



# One year after Tlatlaya: The Order was to Kill

English summary of the new report presented on July 2, 2015  
by the Miguel Agustín Pro Juárez Human Rights Center

## 1. Introduction

One year after the Tlatlaya massacre, the Miguel Agustín Pro Juárez Human Rights Center (Center Prodh) presents its analysis of the lack of justice, truth, and reparations in this emblematic case, which is one of many serious human rights abuses committed in the context of the militarization of public security in Mexico.

This report draws on information to which we have access in our role as legal representatives of one of the survivors of the massacre, known publicly by the pseudonym Julia.

Of particular importance, **the documents obtained show the existence of standing, written orders that promote serious human rights violations, in this case extrajudicial executions.** Given that the Mexican army seeks to explain the high number of civilians killed by its members as the result of “shoot-outs” (despite the clearly disproportionate number of civilian versus military deaths), this new information permits a better-informed public discussion of how Mexican security forces actually use lethal force, and should lead to investigation of the army in this regard.

For Center Prodh, it is crucial to recognize that this report is only possible thanks to Julia’s ongoing fight for truth and justice following the extrajudicial execution of her 15-year-old daughter Erika in Tlatlaya. We take this opportunity to recognize her courage and to call on the Mexican government to guarantee her safety and that of her family.

## 2. Incomplete justice, absence of truth

The initial explanation given by authorities for the killing of 22 civilians on June 30, 2014 in Tlatlaya, Mexico State, was that the deaths occurred during a shoot-out between soldiers and criminals. The Ministry of Defense (Sedena, for its initials in Spanish), the executive branch of the Mexico State government, the federal Attorney General’s Office (PGR), and even the National Human Rights Commission (CNDH) gave a false version of events that was

exposed months later by the Associated Press and by Esquire magazine, which published an interview with Julia, who was present during the massacre because she had come in search of her daughter, with whom she had lost contact shortly beforehand.

Even though Julia's eyewitness testimony and that of the other two survivors demonstrate that the initial explanation was false, significant discrepancies remain in the number of victims now acknowledged by the Attorney General's Office and by the National Human Rights Commission. As of today, the Attorney General's Office has charged seven soldiers for the murder of eight civilians, and claims that the rest of the civilians were killed while participating in a shoot-out. Yet the witnesses and the National Human Rights Commission's conclusions in Recommendation 51/2014 show that the number of victims executed extrajudicially is higher. The Commission identifies twelve definite victims of extrajudicial execution and three possible victims (who were moved afterwards during the alteration of the crime scene).

The three survivors' testimonies all point to a high number of victims of extrajudicial execution. Julia personally saw nine people who were arbitrarily shot after an initial exchange of gunfire, and heard several other gunshots that coincide with other presumed victims of execution. The survivors confirm that two of the victims were shot when they had already been taken into custody by the initial group of soldiers, after reinforcements with a different uniform arrived.

Julia's adolescent daughter is not considered a victim of extrajudicial execution by Mexican authorities, even though there is evidence that her body was moved from its original place, that a gun was planted on her (by her left hand, when she was right-handed), and that the same gun used to carry out extrajudicial executions was used to shoot her (one of its bullets was found in her body).

We can thus conclude, at minimum, that the federal investigation has not fully clarified these events. We call on the Attorney General's Office to include independent experts in its investigation, with the aim of identifying the true number of victims of extrajudicial execution and modifying the criminal charges accordingly. Until this occurs, we cannot speak of justice for Tlatlaya, and the National Human Rights Commission should not consider that federal authorities have complied with its Recommendation on the case.

### **3. Obligation to investigate the army's institutional responsibility**

Authorities have not yet investigated the chain of command implicated in the Tlatlaya case, even though the case file contains orders from superiors that promote extrajudicial executions. We publish these orders for the first time in this report, given that they constitute documents of public interest with direct bearing on serious human rights violations.

To obtain the documents to which we refer, Julia, accompanied by Center Prodh, first requested access to the case file of criminal trial 338/2014, currently before the Sixth Military Court of the First Military Region. The military court denied her request, stating that she had no standing in the trial and that the information was confidential. She filed an *amparo* constitutional challenge against this decision.

Center Prodh and Julia finally obtained partial access to the file when a federal judge requested them from the military court (which sent one of two volumes of the case file). Within the documents to which we were given access, we found a *General Operating Order for the San Antonio del Rosario Operating Base* and a subsequent *Relief and Command Designation Order for Infantry Lieutenant Ezequiel Rodríguez Martínez*, both dated June 11, 2014, signed by a Lieutenant Colonel in absence of the Commander of the 102<sup>nd</sup> Infantry Battalion, Colonel Raúl Castro Aparicio.

The purpose of the *General Operating Order* was to establish how commanders and troops in public security operations should operate. The order cites the army's official 2013-2018 Program, and it mentions Operation Dragon, about which we do not have further information.

The *Relief and Command Designation Order* directed to Lieutenant Rodríguez carries the symbol of issuing authority "102 Inf. Bat., Command Group" and reiterates how operations should be carried out, specifying that these are orders from the High Commander, that is, the Defense Minister. As legal justification, the order cites a number of norms that in no way give the army the power to carry out the activities assigned to the San Antonio del Rosario Operating Base.

The order mandates that, "**actions to reduce violence shall be planned and executed in the dark hours, directed at specific targets.**" It mentions that the priority during these operations is to avoid harming innocent people ("collateral victims"), following a consistent distinction made throughout the order between three groups: soldiers, civilians, and "criminals," also called "delinquent groups" or "members of organized crime." Yet there are no clear indications of how to identify this last group. Regarding this group, the order specifies:

**"Troops should operate massively at night and reduce activities during the day, in order to kill criminals in the darkness of the night, given that most crimes are committed during those hours."**<sup>1</sup>

---

<sup>1</sup> In Spanish, the word used for "kill" in the order is "*abatir*," the term used by the army consistently and exclusively to mean "kill" both within the investigation of the Tlatlaya case and in the press releases of the army and navy over the last two presidential administrations, as well as in numerous public statements.

By instructing soldiers to attack supposed “criminals” at night – without requiring any particular process or criteria to define who is a criminal – the order not only incentivizes the commission of extrajudicial executions, but places the soldiers in a situation of advantage (the cover of dark), which also facilitates the covering up of illicit activities. Thus, although the order itself contains other dispositions that allude to the obligation to “respect human rights” and contains an annex of “Conducts that should be avoided in operations” (including excessive use of force), these parts of the order are contradicted by the previously cited language; thus, at best the order is confusing and contradictory.

Given the probable role of this order in promoting the conduct seen in Tlatlaya, the chain of command should be investigated for possible criminal responsibility for having ordered or tolerated these actions (or for any material participation in the facts or in obstructing justice). The chain to be investigated within the army would begin with Lieutenant Rodríguez (to whom the order was directed), moving on to Colonel Aparicio as Commander of the 102<sup>nd</sup> Battalion, then to the commanders of the 22<sup>nd</sup> Military Zone and the First Military Region (to which this Zone belongs), and would then move to General Salvador Cienfuegos Zepeda as Minister of Defense. There should also be an investigation of the military personnel who signed and were copied in the order (nine people appear in these capacities in the document).

Center Prodh has formally requested that the Attorney General’s Office take statements from the aforementioned individuals in the framework of its investigation in order to clarify the facts, the nature of Operation Dragon, and other aspects that are in dispute, such as the number of state agents who arrived at the scene of the crime on June 30<sup>th</sup> (evidence places this number at more than 55 members of the army and 21 members of the navy, but the Attorney General’s Office only took statements from the members of the San Antonio del Rosario Operating Base).

In closing, we recall that the order cited above violates international law whether we apply international human rights law or international humanitarian law (applicable to situations of armed conflict).

#### **4. Improper use of military jurisdiction**

As a case of human rights violations against civilians, the Tlatlaya massacre cannot legally be investigated or tried in military jurisdiction according to the jurisprudence of the Inter-American Court of Human Rights, the decisions of Mexico’s Supreme Court, and Mexico’s Code of Military Justice, which was reformed (before the Tlatlaya case occurred) specifically to prevent military jurisdiction from being used in such cases.

Nevertheless, the Tlatlaya case was investigated and is being tried in military jurisdiction. Thus, currently there are two parallel trials in course (one military and one civilian), which could end with contradictory verdicts.

The military prosecutors cite a loophole in the 2014 reform of the Code of Military Justice (article 37, which permits parallel investigations) to justify having assumed jurisdiction over the case and having ordered a series of investigatory actions from the beginning.

In this sense, it is important to recall that in April 2015 the Inter-American Court of Human Rights issued two compliance judgments in which it found that Mexico had not complied with orders to reform the use of military jurisdiction stemming from the paradigmatic cases of Rosendo Radilla Pacheco, Rodolfo Montiel and Teodoro Cabrera (the Ecologists Case), Valentina Rosendo Cantú, and Inés Fernández Ortega.

## **5. Revictimization**

Julia lost her daughter in Tlatlaya, witnessed the execution of numerous other victims, and was then arbitrarily detained and coerced into signing documents without knowing what they contained, as part of the authorities' attempt to accuse the three surviving women of crimes they did not commit.

Even after regaining her liberty, Julia has faced a continuous uphill battle just to be recognized as a victim of the Tlatlaya massacre. In the trial underway in military jurisdiction, on January 14, 2015, she requested recognition as a victim (which would permit her to have access to the case file). This status was denied the following day, so she filed an *amparo* constitutional challenge, Indirect Amparo 135/2015-IV-B, before the Fourteenth District Judge for Penal Amparos in Mexico City. On April 14, 2015, this judge ordered that the parties to the *amparo* be given access to the files sent by the military court. Thus, Julia had to wait ten months to have access to part of the case file.

In civilian jurisdiction, on October 7, 2014, after giving her statement on the facts of the case, Julia was recognized as a victim by the federal prosecutor. However, this did not translate into respect for her rights as a victim. She was not notified when the federal trial began before the Fourth Court of Federal Criminal Trials in Toluca, Mexico State. She went to the court and found that only eight people had been officially classified as victims, and that her daughter was not included. On November 21, 2014, the court denied her request for full access to the case file, arguing that Julia is not a victim. To challenge this denial, Julia filed another *amparo* action, number 1859/2014, currently before the Fifth District Court for Amparos and Federal Trials in Toluca.

On the other hand, we recall that Julia is a beneficiary of precautionary measures granted by the Inter-American Commission on Human Rights. Although there have been concrete advances in implementing various protection measures, some of these are impractical and costly, while other measures have not been fully implemented. This is especially true of the measures needed to protect Julia's immediate family.

Finally, instead of guaranteeing her rights, the Executive Commission for Attention to Victims (CEAV) has publicly stated on a number of occasions that the victims and families of

the Tlatlaya case are receiving large amounts of money as reparations. In the case of Julia, this is not only false, but places her at risk of kidnapping, extortion, and other crimes, given that she lives in an area in which the government does not have control of the security situation (the *Tierra Caliente* region).

These public statements come within a context of statements by other authorities seeking to discredit Julia and the other survivors of the massacre. The very day after Julia gave her statement to the Attorney General's Office, the Attorney General publicly claimed that Julia had changed her story.

## **6. Recommendations**

### **Truth and Justice**

- In line with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, recommended by Economic and Social Council resolution 1989/65 of May 24, 1989, the Attorney General's Office (PGR) should allow the creation of a new investigative commission for the Tlatlaya case, with the participation of government and independent experts, in order to clarify the true number of victims of extrajudicial executions.
- Considering the increasing number of extrajudicial executions committed by military and police forces in Mexico and the generalized lack of credibility in the investigations of these crimes, we urgently recommend the adoption of a special protocol for the investigation of cases in which state agents have killed civilians, guaranteeing the effectiveness, independence, and impartiality of the investigations. These minimum requirements are not currently met by the prosecutors' offices.
- The government should ensure access to information of public interest in the military and civilian investigations of the Tlatlaya case, considering that the underlying facts constitute serious human rights violations.
- We recommend urgently a high-level mechanism to coordinate the implementation of the recommendations of the 2014 final report of UN Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions, Christof Heyns, following his visit to Mexico, especially regarding the creation of a national forensic institution, the demilitarization of public security, the need to combat the alteration of crime scenes and the obstruction of justice by state agents, and measures to end the public criminalization of victims by government officials.

### **Institutional responsibility of the army**

- The Attorney General's Office should investigate the chain of command and examine the evidence offered by Center Prodh regarding institutional responsibility in the Tlatlaya case.

- Since other army units may currently be operating with the same type of orders given in Tlatlaya, the army should make public the operating orders currently in force and should suspend all orders that call for killing criminals and other similar acts. The army should submit its operating orders to civilian review with the aim of identifying and cancelling all orders that could promote serious human rights violations.

### **Military jurisdiction**

- The judicial branch should rule in favor of Julia, recognizing, among others, her right to challenge the use of military jurisdiction to investigate and try the facts of this case. The Supreme Court should use this opportunity to declare article 37 of the Code of Military Justice unconstitutional.
- The legislative branch should reform the Code of Military Justice once again, this time ensuring that the new Code complies with the orders of the Inter-American Court of Human Rights.

### **Victims' rights**

- The survivors of the massacre should have full access to the criminal trials and there should be public versions of the case files, given the nature of the case as a serious human rights violation.
- The government should comply fully with the precautionary measures needed to protect Julia and her family.
- The government should take all necessary measures to repair the harm suffered by Julia, recognize her important role in exposing the truth, and avoid placing her at additional risk.