations:
 - o Ensure that human rights violations by the security forces are systematically investigated, perpetrators are brought to justice and victims are compensated⁵⁶ and recommendations made by National Human Rights Commission adopted;⁵⁷
 - o Review the Code of Military Justice with a view to extending the jurisdiction of civil courts in cases involving violations of human rights by the military, in order to align more closely with international human rights obligations;⁵⁸
- o Ensure that murders of children are fully clarified, that those responsible and their accomplices, including civil servants who might have not conducted investigations, are brought to justice;
- o Set up a coordination committee, constituted by the Ministry of Labor, the Ministry of Education and the Ministry of Health, whose main task would be to design, implement and evaluate preventive measures. This committee should be able to link between the federal level and the state and municipal levels, and should involve civil society organizations specialized on juvenile violence prevention;
- o Take effective measure to bring to justice companies involved in money laundering coming from organized crime groups;
- o Set up a Children Rights Commissioner (Ombudsman) at the federal level, to investigate with impartiality and independence cases of violation of children's rights, taking into account the Committee's general comment No. 2 (2002) on "The Role of Independent National Human Rights

Institutions in the Protection and Promotion of the Rights of the Child";

- o Seek technical assistance from the UN and other international organizations in the planning and the implementation of violence preventive programs;
- o Create an information system that collects and elaborates data on children under the age of 18 who are victims or perpetrators of offences related to organized crime or narco-trafficking and disaggregate such data for sex, age, state and municipality;
- o Ensure that all governmental branches respect and guarantee citizens' right to access to information about organized crimes.



Photo Credit: Antonio Salas Castro / Procesofoto

⁵⁶ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, para. 93 n. 35.

⁵⁷ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, para. 93 n. 35-43.

⁵⁸ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, para. 54.

Recommendations to the United Nations Committee on the Rights of the Child on the First Report by the Mexican State under the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

- ==> Explicitly prohibit by law and criminalize forced recruitment of children below 18 by armed forces and forced and voluntary recruitment of children below 18 by armed groups.
- ==> Reform article 133 of the Constitution in the sense of conferring to human rights and humanitarian law treaties constitutional rank.
- ==> Establish extra-territorial jurisdiction for the authors of offences identified in the Protocol, when the author or the victim is a national of the country or have any other links with the State party.
- ==> Provide conditions for the return and/or relocation of internally displaced people. Provide specialised care for internally displaced children.
- ==> Dismantle, disarm, and hold responsible paramilitary groups or armed civilians in indigenous regions (those not included in any special legislation, such as the Amnesty law).
- ==> Raise the minimum age for voluntary recruitment up to 18 years old, without exceptions.
- ==> Explicitly prohibit direct participation in hostilities of children under the age of 18.
- ==> Explicitly criminalize by reform of the Federal Penal Code violations of the provisions of the Optional Protocol regarding the recruitment and involvement of children in hostilities.
- ==> Stipulate explicitly that military personnel should not undertake any act that violates the rights enshrined in the Optional Protocol, regardless of any military order to that effect.
- ==> Ensure that all children in military schools receive education according to articles 28, 29 and 31 of the Convention on the Rights of the Child, taking into account Committee's general comment No. 1 (2001) on the aims of education. In particular, human rights education should be included on the provisions of the Protocol.
- ==> Establish that children under the age of 18 attending military schools are awarded civilian status and not military status.
- ==> Ensure that children in conflict with the law, irrespective of its military or civil nature, are always dealt with within the juvenile justice system and are treated in accordance with the standards enshrined in

Recommendations to the United Nations Committee on the Rights of the Child on the First Report by the Mexican State under the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

the Convention (arts. 37 and 40) and illustrated in the Committee's general comment No. 10 (2007) on "children's rights in juvenile justice".

- ==> Formally prohibit corporal punishment, taking into account Committee's general comment No. 8 (2006) on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment.
- ==> Provide children attending military schools with adequate access to independent complaints and investigation mechanisms.
- ==> Improve the system of data collection and analysis on voluntary recruitment, compulsory recruitment and military schools. Ensure the access to such data by all the interested parties.
- ==> Comply with recommendations issued by the UN Human Rights Council in the Universal Periodic Review on topics like public security, the Army, the fight against organized crime and military courts. In particular, ensure full compliance to the following recommendations:
Ensure that human rights violations by the security forces are systematically investigated, perpetrators are brought to justice and victims are compensated⁵⁹ and recommendations made by National Human Rights Commission adopted;⁶⁰
Review the Code of Military Justice with a view to extending the jurisdiction of civil courts in cases involving violations of human rights by the military, in order to align more closely with international human rights obligations;⁶¹
- ==> Ensure that murders of children are fully clarified, that those responsible and their accomplices, including civil servants who might have not conducted investigations, are brought to justice;
- ==> Set up a coordination committee, constituted by the Ministry of Labor, the Ministry of Education and the Ministry of Health, whose main task would be to design, implement and evaluate preventive measures. This committee should be able to link between the federal level and the state and municipal levels, and should involve civil society organizations specialized on juvenile violence prevention;
- ==> Take effective measure to bring to justice companies involved in money laundering coming from organized crime groups;

⁵⁹ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, paragraph 93 n. 35.

⁶⁰ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, paragraph 93 n. 35-43.

⁶¹ Human Rights Council, Universal Periodic Review, México A/HRC/11/27, paragraph 54.

Recommendations to the United Nations Committee on the Rights of the Child on the First Report by the Mexican State under the Optional Protocol to the UN Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

- ==> Set up a Children Rights Commissioner (Ombudsman) at the federal level, to investigate with impartiality and independence cases of violation of children's rights, taking into account the Committee's general comment No. 2 (2002) on "The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child";
- ==> Seek technical assistance from the UN and other international organizations in the planning and the implementation of violence prevention programs;
- ==> Create an information system that collects and elaborates data on children under the age of 18 who are victims or perpetrators of offences related to organized crime or narco-trafficking and disaggregate such data for sex, age, state and municipality;
- ==> Ensure that all governmental branches respect and guarantee citizens' right to access to public information.



Photo Credit: Comité de derechos humanos de Nuevo Laredo.

Committee on the Rights of the Child: List of issues concerning additional and updated information related to the consideration of the initial report of Mexico June 2010

The State Party is requested to submit in written form additional and updated information, if possible, before 2 August 2010 (not exceeding 15 pages)

1. Please clarify whether exists any provision in the Penal Code that criminalizes forced recruitment and/or participation in hostilities of children below 18;
2. Please clarify whether extraterritorial jurisdiction can be established for offences under the Optional Protocol committed abroad by or against one of its nationals, taking in consideration international instruments, in particular the Rome Statute of the International Court;
3. Please clarify whether Army officers receive training on the Optional Protocol;
4. Please provide detailed information on early military service in 2007, 2008, 2009. Likewise, please clarify whether children aged 16 and 17 who are serving their military service in advance are involved in the fight against the organized crime and narco-trafficking cartels;
5. Please provide disaggregated data on military schools: information on the type of education provided and the proportions of academic education and military training in the curricula, including if the students are trained in using weapons; age-disaggregated data on the students, their military status in the case of a mobilization or of an armed conflict; and their right to leave such schools at any time and not to pursue a military career; and if students have access to independent complaint mechanisms;
6. Please provide disaggregated data on children recruited by paramilitary groups and/or armed groups within the territory of the State party;
7. Please provide information on the measures taken for the rehabilitation and social reintegration of refugee children, asylum seekers and migrants, in particular children that might have been recruited or participated in hostilities abroad.

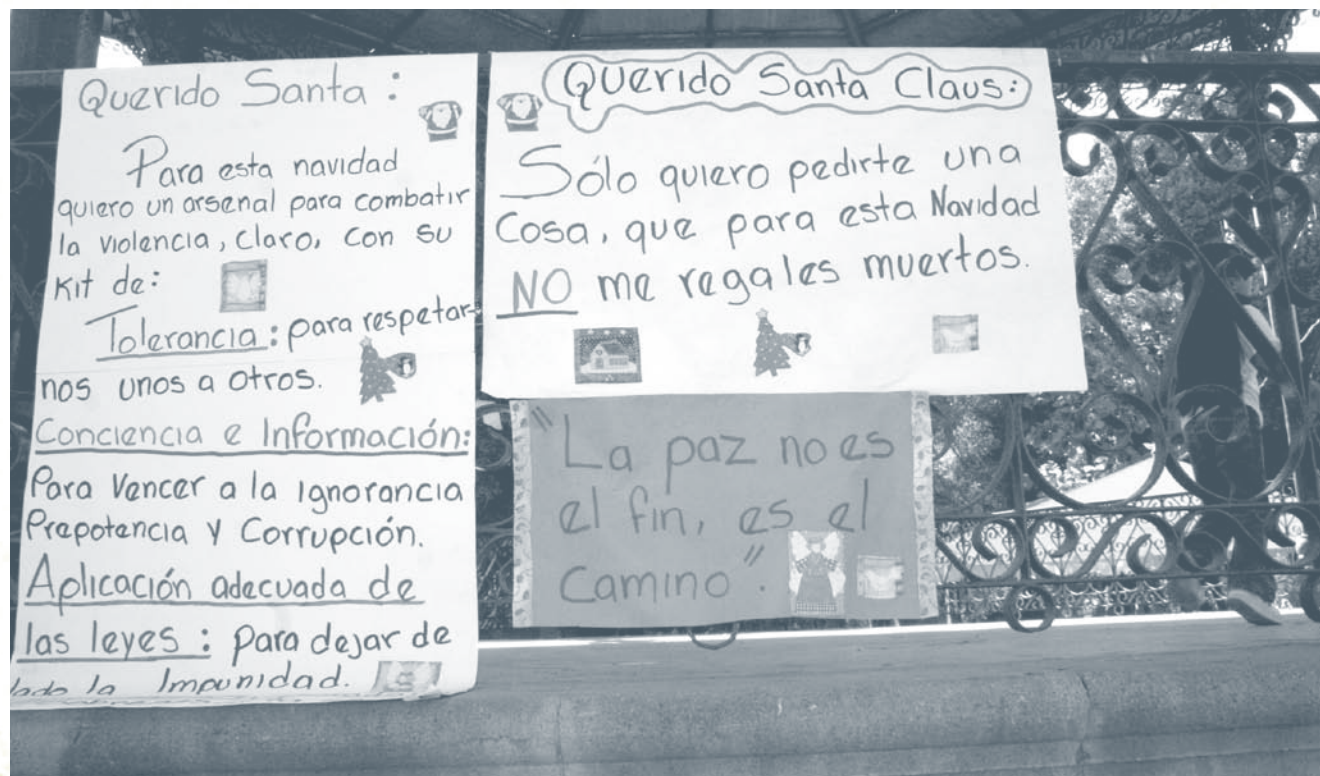


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